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OF
NEBRASKA

REISSUE OF VOLUME 2A
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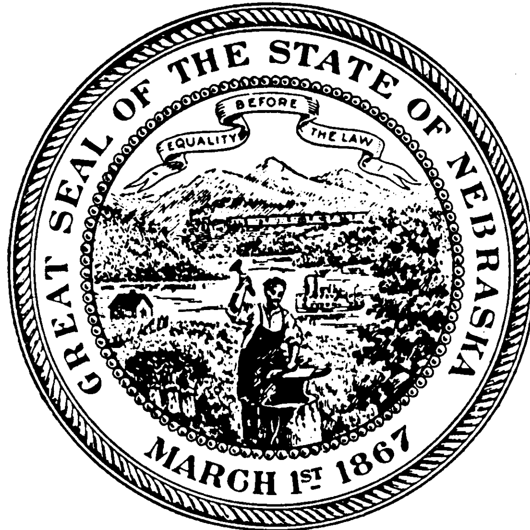

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Revisor of Statutes

For the benefit of the
State of Nebraska

CERTIFICATE OF AUTHENTICATION

I, Joanne M. Pepperl, Revisor of Statutes, do hereby certify that the Reissue of Volume 2A of the Revised Statutes of Nebraska, 2008, contains all of the laws set forth in Chapters 29 to 36, appearing in Volume 2A, Revised Statutes of Nebraska, 1995, as amended and supplemented by the Ninety-fourth Legislature, Second Session, 1996, through the One Hundredth Legislature, Second Session, 2008, of the Nebraska Legislature, in force at the time of publication hereof.

Joanne M. Pepperl
Revisor of Statutes

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ARTICLE 1

DEFINITIONS AND GENERAL RULES OF PROCEDURE

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29-101 Terms, usage.

Unless otherwise provided, words used in this code in the present tense include the future as well as the present. Words used in the masculine gender comprehend as well the feminine and neuter. The singular number includes the plural and the plural the singular. The term writing includes printing. The term oath includes an affirmation.

Source: G.S.1873, c. 58, § 246, p. 781; R.S.1913, § 8901; C.S.1922, § 9922; C.S.1929, § 29-101.

In construction of criminal code, singular number includes the plural. Follmer v. State, 94 Neb. 217, 142 N.W. 908 (1913).

29-102 Repealed. Laws 1978, LB 748, § 61.

29-103 Magistrate, defined.

The term magistrate in this code, when not otherwise expressly stated, shall mean a judge of the county court or clerk magistrate.

Source: G.S.1873, c. 58, § 248, p. 782; R.S.1913, § 8903; C.S.1922, § 9924; C.S.1929, § 29-103; R.S.1943, § 29-103; Laws 1972, LB 1032, § 161; Laws 1984, LB 13, § 47; Laws 1986, LB 529, § 27.

District judge is not included. Binfield v. State, 15 Neb. 484, 19 N.W. 607 (1884).

29-104 Prosecuting attorney, defined.

The term prosecuting attorney means any county attorney or city attorney or assistant city attorney when such attorney is prosecuting any violation designated as a misdemeanor or traffic infraction.

Source: G.S.1873, c. 58, § 249, p. 782; R.S.1913, § 8904; C.S.1922, § 9925; C.S.1929, § 29-104; R.S.1943, § 29-104; Laws 1975, LB 168, § 1; Laws 1998, LB 218, § 8.

City prosecutor in a city of metropolitan class who is also a deputy county attorney is a ''prosecuting attorney'' within this section. State v. Kolosseus, 198 Neb. 404, 253 N.W.2d 157 (1977).

Assistant attorney general is agent of Attorney General, and official acts must be performed in name of his principal. Lower v. State, 106 Neb. 666, 184 N.W. 174 (1921).

29-105 Code; general and special provisions.

In the construction of this code each general provision shall be controlled by a special provision on the same subject, if there is a conflict.

Source: G.S.1873, c. 58, § 250, p. 782; R.S.1913, § 8905; C.S.1922, § 9926; C.S.1929, § 29-105.

Penal statute applies only to persons clearly within its terms. State v. Dailey, 76 Neb. 770, 107 N.W. 1094 (1906).

29-106 Code and other law; construe according to plain import of language.

This code and every other law upon the subject of crime which may be enacted shall be construed according to the plain import of the language in which it is written, without regard to the distinction usually made between the construction of penal laws and laws upon other subjects, and no person shall be punished for an offense which is not made penal by the plain import of the words, upon pretense that he has offended against its spirit.

Source: G.S.1873, c. 58, § 251, p. 782; R.S.1913, § 8906; C.S.1922, § 9927; C.S.1929, § 29-106.

1. Construction
2. Miscellaneous

1. Construction

Penal statutes are inelastic, must be strictly construed, and are never extended by implication. Macomber v. State, 137 Neb. 882, 291 N.W. 674 (1940).

Railway car is a ''building.'' Hardin v. State, 92 Neb. 298, 138 N.W. 146 (1912).

Where statute is adopted from another state, construction by courts of that state is ordinarily followed. State v. Martin, 87 Neb. 529, 127 N.W. 896 (1910).

There are no common law crimes in this state; common law definitions may be resorted to only where statute designates crimes in general terms. Kinnan v. State, 86 Neb. 234, 125 N.W. 594 (1910).

Language, capable of two constructions, is not construed to make an otherwise innocent act criminal. Gilbert v. State, 78 Neb. 636, 112 N.W. 293 (1907).

In construing a statute, words should be given usual meaning. State v. Byrum, 60 Neb. 384, 83 N.W. 207 (1900).

Violation of the very letter of law is essential to convict. Bailey v. State, 57 Neb. 706, 78 N.W. 284 (1899).

Statute providing how penalty, previously created, may be recovered is not penal and need not be strictly construed. Albion Nat. Bank v. Montgomery, 54 Neb. 681, 74 N.W. 1102 (1898).

2. Miscellaneous

Where defendant requested instruction reciting statute, he could not complain. Lovings v. State, 158 Neb. 134, 62 N.W.2d 672 (1954).

Prosecution for violation of city ordinance is civil proceeding when offense is not made crime by statute. Peterson v. State, 79 Neb. 132, 112 N.W. 306 (1907).

There can be no punishment for act not made penal by plain import of statute. State v. De Wolfe, 67 Neb. 321, 93 N.W. 746 (1903); Moore v. State, 53 Neb. 831, 74 N.W. 319 (1898).

''Original code'' refers to code of 1873. Richards v. State, 65 Neb. 808, 91 N.W. 878 (1902).

Legislature intended to abolish hypertechnical rules of common law. Burlingim v. State, 61 Neb. 276, 85 N.W. 76 (1901).

29-107 Person or other general term, when protection of property intended; meaning.

Whenever any property or interest is intended to be protected by a provision of the penal law, and the general term person or any other general term is used to designate the party whose property is intended to be protected, the provisions of such penal laws and the protection thereby given shall extend to the property of the state, or of any county, and of all public or private corporations.

Source: G.S.1873, c. 58, § 252, p. 782; R.S.1913, § 8907; C.S.1922, § 9928; C.S. 1929, § 29-107.

29-108 Signature, how construed.

The word signature includes the mark of a person unable to write his name; a mark shall have the same effect as a signature when the name is written by

some other person and the mark is made near thereto by the person unable to write his name.

Source: G.S.1873, c. 58, § 253, p. 782; R.S.1913, § 8908; C.S.1922, § 9929; C.S.1929, § 29-108.

29-109 Terms not defined, how construed; titles, treatment.

Except where a word, term or phrase is specially defined, all words used in this code are to be taken and construed in the sense in which they are understood in common language, taking into consideration the context and subject matter relative to which they are employed. The titles merely, to the various chapters, articles, sections or clauses of this code, which are written or printed upon the bill at the time of its approval, shall constitute no part thereof.

Source: G.S.1873, c. 58, § 254, p. 782; R.S.1913, § 8909; C.S.1922, § 9930; C.S.1929, § 29-109.

It is a simple rule of statutory construction that terms which are not specifically defined are to be taken in the sense in which they are understood in common language. State v. Holman, 229 Neb. 57, 424 N.W.2d 627 (1988).

Related context and subject matter must be considered in construing penal statute. State v. Neal, 187 Neb. 413, 191 N.W.2d 458 (1971).

Terms must be taken and construed in the sense in which they are understood in common language. Wirth v. Calhoun, 64 Neb. 316, 89 N.W. 785 (1902).

29-110 Prosecutions; complaint, indictment, or information; filing; time limitations; exceptions.

(1) Except as otherwise provided by law, no person shall be prosecuted for any felony unless the indictment is found by a grand jury within three years next after the offense has been done or committed or unless a complaint for the same is filed before the magistrate within three years next after the offense has been done or committed and a warrant for the arrest of the defendant has been issued.

(2) Except as otherwise provided by law, no person shall be prosecuted, tried, or punished for any misdemeanor or other indictable offense below the grade of felony or for any fine or forfeiture under any penal statute unless the suit, information, or indictment for such offense is instituted or found within one year and six months from the time of committing the offense or incurring the fine or forfeiture or within one year for any offense the punishment of which is restricted by a fine not exceeding one hundred dollars and to imprisonment not exceeding three months.

(3) Except as otherwise provided by law, no person shall be prosecuted for kidnapping under section 28-313, false imprisonment under section 28-314 or 28-315, child abuse under section 28-707, pandering under section 28-802, debauching a minor under section 28-805, or an offense under section 28-813, 28-813.01, or 28-1463.03 when the victim is under sixteen years of age at the time of the offense (a) unless the indictment for such offense is found by a grand jury within seven years next after the offense has been committed or within seven years next after the victim's sixteenth birthday, whichever is later, or (b) unless a complaint for such offense is filed before the magistrate within seven years next after the offense has been committed or within seven years next after the victim's sixteenth birthday, whichever is later, and a warrant for the arrest of the defendant has been issued.

(4) No person shall be prosecuted for a violation of the Securities Act of Nebraska under section 8-1117 unless the indictment for such offense is found by a grand jury within five years next after the offense has been done or committed or unless a complaint for such offense is filed before the magistrate within five years next after the offense has been done or committed and a warrant for the arrest of the defendant has been issued.

(5) There shall not be any time limitations for prosecution or punishment for treason, murder, arson, forgery, sexual assault in the first or second degree under section 28-319 or 28-320, sexual assault of a child in the second or third degree under section 28-320.01, or sexual assault of a child in the first degree under section 28-319.01; nor shall there be any time limitations for prosecution or punishment for sexual assault in the third degree under section 28-320 when the victim is under sixteen years of age at the time of the offense.

(6) The time limitations prescribed in this section shall include all inchoate offenses pursuant to the Nebraska Criminal Code and compounding a felony pursuant to section 28-301.

(7) The time limitations prescribed in this section shall not extend to any person fleeing from justice.

(8) When any suit, information, or indictment for any crime or misdemeanor is limited by any statute to be brought or exhibited within any other time than is limited by this section, then the suit, information, or indictment shall be brought or exhibited within the time limited by such statute.

(9) If any suit, information, or indictment is quashed or the proceedings set aside or reversed on writ of error, the time during the pendency of such suit, information, or indictment so quashed, set aside, or reversed shall not be reckoned within this statute so as to bar any new suit, information, or indictment for the same offense.

(10) The changes made to this section by Laws 2004, LB 943, shall apply to offenses committed prior to April 16, 2004, for which the statute of limitations has not expired as of such date and to offenses committed on or after such date.

(11) The changes made to this section by Laws 2005, LB 713, shall apply to offenses committed prior to September 4, 2005, for which the statute of limitations has not expired as of such date and to offenses committed on or after such date.

Source: G.S.1873, c. 58, § 256, p. 783; R.S.1913, § 8910; C.S.1922, § 9931; C.S.1929, § 29-110; R.S.1943, § 29-110; Laws 1965, c. 147, § 1, p. 489; Laws 1989, LB 211, § 1; Laws 1990, LB 1246, § 10; Laws 1993, LB 216, § 10; Laws 2004, LB 943, § 8; Laws 2005, LB 713, § 2; Laws 2006, LB 1199, § 10.

Cross References

Nebraska Criminal Code, see section 28-101.
Securities Act of Nebraska, see section 8-1123.

1. Limitation of action
2. Fleeing from justice

1. Limitation of action

This section is inapplicable to evidence of prior bad acts. State v. Nesbitt, 264 Neb. 612, 650 N.W.2d 766 (2002).

Pursuant to subsection (1) of this section, postconviction proceedings fall within the ambit of the phrase ''proceedings . . . on writ of error''. State v. Thieszen, 252 Neb. 208, 560 N.W.2d 800 (1997).

Pursuant to subsection (1) of this section, the words ''proceedings . . . set aside . . . on writ of error'' mean proceedings set aside on appeal. State v. Thieszen, 252 Neb. 208, 560 N.W.2d 800 (1997).

Chapter 29 applies only to criminal procedure, and therefore, the statute of limitations in this section has no application to civil cases. LaBenz Trucking v. Snyder, 246 Neb. 468, 519 N.W.2d 259 (1994).

Five-year period of limitations became effective August 25, 1989; act became effective 3 months after Legislature adjourned in absence of emergency clause. State v. Hirsch, 245 Neb. 31, 511 N.W.2d 69 (1994).

The 3-year statute of limitations generally applicable to felony prosecutions does not apply to the crime of first degree murder. State v. White, 239 Neb. 554, 477 N.W.2d 24 (1991).

When in a prosecution for murder the statute of limitations bars a conviction for manslaughter, the defendant is not entitled to an instruction for manslaughter as a lesser-included offense of murder unless he or she elects to waive the defense of the statute of limitations. State v. Keithley, 236 Neb. 631, 463 N.W.2d 329 (1990).

Statute does not apply to cases involving termination of parental rights, as they are not criminal in nature. In re Interest of Hollenbeck, 212 Neb. 253, 322 N.W.2d 635 (1982).

The provision for issuance of an arrest warrant, in this section, is not a condition precedent to a prosecution. State v. Eynon, 197 Neb. 734, 250 N.W.2d 658 (1977).

The filing of a felony complaint before a magistrate charging embezzlement and the issuance of an arrest warrant within three years after date of offense tolls the statute of limitations. State v. Donoho, 190 Neb. 593, 210 N.W.2d 851 (1973).

A charge of failing to pay an installment of child support which accrued more than three years earlier was subject to defense of statute of limitations. State v. Journey, 186 Neb. 556, 184 N.W.2d 616 (1971).

Criminal prosecution for violation of statute based on illegal interest of city officer in contract with city must be brought within time prescribed in this section. Arthur v. Trindel, 168 Neb. 429, 96 N.W.2d 208 (1959).

Prosecution for violation of Blue Sky Law was barred by statute of limitations. Jacox v. State, 154 Neb. 416, 48 N.W.2d 390 (1951).

Three-year period of limitations does not apply to prosecutions for murder. Jackson v. Olson, 146 Neb. 885, 22 N.W.2d 124 (1946).

With exception of certain crimes, prosecution is barred unless brought within time limited by this section, and pendency of prosecution in another county does not toll statute. State ex rel. Johnson v. Goble, 136 Neb. 242, 285 N.W. 569 (1939).

Statute does not bar action for criminal contempt though criminal prosecution for the same act would be barred. State ex rel. Wright v. Barlow, 132 Neb. 166, 271 N.W. 282 (1937).

An information charging forgery in language of statute charges a crime that is not barred by the three-year statute of limitations. Flannigan v. State, 127 Neb. 640, 256 N.W. 321 (1934).

Information charging embezzlement continuously over a period commencing over three years previously was good as to part of period within three years of filing information, but conviction reversed because both information and verdict failed to show amount embezzled within statute of limitations. Hogoboom v. State, 120 Neb. 525, 234 N.W. 422, 79 A.L.R. 1171 (1931).

Indictment must be found, or information filed, within time fixed. Gragg v. State, 112 Neb. 732, 201 N.W. 338 (1924); Boughn v. State, 44 Neb. 889, 62 N.W. 1094 (1895).

Prosecution for rape must be commenced in three years, and assault and battery in one year. Kramer v. Weigand, 91 Neb. 47, 135 N.W. 230 (1912).

Forgery falls within exception in section. State v. Leekins, 81 Neb. 280, 115 N.W. 1080 (1908).

Prosecution for selling intoxicating liquors must be brought within eighteen months. McArthur v. State, 60 Neb. 390, 83 N.W. 196 (1900).

Arrest and preliminary examination arrest running of statute only if magistrate had jurisdiction. State v. Robertson, 55 Neb. 41, 75 N.W. 37 (1898).

Crime of murder is regarded as committed at time fatal blow was struck though death results on subsequent date. Debney v. State, 45 Neb. 856, 64 N.W. 446 (1895).

Acts of first degree sexual assault committed on or before August 24, 1986, were time barred on August 25, 1989, the effective date of the 1989 amendment to this section and, therefore, were not subject to the extended statute of limitations implemented by the amendment. State v. Wiemer, 3 Neb. App. 821, 533 N.W.2d 122 (1995).

While the Legislature has the power to enact retroactive changes in a statute of limitations, it cannot remove a bar or limitation which has already become complete. State v. Hirsch, 1 Neb. App. 1120, 510 N.W.2d 534 (1993).

In habeas corpus proceeding where claim was made that court lacked jurisdiction because prosecution was barred by statute of limitations, adjudication in original prosecution that petitioner tolled statute by fleeing from justice is binding upon petitioner and federal court. Taylor v. O'Grady, 113 F.2d 798 (8th Cir. 1940).

2. Fleeing from justice

The phrase ''fleeing from justice'' means to leave one's usual abode or to leave the jurisdiction where an offense has been committed, with intent to avoid detection, prosecution, or punishment for some public offense. State v. Thomas, 236 Neb. 84, 459 N.W.2d 204 (1990).

Fleeing from justice contemplates that the accused has departed from his usual place of residence to a place where he cannot be found in the exercise of reasonable diligence by the officers. Emery v. State, 138 Neb. 776, 295 N.W. 417 (1940).

Fleeing from justice means a departure by a person from his usual place of abode, or from the place where he has committed an offense, with intent to avoid detection and prosecution for such public offense. Taylor v. State, 138 Neb. 156, 292 N.W. 233 (1940); Colling v. State, 116 Neb. 308, 217 N.W. 87 (1927).

29-111 Fines and punishments; how enforced.

All fines and punishments provided for in this code shall be enforced by the procedure provided for in this code so far as such procedure extends or can be made applicable.

Source: G.S.1873, c. 58, § 257, p. 783; R.S.1913, § 8911; C.S.1922, § 9932; C.S.1929, § 29-111.

29-112 Felon; disqualified as juror or officeholder; warrant of discharge; effect; right to vote.

Any person sentenced to be punished for any felony, when the sentence is not reversed or annulled, is incompetent to be a juror or to hold any office of

honor, trust, or profit within this state, unless such person receives from the Board of Pardons of this state a warrant of discharge, in which case such person shall be restored to such civil rights and privileges as enumerated or limited by the Board of Pardons. The warrant of discharge shall not release such person from the costs of conviction unless otherwise ordered by the Board of Pardons.

Any person sentenced to be punished for any felony, when the sentence is not reversed or annulled, is not qualified to vote until two years after he or she has completed the sentence, including any parole term. The disqualification is automatically removed at such time.

Source: G.S.1873, c. 58, § 258, p. 783; R.S.1913, § 8912; Laws 1919, c. 56, § 1, p. 160; C.S.1922, § 9933; C.S.1929, § 29-112; R.S. 1943, § 29-112; Laws 1951, c. 86, § 1, p. 249; Laws 1959, c. 117, § 1, p. 448; Laws 2002, LB 1054, § 3; Laws 2005, LB 53, § 1.

Cross References

Constitutional provisions:
Board of Pardons, see Article IV, section 13, Constitution of Nebraska.
Disqualification from holding office, see Article XV, sections 1 and 2, Constitution of Nebraska.
Disqualification from voting, see Article VI, section 2, Constitution of Nebraska.
Disqualification from voting, see section 32-313.
Pardons and paroles, see sections 29-2246 et seq., 83-188 et seq., and 83-1,126 et seq.

The purpose of this section, as evident from its plain language, is to provide the mechanism by which a felon's right to vote is restored. Ways v. Shively, 264 Neb. 250, 646 N.W.2d 621 (2002).

Conviction does not deprive person of other or different civil rights than those specifically named. Bosteder v. Duling, 115 Neb. 557, 213 N.W. 809 (1927).

Objection that juror is disqualified may be waived. Turley v. State, 74 Neb. 471, 104 N.W. 934 (1905).

Information requested on questionnaire sent to prospective jurors was proper. Beatrice Foods Co. v. United States, 312 F.2d 29 (8th Cir. 1963).

29-112.01 Restoration of civil rights; felon; procedure.

Any person sentenced to be punished for any felony, when the sentence is other than confinement in a Department of Correctional Services adult correctional facility, shall be restored to such civil rights as enumerated or limited by the Board of Pardons upon receipt from the Board of Pardons of a warrant of discharge, which shall be issued by such board upon receiving from the sentencing court a certificate showing satisfaction of the judgment and sentence entered against such person.

Source: Laws 1959, c. 117, § 2, p. 448; Laws 1993, LB 31, § 3; Laws 2002, LB 1054, § 4.

Cross References

Pardons and paroles, see sections 29-2246 et seq., 83-188 et seq., and 83-1,126 et seq.
Probation, completion of, see section 29-2264.

29-113 Felon of other states; disqualified as juror or officeholder; right to vote.

Any person who has been convicted of a felony under the laws of any other state shall be deemed incompetent to be a juror or to hold any office of honor, trust, or profit within this state unless such person has been restored to civil rights under the laws of the state in which the felony was committed.

Any person who has been convicted of a felony under the laws of any other state is not qualified to vote until two years after such person has completed his or her sentence, including any parole term.

Source: G.S.1873, c. 58, § 259, p. 783; R.S.1913, § 8913; C.S.1922, § 9934; C.S.1929, § 29-113; R.S.1943, § 29-113; Laws 1951, c. 86, § 2, p. 249; Laws 1969, c. 236, § 1, p. 871; Laws 1993, LB 31, § 4; Laws 2002, LB 1054, § 5; Laws 2005, LB 53, § 2.

29-114 Repealed. Laws 1971, LB 187, § 1.

29-115 Suppression of statement by defendant; filing of motion; when made; failure to object before trial; effect; exceptions; effect.

Any person aggrieved by a statement taken from him or her which is not a voluntary statement, or any statement which he or she believes was taken from him or her in violation of the fifth or sixth amendments of the Constitution of the United States, may move for suppression of such statement for use as evidence against him or her. The suppression motion shall be filed in the district court where a felony is charged and may be made at any time after the information or indictment is filed, and must be filed at least ten days before trial, unless otherwise permitted by the court for good cause shown. When the charge is other than a felony, the motion shall be filed in the court where the complaint is pending, and must be filed at least ten days before trial or at the time of the plea to the complaint, whichever is later, unless otherwise permitted by the court for good cause shown. Unless claims of a statement being involuntary or taken in violation of the fifth or sixth amendments of the Constitution of the United States are raised by motion before trial as provided in this section, all objections to the use of such statements as evidence on these grounds shall be deemed waived, except that the court may entertain such motions to suppress after the commencement of trial when the defendant is surprised by the introduction of such statements by the state, and also the court in its discretion may entertain motions to suppress such statements when the defendant was not aware of the grounds for any such motion before the commencement of trial, or in such situations as the court deems that justice may require. In the event that the trial court entertains any such motion after the commencement of trial, the defendant shall be deemed to have waived any jeopardy which may have attached. None of the foregoing shall affect the right of the defendant to present the question of the voluntariness of the statement, or the question of whether the proper constitutional safeguards were given to any defendant either in custody or otherwise significantly deprived of his or her liberty, for the consideration of the fact finder at trial.

Source: Laws 1981, LB 411, § 1; Laws 1998, LB 218, § 9.

Because this section commits the determination whether to entertain a motion to suppress made after the commencement of trial to the discretion of the trial court, an appellate court reviews such a determination for an abuse of discretion. State v. Harris, 263 Neb. 331, 640 N.W.2d 24 (2002).

The distinction between a motion to quash and a motion to suppress is not mere form over substance. The filing of a motion to quash clearly notifies the State that the defendant's challenge is to the propriety of the entire proceedings. In contrast to a motion to quash, a motion to suppress seeks to exclude certain evidence from being presented at trial. A motion to suppress, with certain exceptions, must be made in writing. State v. Kanarick, 257 Neb. 358, 598 N.W.2d 430 (1999).

Where none of the exceptions stated in this statute are applicable, failure to file a motion to suppress as required under this section constitutes a waiver to any objection to the statement. State v. Cronin, 227 Neb. 302, 417 N.W.2d 169 (1987).

This section requires that any objection as to the voluntariness of a statement of a defendant in a criminal case be made as a pretrial motion to suppress the statement, and failure to object at this stage results in a waiver of the objection. State v. Warren, 227 Neb. 160, 416 N.W.2d 249 (1987).

29-116 Suppression of statement by defendant; order granting suppression; review; procedure; appeal.

(1) In addition to any other rights of appeal, the state shall have the right to appeal from an order granting a motion for the suppression of statements alleged to be involuntary or in violation of the fifth or sixth amendments of the Constitution of the United States in the manner provided in this section.

(2) If such motion has been granted in the district court, the Attorney General or the county attorney or prosecuting attorney with the consent of the Attorney General may file his or her application with the Clerk of the Supreme Court asking for a summary review of the order granting the motion. The review shall be made by a judge of the Court of Appeals at chambers upon such notice, briefs, and argument as the judge directs, after which such judge shall enter his or her order affirming, reversing, or modifying the order submitted for review, and upon any trial on the general issue thereafter, the parties and the trial court shall be bound by such order. Upon conviction after trial the defendant may on appeal challenge the correctness of the order by the judge.

(3) If such motion has been granted in the county court, the Attorney General or the county attorney or prosecuting attorney may file his or her application with the clerk of the district court in the district in which the motion has been granted asking for a summary review of the order granting the motion. The review shall be made by a judge of the district court upon such notice, briefs, and arguments as the judge directs, after which such judge shall enter his or her order affirming, reversing, or modifying the order submitted for review, and upon any trial on the general issue thereafter the parties and the trial court shall be bound by such order. Upon conviction after trial the defendant may on appeal challenge the correctness of the order by the judge.

Source: Laws 1981, LB 411, § 2; Laws 1991, LB 732, § 71; Laws 1992, LB 360, § 7; Laws 1998, LB 218, § 10.

A defendant's successful motion in the district court to suppress evidence is not finally granted or determined, unless there is no appeal, until a judge of the Court of Appeals has decided the matter under this section. The time from the defendant's filing of such motion until final determination is excluded in the speedy trial calculation. State v. Hayes, 10 Neb. App. 833, 639 N.W.2d 418 (2002).

A trial court may, in its good judgment, correct its pretrial ruling on a motion to suppress statements, even though such a correction results in denial of the State's opportunity to appeal the decision to suppress the evidence. State v. Vaida, 1 Neb. App. 768, 510 N.W.2d 389 (1993).

29-117 Suppression of statement by defendant; application for review; filing; when.

The application for review provided in section 29-116 shall be accompanied by a copy of the order of the trial court granting the motion to suppress and a bill of exceptions containing all of the evidence, including affidavits, considered by the trial court in its ruling on the motion, and so certified by the trial court. The application shall be filed with the Clerk of the Supreme Court, if the trial court is the district court, or with the clerk of the district court, if the trial court is the county court, within such time as may be ordered by the trial court, which in fixing such time shall take into consideration the length of time required to prepare the bill of exceptions, and shall also consider whether the defendant is in jail or whether he or she is on bail, but in no event shall more than thirty days be given in which to file such application.

Source: Laws 1981, LB 411, § 3; Laws 1998, LB 218, § 11; Laws 2000, LB 921, § 30.

29-118 Suppression of statement by defendant; order granting suppression; review; trial court; duties.

In making an order granting a motion to suppress a statement, the trial court shall in such order fix a time, not exceeding ten days, in which the county attorney or other prosecuting attorney may file a notice with the clerk of such court of his or her intention to seek a review of the order. Upon the filing of such notice, the trial court shall fix a time in which the application for review shall be filed with the clerk of the appellate court.

Source: Laws 1981, LB 411, § 4; Laws 1998, LB 218, § 12.

29-119 Plea agreement; terms, defined.

For purposes of this section and sections 23-1201, 29-120, and 29-2261, unless the context otherwise requires:

(1) A plea agreement means that as a result of a discussion between the defense counsel and the prosecuting attorney:

(a) A charge is to be dismissed or reduced; or

(b) A defendant, if he or she pleads guilty to a charge, may receive less than the maximum penalty permitted by law; and

(2) Victim means a person who, as a result of a homicide as defined in sections 28-302 to 28-306, a first degree sexual assault as defined in section 28-319, a first degree assault as defined in section 28-308, a sexual assault of a child in the second or third degree as defined in section 28-320.01, a sexual assault of a child in the first degree as defined in section 28-319.01, a second degree assault as defined in section 28-309, a first degree false imprisonment as defined in section 28-314, a second degree sexual assault as defined in section 28-320, or a robbery as defined in section 28-324, has had a personal confrontation with the offender and also includes a person who has suffered serious bodily injury as defined in section 28-109 as a result of a motor vehicle accident when the driver was charged with a violation of section 60-6,196 or 60-6,197 or with a violation of a city or village ordinance enacted in conformance with either section. In the case of a homicide, victim means the nearest surviving relative under the law as provided by section 30-2303 but does not include the alleged perpetrator of the homicide. In the case of a sexual assault of a child, victim means the child victim and the parents, guardians, or duly appointed legal representative of the child victim but does not include the alleged perpetrator of the sexual assault.

Source: Laws 1983, LB 78, § 1; Laws 1990, LB 87, § 2; Laws 1993, LB 370, § 10; Laws 1998, LB 309, § 2; Laws 2004, LB 270, § 3; Laws 2006, LB 1199, § 11.

29-120 Plea agreement; prosecuting attorney; duties.

Prior to reaching a plea agreement with defense counsel, a prosecuting attorney, prosecuting a violation of a city or village ordinance enacted in conformance with section 60-6,196 or 60-6,197, shall consult with or make a good faith effort to consult with the victim regarding the content of and reasons for such plea agreement.

Source: Laws 1983, LB 78, § 3; Laws 1993, LB 370, § 11.

29-121 Leaving child at a hospital; no prosecution for crime; hospital; duty.

No person shall be prosecuted for any crime based solely upon the act of leaving a child in the custody of an employee on duty at a hospital licensed by

the State of Nebraska. The hospital shall promptly contact appropriate authorities to take custody of the child.

Source: Laws 2008, LB157, § 1.
Effective date July 18, 2008.

ARTICLE 2

POWERS AND DUTIES OF CERTAIN OFFICERS

Section
29-201. County judges as magistrates; jurisdiction.
29-202. Repealed. Laws 1972, LB 1032, § 287.
29-203. District judges and county judges; conservators of the peace; jurisdiction.
29-204. Repealed. Laws 1988, LB 1030, § 53.
29-205. Fugitive; apprehension and arrest.
29-206. Repealed. Laws 1972, LB 1032, § 287.
29-207. Repealed. Laws 1972, LB 1032, § 287.
29-208. Criminal identification; agents; power of Governor to appoint.
29-209. Criminal identification; fingerprints and descriptions; duties of law enforcement officers and agencies.
29-210. Criminal identification and information; Nebraska State Patrol; duties.
29-211. Motor vehicle pursuit; law enforcement agency; adopt policy; contents; training.
29-212. Missing Persons Information Clearinghouse; terms, defined.
29-213. Missing Persons Information Clearinghouse; missing person report; law enforcement agency; duties.
29-214. Missing Persons Information Clearinghouse; missing person report; unemancipated minor; law enforcement agency; duties.
29-214.01. Missing Persons Information Clearinghouse; Nebraska State Patrol; powers and duties.
29-215. Law enforcement officers; jurisdiction; powers; contracts authorized.
29-216. Victim of sex offense; law enforcement officer, prosecuting officer, or government official; prohibited acts.
29-301. Repealed. Laws 1986, LB 529, § 58; Laws 1986, LB 1159, § 1.
29-302. Repealed. Laws 1986, LB 529, § 58; Laws 1986, LB 1159, § 1.
29-302.01. Repealed. Laws 1986, LB 529, § 58; Laws 1986, LB 1159, § 1.
29-302.02. Repealed. Laws 1986, LB 529, § 58; Laws 1986, LB 1159, § 1.
29-302.03. Repealed. Laws 1986, LB 529, § 58; Laws 1986, LB 1159, § 1.
29-303. Repealed. Laws 1986, LB 529, § 58; Laws 1986, LB 1159, § 1.
29-304. Repealed. Laws 1986, LB 529, § 58; Laws 1986, LB 1159, § 1.
29-305. Repealed. Laws 1986, LB 529, § 58; Laws 1986, LB 1159, § 1.
29-306. Repealed. Laws 1986, LB 529, § 58; Laws 1986, LB 1159, § 1.
29-307. Repealed. Laws 1986, LB 529, § 58; Laws 1986, LB 1159, § 1.
29-308. Repealed. Laws 1986, LB 529, § 58; Laws 1986, LB 1159, § 1.
29-309. Repealed. Laws 1986, LB 529, § 58; Laws 1986, LB 1159, § 1.
29-310. Repealed. Laws 1986, LB 529, § 58; Laws 1986, LB 1159, § 1.
29-311. Repealed. Laws 1986, LB 529, § 58; Laws 1986, LB 1159, § 1.
29-312. Repealed. Laws 1986, LB 529, § 58; Laws 1986, LB 1159, § 1.
29-313. Repealed. Laws 1972, LB 1333, § 1.
29-314. Repealed. Laws 1972, LB 1333, § 1.
29-315. Repealed. Laws 1972, LB 1333, § 1.
29-316. Repealed. Laws 1972, LB 1333, § 1.

29-201 County judges as magistrates; jurisdiction.

All county judges in this state shall have the same and equal powers of jurisdiction in all matters relating to the enforcement of the criminal laws of the state, except as otherwise expressly provided, and the jurisdiction of all such officers as magistrates, for the discharge of the duties and for the exercise of the powers enjoined and conferred by this code, shall extend to all crimes

and offenses punishable by the laws of this state, committed within their respective jurisdictions, and for the prevention of crimes and offenses as in this code provided, throughout their respective counties.

Source: G.S.1873, c. 58, § 260, p. 784; R.S.1913, § 8914; C.S.1922, § 9935; C.S.1929, § 29-201; R.S.1943, § 29-201; Laws 1972, LB 1032, § 162.

29-202 Repealed. Laws 1972, LB 1032, § 287.

29-203 District judges and county judges; conservators of the peace; jurisdiction.

The judges of the district courts in their respective districts, and the magistrates mentioned in section 29-201 in their respective counties, shall jointly and severally be conservators of the peace within their respective jurisdictions, and shall have full power to enforce or cause to be enforced all laws that now exist or that shall hereafter be made for the prevention and punishment of offenses, or for the preservation and observance of the peace. Judges of the district courts shall have the same powers to require securities for the keeping of the peace and good behavior, and bail for appearance in courts to answer complaints to keep the peace, and for crimes and offenses committed in their respective districts as any of the magistrates aforesaid have in their respective counties.

Source: G.S.1873, c. 58, § 262, p. 784; R.S.1913, § 8916; C.S.1922, § 9937; C.S.1929, § 29-203.

District judges have all of the required jurisdiction of magistrates. Otte v. State, 172 Neb. 110, 108 N.W.2d 737 (1961).

District judge may hold preliminary hearing. Callies v. State, 157 Neb. 640, 61 N.W.2d 370 (1953).

District judge may sit as examining magistrate. Cohoe v. State, 79 Neb. 811, 113 N.W. 532 (1907); State v. Dennison, 60 Neb. 192, 82 N.W. 628 (1900).

Preliminary hearing is in no sense a trial. Van Buren v. State, 65 Neb. 223, 91 N.W. 201 (1902).

29-204 Repealed. Laws 1988, LB 1030, § 53.

29-205 Fugitive; apprehension and arrest.

If any person or persons who may be charged with the commission of a crime or offense made punishable by the laws of this state shall abscond or remove from the county in which such crime or offense is charged to have been committed, it shall be lawful for any sheriff or other person to apprehend the person or persons so charged, remove him, her, or them to the county in which the alleged crime may be said to have been committed, and deliver such person or persons to any magistrate in such county, who shall cause the person or persons so delivered to be dealt with as the law may direct.

Source: G.S.1873, c. 58, § 264, p. 785; R.S.1913, § 8918; C.S.1922, § 9939; C.S.1929, § 29-205; R.S.1943, § 29-205; Laws 1988, LB 1030, § 22.

It is mandatory duty of sheriff, where warrant is placed in his hands issued in another county, to apprehend the accused and remove him to the county where the crime is charged. State ex rel. Johnson v. Goble, 136 Neb. 242, 285 N.W. 569 (1939).

A law enforcement officer investigating a crime has the authority to detain a suspect with an outstanding arrest warrant outside the law enforcement officer's primary jurisdiction. State v. Hill, 12 Neb. App. 492, 677 N.W.2d 525 (2004).

29-206 Repealed. Laws 1972, LB 1032, § 287.

29-207 Repealed. Laws 1972, LB 1032, § 287.

29-208 Criminal identification; agents; power of Governor to appoint.

The Governor is hereby authorized to appoint such agents as may be necessary for carrying out the provisions of sections 29-208 to 29-210.

Source: Laws 1921, c. 207, § 1, p. 739; C.S.1922, § 9942; C.S.1929, § 29-208.

29-209 Criminal identification; fingerprints and descriptions; duties of law enforcement officers and agencies.

It is hereby made the duty of the sheriffs of the several counties of the State of Nebraska, the chiefs of police of incorporated cities therein, marshals of incorporated cities and towns therein, and agencies of state government having powers of arrest to furnish the Nebraska State Patrol two copies of fingerprints on forms provided by the Nebraska State Patrol and the Federal Bureau of Investigation, and descriptions of all persons who are arrested by them (1) for any felony or (2) as felony fugitives from the criminal justice system of another jurisdiction. This section is not intended to include violators of city ordinances or of persons arrested for other trifling offenses. The Nebraska State Patrol shall in all appropriate cases forward one copy of such fingerprints and other necessary identifying data and information to the system maintained by the Federal Bureau of Investigation.

Source: Laws 1921, c. 207, § 2, p. 739; C.S.1922, § 9943; C.S.1929, § 29-209; R.S.1943, § 29-209; Laws 1978, LB 713, § 16.

Cross References

Security, Privacy, and Dissemination of Criminal History Information Act, see section 29-3501.

29-210 Criminal identification and information; Nebraska State Patrol; duties.

The Nebraska State Patrol is hereby authorized (1) to keep a complete record of all reports filed of all personal property stolen, lost, found, pledged or pawned, in any city or county of this state; (2) to provide for the installation of a proper system and file, and cause to be filed therein cards containing an outline of the methods of operation employed by criminals; (3) to use any system of identification it deems advisable, or that may be adopted in any of the penal institutions of the state; (4) to keep a record consisting of duplicates of measurements, processes, operations, plates, photographs, measurements and descriptions of all persons confined in penal institutions of this state; (5) to procure and maintain, so far as practicable, plates, photographs, descriptions and information concerning all persons who shall hereafter be convicted of felony or imprisoned for violating the military, naval or criminal laws of the United States, and of well-known and habitual criminals from whatever source procurable; (6) to furnish any criminal justice agency with any information, material, records, or means of identification which may properly be disseminated and that it may desire in the proper administration of criminal justice; (7) to upgrade, when feasible, the existing law enforcement communications network; and (8) to establish and maintain an improved system or systems by which relevant information may be collected, coordinated, and made readily available to serve qualified persons or agencies concerned with the administration of criminal justice.

Source: Laws 1921, c. 207, § 3, p. 739; C.S.1922, § 9944; C.S.1929, § 29-210; R.S.1943, § 29-210; Laws 1978, LB 713, § 17.

Cross References

Security, Privacy, and Dissemination of Criminal History Information Act, see section 29-3501.

29-211 Motor vehicle pursuit; law enforcement agency; adopt policy; contents; training.

(1) Each law enforcement agency within the State of Nebraska shall adopt and implement a written policy regarding the pursuit of motor vehicles. Such policy shall contain at least the following elements:

(a) Standards which describe when a pursuit may be initiated, taking into consideration the nature and severity of the offense involved;

(b) Standards which describe when a pursuit is to be discontinued, giving special attention to (i) the degree of danger presented to the general public and the pursuing officer and (ii) the probability of later apprehension of the subject based upon his or her identification;

(c) Procedures governing the operation of pursuits including, but not limited to, the number and types of vehicles which may be used, the method of operation of such vehicles, and the exercise of supervision during pursuits;

(d) Procedures governing pursuits which include other law enforcement agencies or which extend into the jurisdiction of other law enforcement agencies; and

(e) A system of mandatory continued planning and review of training of personnel appropriate and consistent with the policies and jurisdiction of the law enforcement agency regarding the proper handling of pursuits, including, at a minimum, an annual review of the policy with each sworn law enforcement officer and dispatcher.

(2) It shall be the responsibility of each law enforcement agency within the State of Nebraska to ensure that all law enforcement officers who commence employment with such law enforcement agency receive specialized training in pursuit driving at the Nebraska Law Enforcement Training Center or at an equivalent training program approved by the Nebraska Police Standards Advisory Council.

Source: Laws 1981, LB 76, § 3; Laws 1996, LB 952, § 3.

Cross References

Apprehension of persons, see section 9-215.
Liability for damages to third parties, see sections 13-911 and 81-8,215.01.
Nebraska Rules of the Road, emergency vehicle privileges, see section 60-6,114.
Uniform Act on Fresh Pursuit, see section 29-421.

29-212 Missing Persons Information Clearinghouse; terms, defined.

For purposes of sections 29-212 to 29-214.01, unless the context otherwise requires:

(1) Missing person means a person who has been reported as missing to a law enforcement agency; and

(2) Missing Persons Information Clearinghouse means the repository established within the Nebraska State Patrol pursuant to section 29-214.01.

Source: Laws 1985, LB 187, § 1; Laws 2005, LB 111, § 1.

29-213 Missing Persons Information Clearinghouse; missing person report; law enforcement agency; duties.

When a report of a missing person has been received by a law enforcement agency having jurisdiction, the agency shall notify:

(1) On-duty personnel of the agency, as soon as practicable, through internal means and over the appropriate police radio network;

(2) All law enforcement agencies considered to be involved by the law enforcement agency having jurisdiction;

(3) All law enforcement agencies to which the person filing the report requests that the information be sent, if the request is reasonable in light of the information contained in the report;

(4) All law enforcement agencies requesting the information; and

(5) The Missing Persons Information Clearinghouse.

Source: Laws 1985, LB 187, § 2; Laws 2005, LB 111, § 2.

29-214 Missing Persons Information Clearinghouse; missing person report; unemancipated minor; law enforcement agency; duties.

(1) If a report of a missing person involves an unemancipated minor, the law enforcement agency shall immediately transmit the proper information for inclusion in the National Crime Information Center computer and the Missing Persons Information Clearinghouse.

(2) If a report of a missing person involves an unemancipated minor, a law enforcement agency shall not prevent an immediate active investigation on the basis of an agency rule which specifies an automatic time limitation for a missing person investigation.

Source: Laws 1985, LB 187, § 3; Laws 2005, LB 111, § 3.

Cross References

Missing Children Identification Act, see section 43-2001 et seq.

29-214.01 Missing Persons Information Clearinghouse; Nebraska State Patrol; powers and duties.

(1) The Missing Persons Information Clearinghouse is established within the Nebraska State Patrol. The Nebraska State Patrol shall provide for the administration of the clearinghouse and may adopt and promulgate rules and regulations to carry out the provisions of this section.

(2) The Missing Persons Information Clearinghouse shall be used by all law enforcement agencies in the state as a central repository for information on missing persons. Such information shall be provided on a uniform form prescribed by the Nebraska State Patrol.

(3) In connection with the Missing Persons Information Clearinghouse, the Nebraska State Patrol shall:

(a) Collect, process, maintain, and disseminate information about missing persons in Nebraska through hard copy or electronic means;

(b) Develop training programs for law enforcement agencies concerning the appropriate procedures to report missing persons to the clearinghouse;

(c) Cooperate with other states and the National Crime Information Center in the exchange of information on missing persons;

(d) Maintain a statewide, toll-free telephone line, twenty-four hours a day, to receive and disseminate information related to missing persons;

(e) Maintain an Internet web site accessible to law enforcement agencies and to the public with information on missing persons and with information about the resources available through the clearinghouse. Nothing in this section shall prevent the Nebraska State Patrol from establishing a separate link accessible only to law enforcement agencies for the dissemination and collection of sensitive information as determined by the Nebraska State Patrol;

(f) Develop training programs to assist in the prevention of kidnapping;

(g) Maintain a registry of prevention and education materials and programs regarding missing and runaway minors through hard copy or electronic means;

(h) Distribute through hard copy or electronic means monthly missing persons bulletins to local law enforcement agencies and to other interested individuals, agencies, and media outlets which request such information. The bulletins shall contain information on missing persons in Nebraska, including names, photographs or other images, if available, descriptions of missing persons, the law enforcement agencies or persons to contact with information regarding missing persons, and the names of persons reported missing whose locations have been determined and confirmed;

(i) Produce, update at least weekly, and distribute, through hard copy or electronic means, press releases about missing persons to media outlets which request missing person information, containing the same or similar information contained in the monthly missing persons bulletin;

(j) Compile statistics relating to the incidence of missing persons within Nebraska; and

(k) Encourage and seek both financial and in-kind support from private individuals and organizations to assist in carrying out the provisions of this section.

(4) The purpose of the Missing Persons Information Clearinghouse is to serve as a repository. The clearinghouse does not relieve the law enforcement agency having jurisdiction over a missing person case of its investigatory duties and does not automatically involve the Nebraska State Patrol as the primary investigatory agency in such case.

(5) The Missing Persons Information Clearinghouse shall be notified after the location of a missing person has been determined and confirmed. After the location of a missing person has been determined and confirmed, the clearinghouse shall only release information described in subdivision (3)(h) of this section concerning the located person. Other information concerning the history of the missing person case shall be disclosed only to law enforcement agencies of this state and other jurisdictions when necessary for the discharge of official duties, and to the juvenile court in the county of residence of a formerly missing person who is a minor. All information in the clearinghouse relating to a missing person who is an adult shall be purged when the person's location has been determined and confirmed. All information in the clearinghouse relating to a missing person who is a minor shall be purged when the person reaches eighteen years of age and the person's location has been determined and confirmed.

Source: Laws 2005, LB 111, § 4.

29-215 Law enforcement officers; jurisdiction; powers; contracts authorized.

(1) A law enforcement officer has the power and authority to enforce the laws of this state and of the political subdivision which employs the law enforcement officer or otherwise perform the functions of that office anywhere within his or her primary jurisdiction.

(2) Any law enforcement officer who is within this state, but beyond his or her primary jurisdiction, has the power and authority to enforce the laws of this state or any legal ordinance of any city or incorporated village or otherwise perform the functions of his or her office, including the authority to arrest and detain suspects, as if enforcing the laws or performing the functions within his or her primary jurisdiction in the following cases:

(a) Any such law enforcement officer, if in a fresh attempt to apprehend a person suspected of committing a felony, may follow such person into any other jurisdiction in this state and there arrest and detain such person and return such person to the law enforcement officer's primary jurisdiction;

(b) Any such law enforcement officer, if in a fresh attempt to apprehend a person suspected of committing a misdemeanor or a traffic infraction, may follow such person anywhere in an area within twenty-five miles of the boundaries of the law enforcement officer's primary jurisdiction and there arrest and detain such person and return such person to the law enforcement officer's primary jurisdiction;

(c) Any such law enforcement officer shall have such enforcement and arrest and detention authority when responding to a call in which a local, state, or federal law enforcement officer is in need of assistance. A law enforcement officer in need of assistance shall mean (i) a law enforcement officer whose life is in danger or (ii) a law enforcement officer who needs assistance in making an arrest and the suspect (A) will not be apprehended unless immediately arrested, (B) may cause injury to himself or herself or others or damage to property unless immediately arrested, or (C) may destroy or conceal evidence of the commission of a crime; and

(d) Any municipality or county may, under the provisions of the Interlocal Cooperation Act or the Joint Public Agency Act, enter into a contract with any other municipality or county for law enforcement services or joint law enforcement services. Under such an agreement, law enforcement personnel may have such enforcement authority within the jurisdiction of each of the participating political subdivisions if provided for in the agreement. Unless otherwise provided in the agreement, each participating political subdivision shall provide liability insurance coverage for its own law enforcement personnel as provided in section 13-1802.

(3) When probable cause exists to believe that a person is operating or in the actual physical control of any motor vehicle, motorboat, or aircraft while under the influence of alcoholic liquor or of any drug or otherwise in violation of section 28-1465, 28-1466, 28-1472, 37-1254.01, 37-1254.02, 60-4,163, 60-4,164, 60-6,196, 60-6,197, 60-6,211.01, or 60-6,211.02, the law enforcement officer has the power and authority to do any of the following or any combination thereof:

(a) Transport such person to a facility outside of the law enforcement officer's primary jurisdiction for appropriate chemical testing of the person;

(b) Administer outside of the law enforcement officer's primary jurisdiction any post-arrest test advisement to the person; or

(c) With respect to such person, perform other procedures or functions outside of the law enforcement officer's primary jurisdiction which are directly and solely related to enforcing the laws that concern a person operating or being in the actual physical control of any motor vehicle, motorboat, or aircraft while under the influence of alcoholic liquor or of any other drug or otherwise in violation of section 28-1465, 28-1466, 28-1472, 37-1254.01, 37-1254.02, 60-4,163, 60-4,164, 60-6,196, 60-6,197, 60-6,211.01, or 60-6,211.02.

(4) For purposes of this section:

(a) Law enforcement officer has the same meaning as peace officer as defined in section 49-801 and also includes conservation officers of the Game and Parks Commission; and

(b) Primary jurisdiction means the geographic area within the territorial limits of the state or political subdivision which employs the law enforcement officer.

Source: Laws 1994, LB 254, § 1; Laws 1999, LB 87, § 68; Laws 2003, LB 17, § 9.

Cross References

Interlocal Cooperation Act, see section 13-801.
Joint Public Agency Act, see section 13-2501.
Motor vehicle pursuit, see section 29-211.
Uniform Act on Fresh Pursuit, see section 29-421.

This section does give certain extrajurisdictional arrest powers to certain law enforcement officers. This section only applies to Nebraska law enforcement officers and does not apply to law enforcement officers who cross state lines. This section does not authorize an out-of-state police officer to arrest a suspect for misdemeanor driving under the influence outside the officer's geographical jurisdiction. State v. Cuny, 257 Neb. 168, 595 N.W.2d 899 (1999).

29-216 Victim of sex offense; law enforcement officer, prosecuting officer, or government official; prohibited acts.

(1) No law enforcement officer, prosecuting officer, or other government official shall ask or require an adult, youth, or child victim of a sex offense as defined under federal, tribal, state, territorial, or local law to submit to a polygraph examination or other truth-telling device as a condition for proceeding with the investigation of such offense.

(2) The refusal of a victim to submit to an examination as described in subsection (1) of this section shall not prevent the investigation of the offense.

Source: Laws 2007, LB143, § 1.

ARTICLE 3
PROCEDURE TO PREVENT CRIMES AND OFFENSES

Section
29-301. Repealed. Laws 1986, LB 529, § 58; Laws 1986, LB 1159, § 1.
29-302. Repealed. Laws 1986, LB 529, § 58; Laws 1986, LB 1159, § 1.
29-302.01. Repealed. Laws 1986, LB 529, § 58; Laws 1986, LB 1159, § 1.
29-302.02. Repealed. Laws 1986, LB 529, § 58; Laws 1986, LB 1159, § 1.
29-302.03. Repealed. Laws 1986, LB 529, § 58; Laws 1986, LB 1159, § 1.
29-303. Repealed. Laws 1986, LB 529, § 58; Laws 1986, LB 1159, § 1.
29-304. Repealed. Laws 1986, LB 529, § 58; Laws 1986, LB 1159, § 1.
29-305. Repealed. Laws 1986, LB 529, § 58; Laws 1986, LB 1159, § 1.
29-306. Repealed. Laws 1986, LB 529, § 58; Laws 1986, LB 1159, § 1.
29-307. Repealed. Laws 1986, LB 529, § 58; Laws 1986, LB 1159, § 1.
29-308. Repealed. Laws 1986, LB 529, § 58; Laws 1986, LB 1159, § 1.
29-309. Repealed. Laws 1986, LB 529, § 58; Laws 1986, LB 1159, § 1.
29-310. Repealed. Laws 1986, LB 529, § 58; Laws 1986, LB 1159, § 1.
29-311. Repealed. Laws 1986, LB 529, § 58; Laws 1986, LB 1159, § 1.
29-312. Repealed. Laws 1986, LB 529, § 58; Laws 1986, LB 1159, § 1.
29-313. Repealed. Laws 1972, LB 1333, § 1.
29-314. Repealed. Laws 1972, LB 1333, § 1.
29-315. Repealed. Laws 1972, LB 1333, § 1.
29-316. Repealed. Laws 1972, LB 1333, § 1.

29-301 Repealed. Laws 1986, LB 529, § 58; Laws 1986, LB 1159, § 1.

29-302 Repealed. Laws 1986, LB 529, § 58; Laws 1986, LB 1159, § 1.

29-302.01 Repealed. Laws 1986, LB 529, § 58; Laws 1986, LB 1159, § 1.

29-302.02 Repealed. Laws 1986, LB 529, § 58; Laws 1986, LB 1159, § 1.

29-302.03 Repealed. Laws 1986, LB 529, § 58; Laws 1986, LB 1159, § 1.

29-303 Repealed. Laws 1986, LB 529, § 58; Laws 1986, LB 1159, § 1.

29-304 Repealed. Laws 1986, LB 529, § 58; Laws 1986, LB 1159, § 1.

29-305 Repealed. Laws 1986, LB 529, § 58; Laws 1986, LB 1159, § 1.

29-306 Repealed. Laws 1986, LB 529, § 58; Laws 1986, LB 1159, § 1.

29-307 Repealed. Laws 1986, LB 529, § 58; Laws 1986, LB 1159, § 1.

29-308 Repealed. Laws 1986, LB 529, § 58; Laws 1986, LB 1159, § 1.

29-309 Repealed. Laws 1986, LB 529, § 58; Laws 1986, LB 1159, § 1.

29-310 Repealed. Laws 1986, LB 529, § 58; Laws 1986, LB 1159, § 1.

29-311 Repealed. Laws 1986, LB 529, § 58; Laws 1986, LB 1159, § 1.

29-312 Repealed. Laws 1986, LB 529, § 58; Laws 1986, LB 1159, § 1.

29-313 Repealed. Laws 1972, LB 1333, § 1.

29-314 Repealed. Laws 1972, LB 1333, § 1.

29-315 Repealed. Laws 1972, LB 1333, § 1.

29-316 Repealed. Laws 1972, LB 1333, § 1.

ARTICLE 4
WARRANT AND ARREST OF ACCUSED

Cross References

Constitutional provision:
Search and seizure, see Article I, section 7, Constitution of Nebraska.
Exemption of member of State Guard from arrest, see section 55-167.
Fugitives, apprehension and arrest, see section 29-205.

Section
29-401. Law violators; arrest by sheriff or other peace officer; juvenile under eighteen years; requirements.
29-402. Arrest by person not an officer.
29-402.01. Shoplifters; detention; no criminal or civil liability.
29-402.02. Shoplifters; peace officer; arrest without warrant.
29-402.03. Shoplifters; arrest; merchant or employee not liable.
29-403. Warrant; who may issue.
29-404. Complaint; filing; procedure; warrant; issuance.
29-404.01. Arrest without warrant; supplemental provisions.
29-404.02. Arrest without warrant; when.
29-404.03. Arrest without warrant; reasonable cause; conditions.
29-405. Warrant; misdemeanor, complainant; costs.
29-406. Warrant; to whom directed; contents.
29-407. Warrant; persons who may execute.
29-408. Warrant; pursuit and arrest of fugitive.
29-409. Fugitive; warrant for arrest and return; effect.
29-410. Prisoner; lawful arrest; detention.
29-411. Warrants and arrests; powers of officer; direction for executing search warrant; damages.
29-412. Arrest under a warrant; prisoner to be taken before magistrate; return.

Section
29-413. Offense committed in view of magistrate; arrest; when authorized; detention.
29-414. Rewards for conviction of felons; powers of county boards; limitation on amount.
29-415. Rewards for capture and conviction of horse and auto thieves; powers of sheriffs; limitation on amount.
29-416. Fresh pursuit; peace officer from another state; authority to make arrest.
29-417. Fresh pursuit; procedure after arrest.
29-417.01. Fresh pursuit; interstate pursuit; liability; personal jurisdiction.
29-418. Fresh pursuit; section, how construed.
29-419. Fresh pursuit; state, defined.
29-420. Fresh pursuit, defined.
29-421. Act, how cited.
29-422. Citation in lieu of arrest; legislative intent.
29-423. Citation; Supreme Court; prescribe form; contents.
29-424. Citation; contents; procedure; complaint; waiver; use of credit card authorized.
29-425. Citation; issued, when; service.
29-426. Citation; failure to appear; penalty.
29-427. Detention of accused; grounds.
29-428. Sections, how construed.
29-429. Citation; cited person to medical facility; when.
29-430. Citation; social security number prohibited.
29-431. Infraction, defined.
29-432. Infraction; person alleged to have committed; custody; when.
29-433. Infraction involving controlled substance; person cited for; course of instruction; requirements.
29-434. Drug treatment centers; provide course of instruction.
29-435. Infraction; citation issued in lieu of arrest; exception.
29-436. Infraction, penalties.
29-437. Infraction; trial without a jury; constitutional rights.
29-438. Infraction; treated as first offense; when.
29-439. Domestic assault; arrest; conditions; report required.
29-440. Domestic assault; weapons; seizure and disposition.

29-401 Law violators; arrest by sheriff or other peace officer; juvenile under eighteen years; requirements.

Every sheriff, deputy sheriff, marshal, deputy marshal, security guard, police officer, or peace officer as defined in subdivision (15) of section 49-801 shall arrest and detain any person found violating any law of this state or any legal ordinance of any city or incorporated village until a legal warrant can be obtained, except that (1) any such law enforcement officer taking a juvenile under the age of eighteen years into his or her custody for any violation herein defined shall proceed as set forth in sections 43-248, 43-250, and 43-253 and (2) the court in which the juvenile is to appear shall not accept a plea from the juvenile until finding that the parents of the juvenile have been notified or that reasonable efforts to notify such parents have been made as provided in section 43-253.

Source: G.S.1873, c. 58, § 283, p. 789; R.S.1913, § 8937; C.S.1922, § 9961; C.S.1929, § 29-401; R.S.1943, § 29-401; Laws 1967, c. 175, § 1, p. 490; Laws 1972, LB 1403, § 1; Laws 1981, LB 346, § 86; Laws 1988, LB 1030, § 23; Laws 1994, LB 451, § 1.

The finding required by subsection (2) of this section, that the parents of a child under the age of 18 years have been notified of the child's arrest or that reasonable efforts to notify have been made, is not jurisdictional. State v. Taylor, 234 Neb. 18, 448 N.W.2d 920 (1989).

An arrest may not be used as a pretext to search for evidence. A pretext arrest is one where the arrest is only a sham, a front being used as an excuse for making a search. The determination of whether an arrest is pretextual is a question of fact for the trial court. This court will not reverse a trial court's finding on this question unless the finding is clearly erroneous. State v. Vann, 230 Neb. 601, 432 N.W.2d 810 (1988).

Firing of shots at tires of speeding automobile was justified in making arrest. Breese v. Newman, 179 Neb. 878, 140 N.W.2d 805 (1966).

Arrest of person who fled from police officers was justified under facts. Sperry v. Greiner, 175 Neb. 524, 122 N.W.2d 463 (1963).

Jury was properly instructed as to the duties of sheriff to arrest and detain under this section. O'Dell v. Goodsell, 152 Neb. 290, 41 N.W.2d 123 (1950).

Mandamus will lie to compel city officers to use summary powers to prevent violations of law. Moores v. State ex rel. Dunn, 71 Neb. 522, 99 N.W. 249 (1904).

Arrest and detention without warrant by marshal was legal. Fry v. Kaessner, 48 Neb. 133, 66 N.W. 1126 (1896).

29-402 Arrest by person not an officer.

Any person not an officer may, without warrant, arrest any person, if a petit larceny or a felony has been committed, and there is reasonable ground to believe the person arrested guilty of such offense, and may detain him until a legal warrant can be obtained.

Source: G.S.1873, c. 58, § 284, p. 789; R.S.1913, § 8938; C.S.1922, § 9962; C.S.1929, § 29-402.

Evidence seized pursuant to an unlawful citizens arrest may still be admissible in absence of a showing of state action. State v. Houlton, 227 Neb. 215, 416 N.W.2d 588 (1987).

Jury award of five thousand dollars damages sustained against a private citizen who procured the unlawful arrest and detention of plaintiff. Huskinson v. Vanderheiden, 197 Neb. 739, 251 N.W.2d 144 (1977).

A police officer may arrest without a warrant when it appears that a felony has been committed and there are reasonable grounds to believe that the person arrested is guilty of the offense. State v. O'Kelly, 175 Neb. 798, 124 N.W.2d 211 (1963).

This section shows intent that provisions of this article apply to felonies and misdemeanors alike. Morrow v. State, 140 Neb. 592, 300 N.W. 843 (1941).

Arrest by private person, with cause to believe party arrested had committed a felony, was legal. Simmerman v. State, 16 Neb. 615, 21 N.W. 387 (1884).

Crime of which person arrested is suspected must have been committed. Kyner v. Laubner, 3 Neb. Unof. 370, 91 N.W. 491 (1902).

Search incident to arrest by Treasury Department agents was proper when agents saw revolver protruding from rear pocket of defendant who was trying to avoid them. United States v. Carter, 523 F.2d 476 (8th Cir. 1975).

Cited in determining that postal inspectors had probable cause to arrest defendant for carrying concealed weapon, a state felony. United States v. Unverzagt, 424 F.2d 396 (8th Cir. 1970).

29-402.01 Shoplifters; detention; no criminal or civil liability.

A peace officer, a merchant, or a merchant's employee who has probable cause for believing that goods held for sale by the merchant have been unlawfully taken by a person and that he can recover them by taking the person into custody may, for the purpose of attempting to effect such recovery, take the person into custody and detain him in a reasonable manner for a reasonable length of time. Such taking into custody and detention by a peace officer, merchant, or merchant's employee shall not render such peace officer, merchant, or merchant's employee criminally or civilly liable for slander, libel, false arrest, false imprisonment, or unlawful detention.

Source: Laws 1957, c. 101, § 1, p. 361; Laws 1963, c. 157, § 1, p. 556.

Where the detention of a suspected shoplifter was unreasonable because it continued after the detainers knew their suspicions were groundless and that they had made a mistake, merchant held not protected under this section. Latek v. K Mart Corp., 224 Neb. 807, 401 N.W.2d 503 (1987).

The words "a merchant's employee" do not include a merchant's agent who is not an employee. Bishop v. Bockoven, Inc., 199 Neb. 613, 260 N.W.2d 488 (1977).

A telephone alert between cooperating store managers advising the location of one suspected of previous shoplifting does not constitute a civil conspiracy against the suspect. Dangberg v. Sears Roebuck & Co., 198 Neb. 234, 252 N.W.2d 168 (1977).

Instruction defining arrest in almost verbatim language of 5 Am. Jur. 2d, Arrest, was proper. Schmidt v. Richman Gordman, Inc., 191 Neb. 345, 215 N.W.2d 105 (1974).

29-402.02 Shoplifters; peace officer; arrest without warrant.

Any peace officer may arrest without warrant any person he has probable cause for believing has committed larceny in retail or wholesale establishments.

Source: Laws 1957, c. 101, § 2, p. 361.

29-402.03 Shoplifters; arrest; merchant or employee not liable.

A merchant or a merchant's employee who causes the arrest of a person, as provided for in section 29-402.01, for larceny of goods held for sale shall not be criminally or civilly liable for slander, libel, false arrest, or false imprisonment where the merchant or merchant's employee has probable cause for believing that the person arrested committed larceny of goods held for sale.

Source: Laws 1957, c. 101, § 3, p. 361; Laws 1963, c. 157, § 2, p. 557.

Instruction defining arrest in almost verbatim language of 5 Am.Jur., Arrest, was proper. Schmidt v. Richman Gordman, Inc., 191 Neb. 345, 215 N.W.2d 105 (1974).

29-403 Warrant; who may issue.

Judges of the district court and judges of the county court shall have power to issue process for the apprehension of any person charged with a criminal offense. Clerk magistrates shall have the power to issue such process as provided in section 24-519.

Source: G.S.1873, c. 58, § 285, p. 789; R.S.1913, § 8939; C.S.1922, § 9963; C.S.1929, § 29-403; R.S.1943, § 29-403; Laws 1972, LB 1032, § 166; Laws 1984, LB 13, § 51; Laws 1986, LB 529, § 28.

29-404 Complaint; filing; procedure; warrant; issuance.

No complaint shall be filed with the magistrate, unless such complaint is in writing and upon oath, signed by the prosecuting attorney or by any other complainant. If the complainant be other than the prosecuting attorney or a city or village attorney prosecuting the violation of a municipal ordinance, he shall either have the consent of the prosecuting attorney or shall furnish to the magistrate a bond with good and sufficient sureties in such amount as the magistrate shall determine to indemnify the person complained against for wrongful or malicious prosecution. Whenever a complaint shall be filed with the magistrate, charging any person with the commission of an offense against the laws of this state, it shall be the duty of such magistrate to issue a warrant for the arrest of the person accused, if he shall have reasonable grounds to believe that the offense charged has been committed. The prosecuting attorney shall consent to the filing of such complaint if he is in possession of sufficient evidence to warrant the belief that the person named as defendant in such complaint is guilty of the crime alleged and can be convicted thereof. The Attorney General shall have the same power to consent to the filing of complaints as the prosecuting attorneys have in their respective counties.

Source: G.S.1873, c. 58, § 286, p. 790; R.S.1913, § 8940; C.S.1922, § 9964; C.S.1929, § 29-404; R.S.1943, § 29-404; Laws 1965, c. 148, § 1, p. 490; Laws 1975, LB 168, § 2; Laws 1977, LB 497, § 1.

1. Complaint
2. Immunity

1. Complaint

Complaint charging unlawful operation of freight-carrying motor vehicle was properly filed with justice of the peace. Conkling v. DeLany, 167 Neb. 4, 91 N.W.2d 250 (1958).

Complaint in name of county attorney and verified by deputy county attorney does not confer jurisdiction upon examining magistrate. Morrow v. State, 140 Neb. 592, 300 N.W. 843 (1941).

In making allegation of venue, no particular form is required. Seay v. Shrader, 69 Neb. 245, 95 N.W. 690 (1903).

Complaint is jurisdictional; title is no part of complaint. White v. State, 28 Neb. 341, 44 N.W. 443 (1889).

Complaint charging offense in language of statute is sufficient. State ex rel. Bryant v. Lauver, 26 Neb. 757, 42 N.W. 762 (1889).

Complaint must charge all that is essential to constitute offense. Smith v. State, 21 Neb. 552, 32 N.W. 594 (1887).

Complaint is sufficient if it shows violation of law, and is not vitiated for redundant matter. Ex parte Maule, 19 Neb. 273, 27 N.W. 119 (1886).

Complaint must be sufficiently specific to negative innocence of defendant. Ex parte Eads, 17 Neb. 145, 22 N.W. 352 (1885).

Complaint for selling liquor was good. Brown v. State, 16 Neb. 658, 21 N.W. 454 (1884).

Complaint can be changed only by consent of complainant and by reverification. Lewis v. State, 15 Neb. 89, 17 N.W. 366 (1883).

2. Immunity

Lack of county attorney's consent and failure to furnish bond not jurisdictional defects and convictions cannot be challenged in proceedings for revocation of motor vehicle operator's license. Bohlen v. Kissack, 189 Neb. 262, 202 N.W.2d 171 (1972).

Accused is not immune from arrest even though out on bail pending trial for felony in another county. State ex rel. Johnson v. Goble, 136 Neb. 242, 285 N.W. 569 (1939).

A ministerial officer is not liable for false imprisonment when acting under warrant regular on its face. Kelsey v. Klabunde, 54 Neb. 760, 74 N.W. 1099 (1898).

29-404.01 Arrest without warrant; supplemental provisions.

The provisions of sections 29-404.01 to 29-404.03 shall be supplemental and in addition to any other laws relating to the subject of arrest.

Source: Laws 1967, c. 172, § 1, p. 487.

29-404.02 Arrest without warrant; when.

(1) Except as provided in section 42-928, a peace officer may arrest a person without a warrant if the officer has reasonable cause to believe that such person has committed:

(a) A felony;

(b) A misdemeanor, and the officer has reasonable cause to believe that such person either (i) will not be apprehended unless immediately arrested, (ii) may cause injury to himself or herself or others or damage to property unless immediately arrested, (iii) may destroy or conceal evidence of the commission of such misdemeanor, or (iv) has committed a misdemeanor in the presence of the officer; or

(c) One or more of the following acts to one or more household members, whether or not committed in the presence of the peace officer:

(i) Attempting to cause or intentionally and knowingly causing bodily injury with or without a dangerous instrument;

(ii) Placing, by physical menace, another in fear of imminent bodily injury; or

(iii) Engaging in sexual contact or sexual penetration without consent as defined in section 28-318.

(2) For purposes of this section:

(a) Household members shall include spouses or former spouses, children, persons who are presently residing together or who have resided together in the past, persons who have a child in common whether or not they have been married or have lived together at any time, other persons related by consanguinity or affinity, and persons who are presently involved in a dating relationship with each other or who have been involved in a dating relationship with each other; and

(b) Dating relationship means frequent, intimate associations primarily characterized by the expectation of affectional or sexual involvement, but does not include a casual relationship or an ordinary association between persons in a business or social context.

Source: Laws 1967, c. 172, § 2, p. 487; Laws 1989, LB 330, § 1; Laws 2004, LB 613, § 6.

1. Felony
2. Misdemeanor
3. Probable cause
4. Miscellaneous

1. Felony

When a law enforcement officer has knowledge based on information reasonably trustworthy under the circumstances, which justifies a prudent belief that a suspect has committed a felony, the officer has probable cause to arrest without a warrant. State v. Robinson, 233 Neb. 729, 448 N.W.2d 386 (1989).

A peace officer may arrest without a warrant if the officer has reasonable cause to believe that the person to be arrested has committed a felony. State v. Horn, 218 Neb. 524, 357 N.W.2d 437 (1984); State v. George, 210 Neb. 786, 317 N.W.2d 76 (1982); State v. Russ, 193 Neb. 308, 226 N.W.2d 775 (1975); State v. Irwin, 191 Neb. 169, 214 N.W.2d 595 1974); State v. Beasley, 183 Neb. 681, 163 N.W.2d 783 (1969).

2. Misdemeanor

There is probable cause for a warrantless arrest under subsection (2)(c) of this section when an officer has reasonable cause to believe that a misdemeanor has been committed and there is reasonable cause to believe that the evidence may be destroyed or concealed. There is reasonable cause to believe that evidence of intoxication may be destroyed by the metabolic processes of the human body. State v. Halligan, 222 Neb. 866, 387 N.W.2d 698 (1986).

This section authorizes any peace officer to arrest a person who commits a misdemeanor in his presence. State v. Chambers, 207 Neb. 611, 299 N.W.2d 780 (1980).

Police may use binoculars in surveillance, and may arrest without a warrant if there is reasonable cause to believe person has committed misdemeanor in their presence, or has committed misdemeanor, and officers have reasonable cause to believe evidence may be destroyed or concealed. State v. Thompson, 196 Neb. 55, 241 N.W.2d 511 (1976).

Peace officer may arrest without a warrant if he has reasonable cause to believe the person has committed a misdemeanor, that he will not be apprehended or may cause injury to others unless immediately arrested, or may destroy or conceal evidence of the commission of the misdemeanor. State v. McCune, 189 Neb. 165, 201 N.W.2d 852 (1972).

A law enforcement officer may make a lawful arrest without a warrant if there exists a reasonable or probable cause that a person has committed a misdemeanor in the officer's presence. Newton v. Huffman, 10 Neb. App. 390, 632 N.W.2d 344 (2001).

3. Probable cause

The test for probable cause for a warrantless arrest is whether at the moment the facts and circumstances within the officers' knowledge and of which they had reasonably trustworthy information were sufficient to warrant a prudent man in believing that the petitioner had committed or was committing an offense. State v. Jones, 208 Neb. 641, 305 N.W.2d 355 (1981).

Where defendant's erratic driving and subsequent conduct is sufficient to give police probable cause to believe defendant was under the influence of drugs or liquor, it is permissible for the police to pursue defendant into a private dwelling. State v. Penas, 200 Neb. 387, 263 N.W.2d 835 (1978).

Probable cause for arrest and for search and seizure exists where the facts and circumstances within the officers' knowledge and of which they have reasonably trustworthy information are sufficient in themselves to warrant a man of reasonable caution to believe that an offense has been or is being committed. State v. Dussault, 193 Neb. 122, 225 N.W.2d 558 (1975).

Probable cause for arrest is to be determined upon objective facts available at time of arrest but there is no requirement that before arrest officer must conduct trial. Morrison v. United States, 491 F.2d 344 (8th Cir. 1974).

Arresting officer not being present at time offense committed and under facts outlined without probable cause for warrantless arrest, evidence seized on search incident to arrest was inadmissible. Turk v. United States, 429 F.2d 1327 (8th Cir. 1970).

4. Miscellaneous

Although the diminishment over time and the ultimate elimination of alcohol in the bloodstream are not willful or intentional, this metabolic process nonetheless constitutes the destruction of evidence such as to provide a basis for effecting a warrantless arrest under the provisions of this section. State v. Wegener, 239 Neb. 946, 479 N.W.2d 783 (1992).

The destruction of evidence through the dissipation of an individual's blood-alcohol level over time is sufficient justification for a warrantless arrest. State v. Marcotte, 233 Neb. 533, 446 N.W.2d 228 (1989).

A warrantless arrest, set in motion on a public road, may not be defeated by means of escaping to a private driveway. State v. Bishop, 224 Neb. 522, 399 N.W.2d 271 (1987).

Officer's conduct in making an arrest under the apparent authority of sections 29-404.02 and 29-411 did not rise to the level of conscious or flagrant misconduct requiring prophylactic exclusion of the defendant's statements. State v. Smith, 209 Neb. 505, 308 N.W.2d 820 (1981).

Warrantless arrest was lawful after officer discovered small bag of marijuana in ''plain view'' in back seat of car driven by defendant, thereby permitting a search of the car's trunk as a search incident to a lawful arrest. State v. Watts, 209 Neb. 371, 307 N.W.2d 816 (1981).

A warrantless arrest in the hallway outside the apartment of the person arrested, which took place as the person arrested was returning to his apartment, does not violate this section. State v. Tipton, 206 Neb. 731, 294 N.W.2d 869 (1980).

Absent exigent circumstances police may not arrest a person in his home without a warrant. State v. Schlothauer, 206 Neb. 670, 294 N.W.2d 382 (1980).

Absent a contrary showing, an arrest made by Nebraska authorities in a neighboring jurisdiction is presumed governed by laws the same as laws in Nebraska. State v. Wilson, 199 Neb. 765, 261 N.W.2d 376 (1978).

Exigent circumstances in this case justified entry into house to make arrest without a prior disclosure of authority or purpose. State v. Brooks, 189 Neb. 592, 204 N.W.2d 86 (1973).

29-404.03 Arrest without warrant; reasonable cause; conditions.

In determining whether reasonable cause exists to justify an arrest, a law enforcement officer may take into account all facts and circumstances, including those based upon any expert knowledge or experience which the officer in fact possessed, which a prudent officer would judge relevant to the likelihood that a crime has been committed and that the person to be arrested has committed it, and for such purpose the officer may rely on information he receives from any informant whom it is reasonable under the circumstances to credit, whether or not at the time of making the arrest the officer knows the informant's identity.

Source: Laws 1967, c. 172, § 3, p. 487.

Police may consider an anonymous tip, along with other facts and circumstances, in determining whether reasonable cause for an arrest exists. Where anonymous tip identified robber as a black male, 6 feet 1 inch tall, 28 years old, with a red eye,

known as ''Tony,'' who could be found at a certain address; eyewitnesses identified robber as black male with a red eye; neighbors of specified address described defendant's car; and defendant was a black male, 6 feet 3 inches tall, 29 years old, found at an address where the described car was parked, and named Tony, reasonable cause for arrest existed. State v. Haynie, 239 Neb. 478, 476 N.W.2d 905 (1991).

The totality of the circumstances, including a suspect's attempt to flee from a police officer, established reasonable or probable cause that the suspect was driving while his driver's license was still under suspension, which was a misdemeanor; thus, the officer had probable cause to arrest the suspect. Newton v. Huffman, 10 Neb. App. 390, 632 N.W.2d 344 (2001).

29-405 Warrant; misdemeanor, complainant; costs.

When the offense charged is a misdemeanor, the magistrate, before issuing the warrant, may, at his discretion, require the complainant to acknowledge himself responsible for costs in case the complaint shall be dismissed, which acknowledgment of security for costs shall be entered upon the docket; and the magistrate on dismissal may, if in his opinion the complaint was without probable cause, enter a judgment against such complainant for costs made thereon. In case the magistrate shall consider such complainant wholly irresponsible, such magistrate may, in his discretion, refuse to issue any warrant unless the complainant procure some responsible surety to the satisfaction of such magistrate for the costs in case of such dismissal, and such surety shall acknowledge himself so bound, and the magistrate shall enter it on his docket.

Source: G.S.1873, c. 58, § 287, p. 790; R.S.1913, § 8941; C.S.1922, § 9965; C.S.1929, § 29-405.

Constable cannot demand his fees in advance. Beach v. State ex rel. Emmons, 27 Neb. 398, 43 N.W. 177 (1889).

This section does not apply to complaint by prosecuting officer. State ex rel Thomas v. McCutcheon, 20 Neb. 304, 30 N.W. 58 (1886).

Costs can be adjudged against complainant only after finding that complaint was without probable cause. Cobbey v. Berger, 13 Neb. 463, 14 N.W. 396 (1882).

29-406 Warrant; to whom directed; contents.

The warrant shall be directed to the sheriff of the county or to the marshal or other police officer of a city or village and, reciting the substance of the accusation, shall command the officer to take the accused and bring him or her before the magistrate or court issuing the warrant or some other magistrate having cognizance of the case to be dealt with according to law. No seal shall be necessary to the validity of the warrant.

Source: G.S.1873, c. 58, § 288, p. 790; R.S.1913, § 8942; C.S.1922, § 9966; C.S.1929, § 29-406; R.S.1943, § 29-406; Laws 1972, LB 1032, § 167; Laws 1988, LB 1030, § 24.

If defendant is in court when complaint is filed, warrant need not issue. Cohoe v. State, 79 Neb. 811, 113 N.W. 532 (1907).

Validity of warrant will not be inquired into by district court when accused has waived preliminary and given bond. Bartley v. State, 53 Neb. 310, 73 N.W. 744 (1898).

Police officer is commanded to take an accused under arrest before a magistrate. Gallegos v. Nebraska, 342 U.S. 55 (1951).

29-407 Warrant; persons who may execute.

The magistrate issuing any such warrant may make an order thereon authorizing a person to be named in such warrant to execute the warrant. The person named in such order may execute such warrant anywhere in the state by apprehending and conveying such offender before the magistrate issuing such warrant or before some other magistrate of the same county. All sheriffs, coroners, and others when required in their respective counties shall aid and assist in the execution of such warrant.

Source: G.S.1873, c. 58, § 289, p. 790; R.S.1913, § 8943; C.S.1922, § 9967; C.S.1929, § 29-407; R.S.1943, § 29-407; Laws 1988, LB 1030, § 25.

Warrant for arrest may be executed within any county in the state. State v. Clingerman, 180 Neb. 344, 142 N.W.2d 765 (1966).

29-408 Warrant; pursuit and arrest of fugitive.

If any person charged as aforesaid with the commission of an offense shall flee from justice, it shall be lawful for the officer, in whose hands the warrant for such person has been placed, to pursue and arrest such person in any other county of this state, and to convey him before the magistrate issuing the warrant, or any other magistrate having cognizance of the case, of the county where such offense was committed.

Source: G.S.1873, c. 58, § 290, p. 790; R.S.1913, § 8944; C.S.1922, § 9968; C.S.1929, § 29-408.

29-409 Fugitive; warrant for arrest and return; effect.

If any person charged with an offense shall abscond or remove from the county in which such offense is alleged to have been committed, it shall be lawful for any magistrate of the county in which such person may be found to issue a warrant for the arrest and removal of such person to the county in which the offense is alleged to have been committed, to be there delivered to any magistrate of such county, who shall cause the person so delivered to be dealt with according to law; and the warrant so issued shall have the same force and effect as if issued from the county in which such offense is alleged to have been committed.

Source: G.S.1873, c. 58, § 291, p. 791; R.S.1913, § 8945; C.S.1922, § 9969; C.S.1929, § 29-409.

29-410 Prisoner; lawful arrest; detention.

Any officer or other person having in lawful custody any person accused of an offense for the purpose of bringing him before the proper magistrate or court, may place and detain such prisoner in any county jail of this state for one night or longer, as the occasion may require, so as to answer the purposes of the arrest and custody.

Source: G.S.1873, c. 58, § 292, p. 791; R.S.1913, § 8946; C.S.1922, § 9970; C.S.1929, § 29-410.

The Fourth Amendment to the U.S. Constitution requires a prompt judicial determination of probable cause as a prerequisite to an extended pretrial detention following a warrantless arrest. State v. Nissen, 252 Neb. 51, 560 N.W.2d 157 (1997).

Jury was properly instructed as to duties of sheriff to arrest and detain under this section. O'Dell v. Goodsell, 152 Neb. 290, 41 N.W.2d 123 (1950).

In action against sheriff for false imprisonment on theory that plaintiff was detained without warrant, evidence was sufficient to establish that plaintiff's arrest and detention were lawful. Martin v. Sanford, 129 Neb. 212, 261 N.W. 136 (1935).

29-411 Warrants and arrests; powers of officer; direction for executing search warrant; damages.

In executing a warrant for the arrest of a person charged with an offense, or a search warrant, or when authorized to make an arrest for a felony without a warrant, the officer may break open any outer or inner door or window of a dwelling house or other building, if, after notice of his office and purpose, he is refused admittance; or without giving notice of his authority and purpose, if the judge or magistrate issuing a search warrant has inserted a direction therein that the officer executing it shall not be required to give such notice, but

the political subdivision from which such officer is elected or appointed shall be liable for all damages to the property in gaining admission. The judge or magistrate may so direct only upon proof under oath, to his satisfaction that the property sought may be easily or quickly destroyed or disposed of, or that danger to the life or limb of the officer or another may result, if such notice be given; but this section is not intended to authorize any officer executing a search warrant to enter any house or building not described in the warrant.

Source: G.S.1873, c. 58, § 293, p. 791; R.S.1913, § 8947; C.S.1922, § 9971; C.S.1929, § 29-411; R.S.1943, § 29-411; Laws 1965, c. 149, § 1, p. 491.

Following a knock and announcement, the requirement that officers executing a search warrant be ''refused admittance,'' within the meaning of this section, is not restricted to an affirmative refusal, but encompasses circumstances that constitute constructive or reasonably inferred refusal. State v. Kelley, 265 Neb. 563, 658 N.W.2d 279 (2003).

This section codifies the common-law requirement of knocking and announcing when serving a search warrant prior to breaking into a person's dwelling. State v. Kelley, 265 Neb. 563, 658 N.W.2d 279 (2003).

Provisions in warrants allowing no-knock search warrants offend neither U.S. Const. amend. IV nor Neb. Const. art. I, sec. 7. State v. Eary, 235 Neb. 254, 454 N.W.2d 685 (1990).

The provision allowing for no-knock search warrants does not offend the fourth amendment to the Constitution of the United States. State v. Meyer, 209 Neb. 757, 311 N.W.2d 520 (1981).

Officer's conduct in making an arrest under the apparent authority of sections 29-404.02 and 29-411 did not rise to the level of conscious or flagrant misconduct requiring prophylactic exclusion of the defendant's statements. State v. Smith, 209 Neb. 505, 308 N.W.2d 820 (1981).

Where defendant's erratic driving and subsequent conduct is sufficient to give police probable cause to believe defendant was under the influence of drugs or liquor, it is permissible for the police to pursue defendant into a private dwelling. State v. Penas, 200 Neb. 387, 263 N.W.2d 835 (1978).

The exercise of the right hereunder to break into a building is subject to the condition that the officer has probable cause to believe the person sought is within the building. State v. Russ, 193 Neb. 308, 226 N.W.2d 775 (1975).

Where a peace officer has reasonable cause to believe a sale of narcotics is taking place inside a residence, exigent circumstances may justify his entering the residence to make arrest without prior disclosure of his authority and purpose. State v. Brooks, 189 Neb. 592, 204 N.W.2d 86 (1973).

The Fourth Amendment to the United States Constitution prohibits the police from making a warrantless and nonconsensual entry into a suspect's home in order to make a routine felony arrest except where there are exigent circumstances present. This section noted by the court as being similar to the New York law it found unconstitutional. Payton v. New York, 445 U.S. 573, 100 S.Ct. 1371. (1980).

29-412 Arrest under a warrant; prisoner to be taken before magistrate; return.

Whenever any person has been arrested under a warrant as provided in sections 29-401 to 29-411, it shall be the duty of the officer making the arrest to take the person so arrested before the proper magistrate; and the warrant by virtue of which the arrest was made, with the proper return endorsed thereon and signed by the officer, shall be delivered to such magistrate.

Source: G.S.1873, c. 58, § 294, p. 791; R.S.1913, § 8948; C.S.1922, § 9972; C.S.1929, § 29-412.

29-413 Offense committed in view of magistrate; arrest; when authorized; detention.

When any offense is committed in view of any magistrate, he or she may, by verbal direction to any sheriff, marshal, or other proper officer or, if no such officer is present, then to any citizen, cause the offender to be arrested and kept in custody for the space of one hour unless he or she shall sooner be taken from such custody by virtue of a warrant issued on complaint under oath. A person so arrested shall not be confined in jail nor put upon trial until arrested by virtue of such a warrant.

Source: G.S.1873, c. 58, § 295, p. 791; R.S.1913, § 8949; C.S.1922, § 9973; C.S.1929, § 29-413; R.S.1943, § 29-413; Laws 1988, LB 1030, § 26.

29-414 Rewards for conviction of felons; powers of county boards; limitation on amount.

The county boards of the several counties in this state are hereby authorized, when they deem the same expedient, to offer such rewards as in their judgment the nature of the case may require for the detection or apprehension of any person charged with or convicted of a felony, and pay the same, together with all necessary expenses, not otherwise provided by law, incurred in making such detection or apprehension, out of the county treasury; *Provided*, in no case shall the amount paid out for expense exceed the sum of three hundred dollars.

Source: G.S.1873, c. 58, § 296, p. 791; Laws 1907, c. 175, § 1, p. 507; R.S.1913, § 8950; C.S.1922, § 9974; C.S.1929, § 29-414.

This section does not authorize payment of reward until conviction. Anderson v. Pierce County, 40 Neb. 481, 58 N.W. 955 (1894).

29-415 Rewards for capture and conviction of horse and auto thieves; powers of sheriffs; limitation on amount.

The sheriffs of the several counties within this state are hereby authorized to offer and pay a reward not exceeding the sum of fifty dollars for the capture and conviction of any person charged with stealing a horse or horses, automobile or automobiles, within their respective counties; and the county boards of such counties shall audit the accounts of such sheriffs for money paid out as such rewards, together with all necessary expenses incurred in the apprehension and detention of any such horse thief or automobile thief, and pay the same out of the treasury of their county.

Source: Laws 1879, § 1, p. 181; R.S.1913, § 8951; Laws 1919, c. 139, § 1, p. 317; C.S.1922, § 9975; C.S.1929, § 29-415.

29-416 Fresh pursuit; peace officer from another state; authority to make arrest.

Any member of a duly organized state, county or municipal peace unit of another state of the United States who enters this state in fresh pursuit, and continues within this state in such fresh pursuit, of a person, in order to arrest him on the ground that he is believed to have committed a felony in such other state, shall have the same authority to arrest and hold such person in custody as has any member of any duly organized state, county or municipal peace unit of this state, to arrest and hold in custody a person on the ground that he is believed to have committed a felony in this state.

Source: Laws 1937, c. 70, § 1, p. 256; C.S.Supp.,1941, § 29-416.

The Nebraska Uniform Act on Fresh Pursuit applies only to officers from another state entering this state; it does not apply to a police officer of a city of the second class seeking to arrest a misdemeanor suspect outside the officer's geographical jurisdiction. State v. Tingle, 239 Neb. 558, 477 N.W.2d 544 (1991).

Fresh pursuit is pursuit instituted immediately and with intent to reclaim or recapture. State v. Goff, 174 Neb. 548, 118 N.W.2d 625 (1962).

29-417 Fresh pursuit; procedure after arrest.

If an arrest is made in this state by an officer of another state in accordance with the provisions of section 29-416, he shall without unnecessary delay take the person arrested before a magistrate of the county in which the arrest was made, who shall conduct a hearing for the purpose of determining the lawfulness of the arrest. If the magistrate determines that the arrest was lawful he

shall commit the person arrested to await for a reasonable time the issuance of an extradition warrant by the Governor of this state. If the magistrate determines that the arrest was unlawful he shall discharge the person arrested.

Source: Laws 1937, c. 70, § 2, p. 256; C.S.Supp.,1941, § 29-417.

This section outlines procedure to be followed after arrest made in fresh pursuit. State v. Goff, 174 Neb. 548, 118 N.W.2d 625 (1962).

29-417.01 Fresh pursuit; interstate pursuit; liability; personal jurisdiction.

(1) A member of a duly organized state, county, or municipal peace unit of another state of the United States who enters this state in fresh pursuit under authority of the Uniform Act on Fresh Pursuit shall be jointly and severally liable, along with the state, county, or municipal peace unit employing the member, for death, injury, or property damage to an innocent third party proximately caused by the action of the member during fresh pursuit.

(2) A member of a duly organized state, county, or municipal peace unit of another state of the United States who enters this state in fresh pursuit under authority of the Uniform Act on Fresh Pursuit shall be deemed to have given his or her consent to be subject to the laws of this state, and such action by the member shall constitute sufficient contact with this state for the exercise of personal jurisdiction over such person, with respect to a cause of action regarding death, injury, or property damage to an innocent third party proximately caused by the actions of the member during fresh pursuit.

(3) Any duly organized state, county, or municipal peace unit of another state of the United States that authorizes its members to enter this state during fresh pursuit under authority of the Uniform Act on Fresh Pursuit shall be deemed to have given its consent to be subject to the laws of this state, and such action by the members shall constitute sufficient contact with this state for the exercise of personal jurisdiction over such peace unit, with respect to a cause of action regarding death, injury, or property damage to an innocent third party proximately caused by the actions of such members during fresh pursuit.

Source: Laws 2001, LB 299, § 1.

29-418 Fresh pursuit; section, how construed.

Section 29-416 shall not be construed so as to make unlawful any arrest in this state which would otherwise be lawful.

Source: Laws 1937, c. 70, § 3, p. 256; C.S.Supp.,1941, § 29-418.

29-419 Fresh pursuit; state, defined.

For purposes of the Uniform Act on Fresh Pursuit, the word state shall include the District of Columbia.

Source: Laws 1937, c. 70, § 4, p. 256; C.S.Supp.,1941, § 29-419; R.S. 1943, § 29-419; Laws 2001, LB 299, § 2.

29-420 Fresh pursuit, defined.

For purposes of the Uniform Act on Fresh Pursuit, the term fresh pursuit shall include fresh pursuit as defined by the common law and also the pursuit of a person who has committed a felony or who is reasonably suspected of having committed a felony. It shall also include the pursuit of a person

suspected of having committed a supposed felony, though no felony has actually been committed, if there is reasonable ground for believing that a felony has been committed. Fresh pursuit shall not necessarily imply instant pursuit, but pursuit without unreasonable delay.

Source: Laws 1937, c. 70, § 5, p. 256; C.S.Supp.,1941, § 29-420; R.S. 1943, § 29-420; Laws 2001, LB 299, § 3.

In order for search to be valid in connection with fresh pursuit, felony must have been committed in another state. State v. Goff, 174 Neb. 548, 118 N.W.2d 625 (1962).

29-421 Act, how cited.

Sections 29-416 to 29-421 shall be known and may be cited as the Uniform Act on Fresh Pursuit.

Source: Laws 1937, c. 70, § 8, p. 257; C.S.Supp.,1941, § 29-423; R.S. 1943, § 29-421; Laws 2001, LB 299, § 4.

29-422 Citation in lieu of arrest; legislative intent.

It is hereby declared to be the policy of the State of Nebraska to issue citations in lieu of arrest or continued custody to the maximum extent consistent with the effective enforcement of the law and the protection of the public. In furtherance of that policy, except as provided in sections 42-928 and 42-929, any peace officer shall be authorized to issue a citation in lieu of arrest or continued custody for any offense which is a traffic infraction, any other infraction, or a misdemeanor and for any violation of a city or village ordinance. Such authorization shall be carried out in the manner specified in sections 29-422 to 29-429 and 60-684 to 60-686.

Source: Laws 1974, LB 829, § 1; Laws 1978, LB 808, § 6; Laws 1985, LB 19, § 2; Laws 1989, LB 330, § 2; Laws 1993, LB 370, § 12.

29-423 Citation; Supreme Court; prescribe form; contents.

To achieve uniformity, the Supreme Court may prescribe the form of citation. The citation shall include a description of the crime or offense charged, the time and place at which the person cited is to appear, a warning that failure to appear in accordance with the command of the citation is a punishable offense, and such other matter as the court deems appropriate, but shall not include a place for the cited person's social security number. The court may provide that a copy of the citation shall constitute the complaint filed in the trial court.

Source: Laws 1974, LB 829, § 2; Laws 2002, LB 82, § 11.

29-424 Citation; contents; procedure; complaint; waiver; use of credit card authorized.

When a citation is used by a peace officer or when a citation is used by an official or inspector pursuant to section 18-1757, he or she shall enter thereon all required information, including the name and address of the cited person, the offense charged, and the time and place the person cited is to appear in court. Unless the person cited requests an earlier date, the time of appearance shall be at least three days after the issuance of the citation. One copy of the citation shall be delivered to the person cited, and a duplicate thereof shall be signed by such person, giving his or her promise to appear at the time and place stated therein. Such person thereupon shall be released from custody. As

soon as practicable, the copy signed by the person cited shall be delivered to the prosecuting attorney.

At least twenty-four hours before the time set for the appearance of the cited person, either the prosecuting attorney or other person authorized by law to issue a complaint for the particular offense shall issue and file a complaint charging such person with an offense or such person shall be released from the obligation to appear as specified. A person cited pursuant to sections 29-422 to 29-429 may waive his or her right to trial. The Supreme Court may prescribe uniform rules for such waivers.

Anyone may use a credit card authorized by the court in which the person is cited as a means of payment of his or her fine and costs.

Source: Laws 1974, LB 829, § 3; Laws 1978, LB 808, § 7; Laws 1985, LB 19, § 3; Laws 1985, LB 326, § 3; Laws 1988, LB 370, § 5; Laws 1998, LB 109, § 2; Laws 2006, LB 1175, § 4.

Cross References

Traffic infraction, citation, see section 60-684.

29-425 Citation; issued, when; service.

Citations may also be issued under the following circumstances:

(1) In any case in which the prosecuting officer is convinced that a citation would serve all of the purposes of an arrest warrant; and

(2) Whenever any complaint or information is filed in any court in this state charging a felony, misdemeanor, infraction, or violation of a city or village ordinance when the court is convinced that a citation would serve all of the purposes of the arrest warrant procedure.

The citations provided for in this section may be served in the same manner as an arrest warrant, in the same manner as a summons in a civil action, or may be served by certified mail.

Source: Laws 1974, LB 829, § 4; Laws 1978, LB 808, § 8.

29-426 Citation; failure to appear; penalty.

Any person failing to appear or otherwise comply with the command of a citation shall be guilty of a misdemeanor and shall, upon conviction thereof, be punished by a fine of not more than five hundred dollars, or by imprisonment in the county jail for not more than three months, or by both such fine and imprisonment.

Source: Laws 1974, LB 829, § 5.

Cross References

Traffic infraction, refusal to sign citation, see section 60-684.

One-year probation as sentence for violating this section affirmed. State v. Meints, 223 Neb. 199, 388 N.W.2d 813 (1986).

29-427 Detention of accused; grounds.

Any peace officer having grounds for making an arrest may take the accused into custody or, already having done so, detain him further when the accused fails to identify himself satisfactorily, or refuses to sign the citation, or when the officer has reasonable grounds to believe that (1) the accused will refuse to respond to the citation, (2) such custody is necessary to protect the accused or

others when his continued liberty would constitute a risk of immediate harm, (3) such action is necessary in order to carry out legitimate investigative functions, (4) the accused has no ties to the jurisdiction reasonably sufficient to assure his appearance, or (5) the accused has previously failed to appear in response to a citation.

Source: Laws 1974, LB 829, § 6.

An officer may arrest for an infraction if such action is necessary to carry out a legitimate investigative function. State v. Sassen, 240 Neb. 773, 484 N.W.2d 469 (1992).

Any peace officer having grounds for making an arrest may take the accused into custody or, already having done so, detain him further when the accused fails to identify himself satisfactorily or refuses to sign the citation or when the officer has reasonable grounds to believe that such action is necessary in order to carry out legitimate investigative functions. State v. Petersen, 12 Neb. App. 445, 676 N.W.2d 65 (2004).

Except as provided in this section, for any offense classified as an infraction, a citation shall be issued in lieu of arrest or continued custody. State v. Petersen, 12 Neb. App. 445, 676 N.W.2d 65 (2004).

A trooper who did not have grounds to arrest a suspect could not detain the suspect under this section. State v. Scovill, 9 Neb. App. 118, 608 N.W.2d 623 (2000).

29-428 Sections, how construed.

Nothing in sections 29-422 to 29-429 and 60-684 to 60-686 shall be construed to affect the rights, lawful procedures, or responsibilities of law enforcement agencies or peace officers using the citation procedure in lieu of the arrest or warrant procedure.

Source: Laws 1974, LB 829, § 7; Laws 1985, LB 19, § 4; Laws 1993, LB 370, § 13.

29-429 Citation; cited person to medical facility; when.

Notwithstanding that a citation is issued, a peace officer is authorized to take a cited person to an appropriate medical facility if he appears mentally or physically unable to care for himself.

Source: Laws 1974, LB 829, § 8.

29-430 Citation; social security number prohibited.

A citation issued by a law enforcement officer shall not contain the cited person's social security number.

Source: Laws 2002, LB 82, § 1.

29-431 Infraction, defined.

As used in sections 28-416, 29-422, 29-424, 29-425, and 29-431 to 29-434, unless the context otherwise requires, infraction shall mean the violation of any law, ordinance, order, rule, or regulation, not including those related to traffic, which is not otherwise declared to be a misdemeanor or a felony. Infraction shall include violations of section 60-6,267.

Source: Laws 1978, LB 808, § 1; Laws 1979, LB 534, § 1; Laws 1983, LB 306, § 1; Laws 1993, LB 370, § 14.

Cross References

Child passenger restraint system, violation, see sections 60-6,267 and 60-6,268.

29-432 Infraction; person alleged to have committed; custody; when.

Any peace officer may take a person alleged to have committed an infraction into custody if harm is likely to occur to either the individual or society if such person is not taken into custody.

Source: Laws 1978, LB 808, § 3.

29-433 Infraction involving controlled substance; person cited for; course of instruction; requirements.

A person cited for an infraction pursuant to section 28-416 shall be assigned to attend a course of instruction relating to the effects of the misuse of drugs, including alcohol and controlled substances. Such instruction shall include counseling on the legal, medical, psychological, and social effects of drug use and abuse. Such course shall consist of a minimum of five hours and a maximum of ten hours of instruction and counseling. Upon completion of the assigned course the instructor shall notify the court in writing of such completion and the notification shall be made a part of the record of the citation. Any person failing to complete such course within thirty days after the assignment shall be guilty of an infraction.

Source: Laws 1978, LB 808, § 4.

29-434 Drug treatment centers; provide course of instruction.

All drug treatment centers shall provide the necessary facilities and programs to carry out the provisions of section 29-433.

Source: Laws 1978, LB 808, § 5; Laws 2004, LB 1083, § 87.

29-435 Infraction; citation issued in lieu of arrest; exception.

Except as provided in section 29-427, for any offense classified as an infraction, a citation shall be issued in lieu of arrest or continued custody pursuant to sections 29-422 to 29-429.

Source: Laws 1979, LB 534, § 2; Laws 1985, LB 19, § 5.

Except as provided in section 29-427, for any offense classified as an infraction, a citation shall be issued in lieu of arrest or continued custody. State v. Petersen, 12 Neb. App. 445, 676 N.W.2d 65 (2004).

29-436 Infraction, penalties.

Any person guilty of an infraction when a penalty is not otherwise specified shall: (1) For the first offense be fined not more than one hundred dollars; (2) upon a second conviction for the same infraction within a two-year period be fined not less than one hundred dollars and not more than three hundred dollars; and (3) upon a third or subsequent conviction for the same infraction within a two-year period be fined not less than two hundred dollars and not more than five hundred dollars.

Source: Laws 1979, LB 534, § 3.

29-437 Infraction; trial without a jury; constitutional rights.

The trial of any person for an infraction shall be by the court without a jury. All other rights provided by the Constitution of the United States made applicable to the states by the Fourteenth Amendment to the Constitution of the United States and the Constitution of the State of Nebraska shall apply to persons charged with an infraction.

Source: Laws 1979, LB 534, § 4.

29-438 Infraction; treated as first offense; when.

Any person charged with commission of an infraction which was committed more than two years after such person's last conviction for the same infraction shall be charged as though the most recent infraction was a first offense.

Source: Laws 1979, LB 534, § 5.

29-439 Domestic assault; arrest; conditions; report required.

(1) If a peace officer receives complaints under section 28-323 from two or more opposing persons, the officer shall evaluate each complaint separately to determine who was the predominant aggressor. If the officer determines that one person was the predominant aggressor, the officer need not arrest the other person believed to have committed an offense. In determining whether a person is the predominant aggressor, the officer shall consider, among other things:

(a) Prior complaints under section 28-323;

(b) The relative severity of the injuries inflicted on each person;

(c) The likelihood of future injury to each person; and

(d) Whether one of the persons acted with a justified use of force under sections 28-1406 to 28-1416.

(2) In addition to any other report required, a peace officer who arrests two or more persons with respect to such a complaint shall submit a detailed, written report setting forth the grounds for arresting multiple parties.

Source: Laws 2004, LB 613, § 7.

29-440 Domestic assault; weapons; seizure and disposition.

(1) Incident to an arrest under section 28-323, a peace officer:

(a) Shall seize all weapons that are alleged to have been involved or threatened to be used; and

(b) May seize any firearm and ammunition in the plain view of the officer or that is discovered pursuant to a search authorized or consented to by the person being searched or in charge of the premises being searched, as necessary for the protection of the officer or any other person.

(2) Weapons seized under this section shall be stored according to the policies and procedures implemented by the seizing law enforcement agency.

(3) Disposition of weapons under this section shall be determined by court order.

Source: Laws 2004, LB 613, § 8.

ARTICLE 5

EXAMINATION BEFORE MAGISTRATE OR COURT

Section
29-501. Repealed. Laws 2007, LB 214, § 5.
29-502. Repealed. Laws 2007, LB 214, § 5.
29-503. Repealed. Laws 2007, LB 214, § 5.
29-504. Felony; speedy preliminary hearing required.
29-505. Witnesses; preliminary hearing; segregation.
29-506. Probable cause finding; effect; accused to be committed or released on bail; conditions; appearance bond.
29-507. Felony; witness; release from custody; conditions.
29-508. Refusal of witness to enter into recognizance or accept conditions; effect.
29-508.01. Witness committed to jail; prerequisites; rights; appeal.
29-508.02. Witness committed to jail; receive witness fee.
29-509. Docket; required; record of recognizances; transcript.
29-510. Finding; offense of a higher grade committed than that charged; power of magistrate.
29-511. Repealed. Laws 1987, LB 665, § 3.
29-512. Repealed. Laws 1987, LB 665, § 3.

Section
29-513. Repealed. Laws 1953, c. 89, § 1.

29-501 Repealed. Laws 2007, LB 214, § 5.

29-502 Repealed. Laws 2007, LB 214, § 5.

29-503 Repealed. Laws 2007, LB 214, § 5.

29-504 Felony; speedy preliminary hearing required.

When the complaint is for a felony, upon the accused being brought before the magistrate, he shall proceed as soon as may be, in the presence of the accused, to inquire into the complaint.

Source: G.S.1873, c. 58, § 300, p. 793; R.S.1913, § 8955; C.S.1922, § 9979; Laws 1925, c. 101, § 1, p. 290; C.S.1929, § 29-504; R.S.1943, § 29-504; Laws 1972, LB 1032, § 168; Laws 1973, LB 226, § 16.

Pursuant to this section, the accused must be brought before a magistrate as soon as is practical under the existing circumstances. State v. Thomas, 236 Neb. 84, 459 N.W.2d 204 (1990).

A speedy preliminary hearing is a personal right which may be waived. State v. Gau, 182 Neb. 114, 153 N.W.2d 298 (1967); Reinoehl v. State, 62 Neb. 619, 87 N.W. 355 (1901); Latimer v. State, 55 Neb. 609, 76 N.W. 207 (1898).

A defendant charged with a felony must be given a preliminary hearing as soon as the nature and circumstances of the case will permit. State v. O'Kelly, 175 Neb. 798, 124 N.W.2d 211 (1963).

Person charged with felony should be given preliminary hearing as soon as possible. Maher v. State, 144 Neb. 463, 13 N.W.2d 641 (1944).

Complaining witness is not party to action; magistrate is not disqualified by being relative of complaining witness. Ingraham v. State, 82 Neb. 553, 118 N.W. 320 (1908).

Preliminary examination is necessary, in prosecution by information, before defendant can be put on trial, over objections, unless waived. Jahnke v. State, 68 Neb. 154, 94 N.W. 158 (1903), reversed on rehearing, 68 Neb. 181, 104 N.W. 154 (1905).

Charging two offenses in same count does not render proceedings invalid. Sothman v. State, 66 Neb. 302, 92 N.W. 303 (1902).

Plea in abatement is proper method of raising question whether or not preliminary examination was had. Everson v. State, 4 Neb. Unof. 109, 93 N.W. 394 (1903).

29-505 Witnesses; preliminary hearing; segregation.

The magistrate, if requested, or if he sees good cause therefor, shall order that the witnesses on both sides be examined each one separate from all the others, and that the witnesses for may be kept separate from the witnesses against the accused during the examination.

Source: G.S.1873, c. 58, § 301, p. 793; R.S.1913, § 8956; C.S.1922, § 9980; C.S.1929, § 29-505.

Magistrates hearing preliminary examinations are invested with discretion to sequester the witnesses. Chicago, B. & Q. R. R. Co. v. Kellogg, 54 Neb. 138, 74 N.W. 403 (1898).

29-506 Probable cause finding; effect; accused to be committed or released on bail; conditions; appearance bond.

If upon the whole examination, it shall appear that no offense has been committed or that there is no probable cause for holding the accused to answer for the offense, he shall be discharged; but if it shall appear that an offense has been committed and there is probable cause to believe that the person charged has committed the offense, the accused shall be committed to the jail of the county in which the same is to be tried, there to remain until he is discharged by due course of law; *Provided*, if the offense be bailable, the accused may be released pursuant to Chapter 29, article 9, such release to be conditioned on his appearance before the district court as ordered. When a defendant has executed an appearance bond and made a deposit with the court pursuant to section

29-901, and such appearance bond is continued in force for the defendant's appearance in district court, the appearance bond costs shall be retained by the examining court, and the appearance bond and the balance of the deposit shall be transmitted to the district court.

Source: G.S.1873, c. 58, §§ 302, 303, p. 793; Laws 1905, c. 206, § 1, p. 699; R.S.1913, § 8957; Laws 1915, c. 162, § 1, p. 333; C.S. 1922, § 9981; C.S.1929, § 29-506; R.S.1943, § 29-506; Laws 1975, LB 284, § 1.

Cross References

Bail, conditions, see sections 29-901 to 29-910.

1. Preliminary hearing
2. Bail
3. Miscellaneous

1. Preliminary hearing

So long as the charge in an amended information is substantially the same as that in the original information, the original preliminary hearing remains effective as to the amended information. State v. Hill, 255 Neb. 173, 583 N.W.2d 20 (1998).

Hereafter the sufficiency of the evidence at a preliminary hearing may be raised only by a plea in abatement filed in the criminal proceeding in the district court. Kruger v. Brainard, 183 Neb. 455, 161 N.W.2d 520 (1968).

A preliminary hearing before a magistrate is not a criminal prosecution or trial. Delay v. Brainard, 182 Neb. 509, 156 N.W.2d 14 (1968).

A preliminary hearing is a procedural safeguard to prevent persons from being detained in custody without probable cause. State v. Sheldon, 179 Neb. 377, 138 N.W.2d 428 (1965).

Preliminary hearing is in no sense a trial of the person accused in regard to his guilt or innocence. Fugate v. Ronin, 167 Neb. 70, 91 N.W.2d 240 (1958).

A finding in a preliminary hearing that there was a possibility that defendant committed the crime charged was not subject to attack by habeas corpus. Cotner v. Solomon, 163 Neb. 619, 80 N.W.2d 587 (1957).

Functional purpose of preliminary hearing is stated. Lingo v. Hann, 161 Neb. 67, 71 N.W.2d 716 (1955).

The holding of an accused person for trial in district court at the conclusion of a preliminary examination gives the court jurisdiction, which is retained until the accused is discharged by due course of law. Dobrusky v. State, 140 Neb. 360, 299 N.W. 360 (1941).

Evidence on preliminary hearing was sufficient to show probable cause. Harmer v. State, 121 Neb. 731, 238 N.W. 356 (1931).

Objection that a preliminary hearing in the form and substance contemplated by the statute had not been held was properly raised by a plea in abatement. Jahnke v. State, 68 Neb. 154, 94 N.W. 158 (1903).

An examination under statute is not a trial or a bar to another examination before another magistrate. In re Garst, 10 Neb. 78, 4 N.W. 511 (1880).

Only purpose of preliminary hearing is to determine whether a crime has been committed, and whether there is probable cause for holding accused to answer. Sigler v. Bird, 354 F.2d 694 (8th Cir. 1966).

At preliminary hearing, magistrate is not authorized to require a defendant to plead guilty or not guilty. Bird v. Sigler, 241 F.Supp. 1007 (D. Neb. 1964).

A preliminary hearing in Nebraska is in no sense a trial of the person accused. Ronzzo v. Sigler, 235 F.Supp. 839 (D. Neb. 1964).

2. Bail

Bail bond on recognizance should be construed with reasonable strictness. State v. Casey, 180 Neb. 888, 146 N.W.2d 370 (1966).

Fact that bail for appearance of defendant in district court required him to appear on first day of first term instead of "forthwith," was not prejudicial error. Paige v. State, 120 Neb. 732, 235 N.W. 91 (1931).

Persons bound or held over to district court at next term on criminal charges should be bound or held over to appear at "the first day of the next jury term" of such court. Harrison v. Cheney, 105 Neb. 821, 182 N.W. 367 (1921).

Surety was liable in suit for forfeiture of bail bond where defendant was charged with violation of National Prohibition Act, and bond was adjudged forfeited before act was repealed. La Grotta v. United States, 77 F.2d 673 (8th Cir. 1935).

Recognizance was construed as requiring appearance forthwith at term then in session. United States v. Mace, 281 F. 635 (8th Cir. 1922).

3. Miscellaneous

A county judge sitting as an examining magistrate has no jurisdiction to dismiss a felony complaint with prejudice. State v. Wilkinson, 219 Neb. 685, 365 N.W.2d 478 (1985).

Sufficiency of evidence to bind accused over may be tested in habeas corpus proceeding. Neudeck v. Buettow, 166 Neb. 649, 90 N.W.2d 254 (1958).

Court has no authority to appoint special bailiff to have custody of witness. Shaw v. Holt County, 88 Neb. 348, 129 N.W. 552 (1911).

29-507 Felony; witness; release from custody; conditions.

A witness against a person accused of a felony shall be ordered released from custody unless the court determines in the exercise of discretion that such release will not reasonably assure that the witness will appear and testify at the trial as required. When a determination to release the witness from custody is made, the court may impose any of the following conditions of release which

will reasonably assure the appearance of the witness for trial or, if no single condition gives that assurance, any combination of the following conditions:

(1) Place the witness in the custody of a designated person or organization agreeing to supervise him or her;

(2) Place restrictions on the travel, association, or place of abode of the witness during the period of such release;

(3) Require, at the option of any witness, either of the following:

(a) The execution of an appearance bond in a specified amount and the deposit with the clerk of the court in cash of a sum not to exceed ten percent of the amount of the bond, one hundred percent of such deposit to be returned to the witness upon the performance of the appearance or appearances; or

(b) The execution of a bail bond with such surety or sureties as the court shall deem proper or, in lieu of such surety or sureties, at the option of such witness, a cash deposit of the sum so fixed, conditioned upon his or her appearance before the proper court as a witness, and to appear at such times thereafter as may be ordered by the proper court. If the amount of bail is deemed insufficient by the court before whom the offense is pending, such court may order an increase of such bail and the witness must provide the additional undertaking, written or cash, to secure his or her release. All recognizances shall be in writing and be continuous from term to term until final judgment of the court in the case. Each surety on such recognizance shall be required to justify under oath in a sum twice the amount of such recognizance and give the description of real estate owned by him or her of a value, above encumbrance, equal to the amount of such justification, and shall name all other cases pending in which he or she is a surety. No one shall be accepted as surety on recognizance aggregating a sum in excess of his or her equity in his or her real estate, but such recognizance shall not constitute a lien on such real estate until judgment is entered thereon against such surety; or

(4) Impose any other condition deemed reasonably necessary to assure appearances as required, including a condition requiring that the witness return to custody after specified hours.

Source: G.S.1873, c. 58, § 304, p. 793; R.S.1913, § 8958; C.S.1922, § 9982; C.S.1929, § 29-507; R.S.1943, § 29-507; Laws 1981, LB 228, § 1.

One who is retained in custody as a material witness pursuant to the provisions of this section is not actually employed in attendance on the court during all the time that the individual is in custody. Cochran v. County of Lincoln, 203 Neb. 818, 280 N.W.2d 897 (1979).

Does not limit amount of security magistrate may require, but does limit amount a married woman or minor may pay toward own release. Application of Cochran, 434 F.Supp. 1207 (D. Neb. 1977).

29-508 Refusal of witness to enter into recognizance or accept conditions; effect.

If any witness required to enter into a recognizance or accept specified conditions for release under section 29-507 refuses to comply with such order, the court shall, subject to the conditions and procedure provided in section 29-508.01, commit him or her to jail until he or she complies with such order or is otherwise discharged according to law.

Source: G.S.1873, c. 58, § 305, p. 793; R.S.1913, § 8959; C.S.1922, § 9983; C.S.1929, § 29-508; R.S.1943, § 29-508; Laws 1981, LB 228, § 2.

29-508.01 Witness committed to jail; prerequisites; rights; appeal.

Before a witness is committed to jail under subdivision (4) of section 29-507 or 29-508, he or she shall:

(1) Receive written notice of the allegations upon which the state relied for its claim of a right to require a recognizance or detention and of the time and place of the hearing on those allegations;

(2) Have a hearing before a judge;

(3) Have the evidence in support of the state's claim disclosed to him or her at a hearing;

(4) Have an opportunity to be heard in person and to present witnesses and documentary evidence;

(5) Have, to the extent practicable, the right to confront and cross-examine witnesses;

(6) Have the right to counsel; and

(7) Be given a written statement by the decisionmaker as to the evidence relied upon and the reasons for the decision made.

A decision to commit a person to jail may be appealed and shall be given priority on the appellate court's calendar.

Source: Laws 1981, LB 228, § 3.

29-508.02 Witness committed to jail; receive witness fee.

A witness committed to jail under subdivision (4) of section 29-507 or 29-508 shall, in addition to the fee provided under section 33-139, receive an amount equal to the amount a witness receives under section 29-1908 for each day held in custody.

Source: Laws 1981, LB 228, § 4.

Cross References

Mileage, how computed, see section 81-1176.
Witnesses, compensation of, see section 33-139.

29-509 Docket; required; record of recognizances; transcript.

It shall be the duty of every magistrate in criminal proceedings to keep a docket thereof as in civil cases. All recognizances taken under section 29-506 or 29-507, together with a transcript of the proceedings, where the defendant is held to answer, shall be certified and returned forthwith to the clerk of the court at which the prisoner is to appear. The transcript shall contain an accurate bill of all the costs that have accrued, and the items composing the same.

Source: G.S.1873, c. 58, § 306, p. 794; R.S.1913, § 8960; C.S.1922, § 9984; C.S.1929, § 29-509; Laws 2007, LB214, § 3.

Jurisdiction of district court over accused, held for trial by examining magistrate, is not terminated by order quashing information. Dobrusky v. State, 140 Neb. 360, 299 N.W. 539 (1941).

29-510 Finding; offense of a higher grade committed than that charged; power of magistrate.

If upon the examination it shall appear to the magistrate that the accused has committed an offense of a higher grade than that charged, he may be held to answer therefor.

Source: G.S.1873, c. 58, § 309, p. 794; R.S.1913, § 8961; C.S.1922, § 9985; C.S.1929, § 29-510.

29-511 Repealed. Laws 1987, LB 665, § 3.

29-512 Repealed. Laws 1987, LB 665, § 3.

29-513 Repealed. Laws 1953, c. 89, § 1.

ARTICLE 6

MINOR OFFENSES; TRIAL

Section
29-601. Repealed. Laws 1972, LB 1032, § 287.
29-602. Repealed. Laws 1972, LB 1032, § 287.
29-603. Repealed. Laws 1972, LB 1032, § 287.
29-604. Repealed. Laws 1972, LB 1032, § 287.
29-605. Repealed. Laws 1972, LB 1032, § 287.
29-606. Repealed. Laws 1972, LB 1032, § 287.
29-607. Repealed. Laws 1972, LB 1032, § 287.
29-608. Repealed. Laws 1972, LB 1032, § 287.
29-609. Repealed. Laws 1972, LB 1032, § 287.
29-610. Repealed. Laws 1972, LB 1032, § 287.
29-610.01. Subpoena; witness; service; failure to appear; contempt of court.
29-610.02. Subpoena; witness; failure to appear; penalty.
29-611. Appeal; procedure.
29-612. Repealed. Laws 1986, LB 529, § 58.
29-613. Repealed. Laws 1986, LB 529, § 58.
29-614. Repealed. Laws 1986, LB 529, § 58.
29-615. Offenses not cognizable by county court; procedure.
29-616. Repealed. Laws 1973, LB 226, § 34.
29-617. Repealed. Laws 1972, LB 1032, § 287.
29-618. Repealed. Laws 1972, LB 1032, § 287.
29-619. Repealed. Laws 1972, LB 1032, § 287.
29-620. Repealed. Laws 1972, LB 1032, § 287.
29-621. Repealed. Laws 1972, LB 1032, § 287.
29-622. Repealed. Laws 1972, LB 1032, § 287.
29-623. Repealed. Laws 1972, LB 1032, § 287.

29-601 Repealed. Laws 1972, LB 1032, § 287.

29-602 Repealed. Laws 1972, LB 1032, § 287.

29-603 Repealed. Laws 1972, LB 1032, § 287.

29-604 Repealed. Laws 1972, LB 1032, § 287.

29-605 Repealed. Laws 1972, LB 1032, § 287.

29-606 Repealed. Laws 1972, LB 1032, § 287.

29-607 Repealed. Laws 1972, LB 1032, § 287.

29-608 Repealed. Laws 1972, LB 1032, § 287.

29-609 Repealed. Laws 1972, LB 1032, § 287.

29-610 Repealed. Laws 1972, LB 1032, § 287.

29-610.01 Subpoena; witness; service; failure to appear; contempt of court.

In criminal misdemeanor cases the clerk may issue writs of subpoena to the witness named therein by mailing it to such person by certified mail to the last-known residence of such person or, if such address is unknown, to the last-

known business address of such person. The person making such service shall make a return thereof showing the manner and proof of service. If any such witness shall fail to appear at the time and place required by the subpoena, such witness may be deemed to be in contempt of court upon a showing of actual notice.

Source: Laws 1974, LB 684, § 1.

29-610.02 Subpoena; witness; failure to appear; penalty.

Contempt of court under section 29-610.01 shall be punished by a fine of not less than ten dollars nor more than five hundred dollars or by imprisonment in the county jail not exceeding thirty days, or by both such fine and imprisonment.

Source: Laws 1974, LB 684, § 2.

29-611 Appeal; procedure.

The defendant shall have the right of appeal from any judgment of a county court pursuant to sections 25-2728 to 25-2737.

Source: G.S.1873, c. 58, § 324, p. 797; R.S.1913, § 8975; C.S.1922, § 9999; Laws 1923, c. 113, § 1, p. 271; C.S.1929, § 29-611; Laws 1937, c. 66, § 1, p. 249; C.S.Supp.,1941, § 29-611; R.S. 1943, § 29-611; Laws 1972, LB 1032, § 169; Laws 1973, LB 6, § 2; Laws 1984, LB 13, § 52; Laws 1986, LB 529, § 29.

29-612 Repealed. Laws 1986, LB 529, § 58.

29-613 Repealed. Laws 1986, LB 529, § 58.

29-614 Repealed. Laws 1986, LB 529, § 58.

29-615 Offenses not cognizable by county court; procedure.

If in the progress of any trial before a county court it shall appear that the defendant ought to be put upon his or her trial for an offense not cognizable before such court, the court shall immediately stop all further proceedings before the court and proceed as in other criminal cases exclusively cognizable before the district court.

Source: G.S.1873, c. 58, § 327, p. 798; R.S.1913, § 8979; C.S.1922, § 10003; C.S.1929, § 29-615; R.S.1943, § 29-615; Laws 1972, LB 1032, § 172; Laws 1984, LB 13, § 55.

Entry upon trial for misdemeanor will not bar subsequent prosecution for felony. Larson v. State, 93 Neb. 242, 140 N.W. 176 (1913).

29-616 Repealed. Laws 1973, LB 226, § 34.

29-617 Repealed. Laws 1972, LB 1032, § 287.

29-618 Repealed. Laws 1972, LB 1032, § 287.

29-619 Repealed. Laws 1972, LB 1032, § 287.

29-620 Repealed. Laws 1972, LB 1032, § 287.

29-621 Repealed. Laws 1972, LB 1032, § 287.

29-622 Repealed. Laws 1972, LB 1032, § 287.

29-623 Repealed. Laws 1972, LB 1032, § 287.

ARTICLE 7

EXTRADITION AND DETAINER

(a) UNIFORM CRIMINAL EXTRADITION ACT

Section
29-701. Repealed. Laws 1963, c. 159, § 31.
29-702. Repealed. Laws 1963, c. 159, § 31.
29-703. Repealed. Laws 1963, c. 159, § 31.
29-704. Repealed. Laws 1963, c. 159, § 31.
29-705. Repealed. Laws 1963, c. 159, § 31.
29-706. Repealed. Laws 1963, c. 159, § 31.
29-707. Repealed. Laws 1963, c. 159, § 31.
29-708. Repealed. Laws 1963, c. 159, § 31.
29-709. Repealed. Laws 1963, c. 159, § 31.
29-710. Repealed. Laws 1963, c. 159, § 31.
29-711. Repealed. Laws 1963, c. 159, § 31.
29-712. Repealed. Laws 1963, c. 159, § 31.
29-713. Repealed. Laws 1963, c. 159, § 31.
29-714. Repealed. Laws 1963, c. 159, § 31.
29-715. Repealed. Laws 1963, c. 159, § 31.
29-716. Repealed. Laws 1963, c. 159, § 31.
29-717. Repealed. Laws 1963, c. 159, § 31.
29-718. Repealed. Laws 1963, c. 159, § 31.
29-719. Repealed. Laws 1963, c. 159, § 31.
29-720. Repealed. Laws 1963, c. 159, § 31.
29-721. Repealed. Laws 1963, c. 159, § 31.
29-722. Repealed. Laws 1963, c. 159, § 31.
29-723. Repealed. Laws 1963, c. 159, § 31.
29-724. Repealed. Laws 1963, c. 159, § 31.
29-725. Repealed. Laws 1963, c. 159, § 31.
29-726. Repealed. Laws 1963, c. 159, § 31.
29-727. Repealed. Laws 1963, c. 159, § 31.
29-728. Repealed. Laws 1963, c. 159, § 31.
29-729. Terms, defined.
29-730. Fugitives from justice; Governor; duty.
29-731. Form of demand.
29-732. Governor; order investigation.
29-733. Persons imprisoned or waiting trial out of state; left the demanding state involuntarily; extradition.
29-734. Persons not present in demanding state at time of commission of crime; extradition.
29-735. Warrant of arrest; issuance.
29-736. Warrant of arrest; execution.
29-737. Arresting officer; authority.
29-738. Rights of accused person; writ of habeas corpus; application.
29-739. Rights of accused person; violation; penalty.
29-740. Confinement; when necessary; requirements.
29-741. Warrant of arrest; issuance prior to requisition; grounds.
29-742. Arrest without warrant by officer or citizen; when.
29-743. Commitment to await requisition; bail.
29-744. Bail; bond; conditions.
29-745. Commitment; discharge, recommitment, or bail.
29-746. Bail; forfeiture; effect.
29-747. Persons under criminal prosecution in this state at time of requisition; Governor; discretionary powers.
29-748. Guilt or innocence of accused; inquiry; when.

Section
29-749. Warrant of arrest; recall; issuance.
29-750. Fugitives from this state; warrant; Governor's duty.
29-751. Fugitives from this state; requisition; application; contents; filing.
29-752. Costs; expenses; payment.
29-753. Extradition; civil action; immunity from service of process in certain cases.
29-754. Extradition proceedings; written waiver; procedure.
29-755. Nonwaiver by this state.
29-756. Extradition; other criminal prosecutions; no right of asylum or immunity.
29-757. Sections, how construed.
29-758. Act, how cited.

(b) AGREEMENT ON DETAINERS

29-759. Text of agreement.
29-760. Appropriate court, defined.
29-761. Enforcement of agreement.
29-762. Escape from custody; penalty.
29-763. Official in charge of penal or correctional institution; duties.
29-764. Central administrator; appointment; powers.
29-765. Copies of sections; distribution.

(a) UNIFORM CRIMINAL EXTRADITION ACT

29-701 Repealed. Laws 1963, c. 159, § 31.

29-702 Repealed. Laws 1963, c. 159, § 31.

29-703 Repealed. Laws 1963, c. 159, § 31.

29-704 Repealed. Laws 1963, c. 159, § 31.

29-705 Repealed. Laws 1963, c. 159, § 31.

29-706 Repealed. Laws 1963, c. 159, § 31.

29-707 Repealed. Laws 1963, c. 159, § 31.

29-708 Repealed. Laws 1963, c. 159, § 31.

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29-710 Repealed. Laws 1963, c. 159, § 31.

29-711 Repealed. Laws 1963, c. 159, § 31.

29-712 Repealed. Laws 1963, c. 159, § 31.

29-713 Repealed. Laws 1963, c. 159, § 31.

29-714 Repealed. Laws 1963, c. 159, § 31.

29-715 Repealed. Laws 1963, c. 159, § 31.

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29-717 Repealed. Laws 1963, c. 159, § 31.

29-718 Repealed. Laws 1963, c. 159, § 31.

29-719 Repealed. Laws 1963, c. 159, § 31.

29-720 Repealed. Laws 1963, c. 159, § 31.

29-721 Repealed. Laws 1963, c. 159, § 31.

29-722 Repealed. Laws 1963, c. 159, § 31.

29-723 Repealed. Laws 1963, c. 159, § 31.

29-724 Repealed. Laws 1963, c. 159, § 31.

29-725 Repealed. Laws 1963, c. 159, § 31.

29-726 Repealed. Laws 1963, c. 159, § 31.

29-727 Repealed. Laws 1963, c. 159, § 31.

29-728 Repealed. Laws 1963, c. 159, § 31.

29-729 Terms, defined.

Where appearing in sections 29-729 to 29-758, the term Governor includes any person performing the functions of Governor by authority of the law of this state. The term Executive Authority includes the Governor, and any person performing the functions of Governor in a state other than this state, and the term State, referring to a state other than this state, includes any other state or territory, organized or unorganized, of the United States of America.

Source: Laws 1963, c. 159, § 1, p. 558.

Alleged violations of Uniform Criminal Extradition Act did not exempt offender from trial and punishment by state. State v. Costello, 199 Neb. 43, 256 N.W.2d 97 (1977).

29-730 Fugitives from justice; Governor; duty.

Subject to the provisions of sections 29-729 to 29-758, the provisions of the Constitution of the United States controlling, and any and all acts of Congress enacted in pursuance thereof, it is the duty of the Governor of this state to have arrested and delivered up to the Executive Authority of any other state of the United States any person charged in that state with treason, felony, or other crime, who has fled from justice and is found in this state.

Source: Laws 1963, c. 159, § 2, p. 559.

A misstatement as to a petitioner's status as a fugitive in the extradition documents did not afford petitioner his right under the Uniform Criminal Extradition Act to have the question of whether he should be extradited from the asylum state properly determined by the governor of that state and, therefore, requires that he be dismissed from custody. Koenig v. Poskochil, 238 Neb. 118, 469 N.W.2d 523 (1991).

Allegation of delayed trial by the demanding state held invalid reason for refusing extradition. Wise v. State, 197 Neb. 831, 251 N.W.2d 373 (1977).

Where one is arrested on demand for extradition, he is not entitled to discharge when demanding state fails to assume custody within thirty days when delay is due to proceedings instituted by him. Prettyman v. Karnopp, 192 Neb. 451, 222 N.W.2d 362 (1974).

29-731 Form of demand.

No demand for the extradition of a person charged with crime in another state shall be recognized by the Governor unless in writing alleging, except in cases arising under section 29-734, that the accused was present in the demanding state at the time of the commission of the alleged crime, and that thereafter he fled from the state, and accompanied by a copy of an indictment found or by information supported by affidavit in the state having jurisdiction of the crime, or by a copy of an affidavit made before a magistrate there, together with a copy of any warrant which was issued thereupon; or by a copy

of a judgment of conviction or of a sentence imposed in execution thereof, together with a statement by the Executive Authority of the demanding state that the person claimed has escaped from confinement or has broken the terms of his bail, probation or parole. The indictment, information, or affidavit made before the magistrate must substantially charge the person demanded with having committed a crime under the law of that state; and the copy of indictment, information, affidavit, judgment or conviction or sentence must be authenticated by the Executive Authority making the demand.

Source: Laws 1963, c. 159, § 3, p. 559.

A demand for extradition is sufficient if it includes a copy of a judgment of conviction or sentence, together with a statement by the executive authority of the demanding state that the person claimed has broken the terms of parole. Singleton and Anthony v. Adams, 207 Neb. 293, 298 N.W.2d 369 (1980).

Where extradition with accompanying papers referred to annexed and authenticated therein together meet requirements of this section, that is sufficient. Austin v. Brumbaugh, 186 Neb. 815, 186 N.W.2d 723 (1971).

29-732 Governor; order investigation.

When a demand shall be made upon the Governor of this state by the Executive Authority of another state for the surrender of a person so charged with crime, the Governor may call upon the Attorney General or any prosecuting officer in this state to investigate or assist in investigating the demand, and to report to him the situation and circumstances of the person so demanded, and whether he ought to be surrendered.

Source: Laws 1963, c. 159, § 4, p. 559.

29-733 Persons imprisoned or waiting trial out of state; left the demanding state involuntarily; extradition.

When it is desired to have returned to this state a person charged in this state with a crime, and such person is imprisoned or is held under criminal proceedings then pending against him in another state, the Governor of this state may agree with the Executive Authority of such other state for the extradition of such person before the conclusion of such proceedings or his term of sentence in such other state, upon condition that such person be returned to such other state at the expense of this state as soon as the prosecution in this state is terminated.

The Governor of this state may also surrender on demand of the Executive Authority of any other state any person in this state who is charged in the manner provided in section 29-751 with having violated the laws of the state whose Executive Authority is making the demand, even though such person left the demanding state involuntarily.

Source: Laws 1963, c. 159, § 5, p. 560.

29-734 Persons not present in demanding state at time of commission of crime; extradition.

The Governor of this state may also surrender, on demand of the Executive Authority of any other state, any person in this state charged in such other state in the manner provided in section 29-731 with committing an act in this state, or in a third state, intentionally resulting in a crime in the state whose Executive Authority is making the demand, and the provisions of sections 29-729 to 29-758 not otherwise inconsistent, shall apply to such cases, even

though the accused was not in that state at the time of the commission of the crime, and has not fled therefrom.

Source: Laws 1963, c. 159, § 6, p. 560.

A misstatement as to a petitioner's status as a fugitive in the extradition documents did not afford petitioner his right under the Uniform Criminal Extradition Act to have the question of whether he should be extradited from the asylum state properly determined by the governor of that state and, therefore, requires that he be dismissed from custody. Koenig v. Poskochil, 238 Neb. 118, 469 N.W.2d 523 (1991).

One who commits an act in one state intentionally resulting in a crime in another state may now be extradited. State of Kansas v. Holeb, 188 Neb. 319, 196 N.W.2d 387 (1972).

29-735 Warrant of arrest; issuance.

If the Governor decides that the demand should be complied with, he shall sign a warrant of arrest, which shall be sealed with the state seal, and be directed to any peace officer or other person whom he may think fit to entrust with the execution thereof. The warrant must substantially recite the facts necessary to the validity of its issuance.

Source: Laws 1963, c. 159, § 7, p. 560.

29-736 Warrant of arrest; execution.

Such warrant shall authorize the peace officer or other person to whom directed to arrest the accused at any time and any place where he may be found within the state and to command the aid of all peace officers or other persons in the execution of the warrant, and to deliver the accused, subject to the provisions of sections 29-729 to 29-758 to the duly authorized agent of the demanding state.

Source: Laws 1963, c. 159, § 8, p. 561.

29-737 Arresting officer; authority.

Every such peace officer or other person empowered to make the arrest shall have the same authority, in arresting the accused, to command assistance therein, as peace officers have by law in the execution of any criminal process directed to them, with like penalties against those who refuse their assistance.

Source: Laws 1963, c. 159, § 9, p. 561.

29-738 Rights of accused person; writ of habeas corpus; application.

No person arrested upon such warrant shall be delivered over to the agent whom the Executive Authority demanding him shall have appointed to receive him unless he shall first be taken forthwith before a judge of a court of record in this state, who shall inform him of the demand made for his surrender and of the crime with which he is charged, and that he has the right to demand and procure legal counsel; and if the prisoner or his counsel shall state that he or they desire to test the legality of his arrest, the judge of such court of record shall fix a reasonable time to be allowed him within which to apply for a writ of habeas corpus. When such writ is applied for, notice thereof, and of the time and place of hearing thereon, shall be given to the prosecuting officer of the county in which the arrest is made and in which the accused is in custody, and to the said agent of the demanding state.

Source: Laws 1963, c. 159, § 10, p. 561.

Cross References

Habeas corpus, see Article I, section 8, Constitution of Nebraska, and section 29-2801 et seq.

Habeas corpus is not the proper action to challenge the validity of a detainer based upon an untried complaint, where the state filing the detainer has not requested transfer of the prisoner. Wickline v. Gunter, 233 Neb. 878, 448 N.W.2d 584 (1989).

Once the governor of an asylum state has granted extradition, a court of that state, considering release on habeas corpus, can do no more than decide (1) whether the extradition documents on their face are in order, (2) whether the petitioner has been charged with a crime in the demanding state, (3) whether the petitioner is the person named in the request for extradition, and (4) whether the petitioner is a fugitive. Radant v. Vargason, 220 Neb. 116, 368 N.W.2d 483 (1985).

29-739 Rights of accused person; violation; penalty.

Any officer who shall deliver to the agent for extradition of the demanding state a person in his custody under the Governor's warrant, in willful disobedience to section 29-738, shall be guilty of a Class II misdemeanor.

Source: Laws 1963, c. 159, § 11, p. 561; Laws 1977, LB 40, § 112.

29-740 Confinement; when necessary; requirements.

The officer or persons executing the Governor's warrant of arrest, or the agent of the demanding state to whom the prisoner may have been delivered may, when necessary, confine the prisoner in the jail of any county or city through which he may pass; and the keeper of such jail must receive and safely keep the prisoner until the officer or person having charge of him is ready to proceed on his route, such officer or person being chargeable with the expense of keeping.

The officer or agent of a demanding state to whom a prisoner may have been delivered following extradition proceedings in another state, or to whom a prisoner may have been delivered after waiving extradition in such other state, and who is passing through this state with such prisoner for the purpose of immediately returning such prisoner to the demanding state may, when necessary, confine the prisoner in the jail of any county or city through which he may pass; and the keeper of such jail must receive and safely keep the prisoner until the officer or agent having charge of him is ready to proceed on his route, such officer or agent, however, being chargeable with the expense of keeping; *Provided however*, that such officer or agent shall produce and show to the keeper of such jail satisfactory written evidence of the fact that he is actually transporting such prisoner to the demanding state after a requisition by the Executive Authority of such demanding state. Such prisoner shall not be entitled to demand a new requisition while in this state.

Source: Laws 1963, c. 159, § 12, p. 562.

29-741 Warrant of arrest; issuance prior to requisition; grounds.

Whenever any person within this state shall be charged on the oath of any credible person before any judge or magistrate of this state with the commission of any crime in any other state and, except in cases arising under section 29-734, with having fled from justice, or with having been convicted of a crime in that state and having escaped from confinement, or having broken the terms of his bail, probation or parole, or whenever complaint shall have been made before any judge or magistrate in this state setting forth on the affidavit of any credible person in another state that a crime has been committed in such other state and that the accused has been charged in such state with the commission of the crime, and, except in cases arising under section 29-734, has fled from justice, or with having been convicted of a crime in that state and having escaped from confinement, or having broken the terms of his bail, probation or parole and is believed to be in this state, the judge or magistrate shall issue a

warrant directed to any peace officer commanding him to apprehend the person named therein, wherever he may be found in this state, and to bring him before the same or any other judge, magistrate or court who or which may be available in or convenient of access to the place where the arrest may be made, to answer the charge or complaint and affidavit, and a certified copy of the sworn charge or complaint and affidavit upon which the warrant is issued shall be attached to the warrant.

Source: Laws 1963, c. 159, § 13, p. 562.

Breaking the terms of bail, probation, or parole is a basis for extradition under this section. State ex rel. Borrink v. State, 10 Neb. App. 293, 634 N.W.2d 18 (2001).

29-742 Arrest without warrant by officer or citizen; when.

The arrest of a person may be lawfully made also by any peace officer or a private person, without a warrant upon reasonable information that the accused stands charged in the courts of a state with a crime punishable by death or imprisonment for a term exceeding one year, but when so arrested the accused must be taken before a judge or magistrate with all practicable speed and complaint must be made against him under oath setting forth the ground for the arrest as in section 29-741; and thereafter his answer shall be heard as if he had been arrested on a warrant.

Source: Laws 1963, c. 159, § 14, p. 563.

29-743 Commitment to await requisition; bail.

If from the examination before the judge or magistrate it appears that the person held is the person charged with having committed the crime alleged and, except in cases arising under section 29-734, that he has fled from justice, the judge or magistrate must, by a warrant reciting the accusation, commit him to the county jail for such a time not exceeding thirty days and specified in the warrant, as will enable the arrest of the accused to be made under a warrant of the Governor on a requisition of the Executive Authority of the state having jurisdiction of the offense, unless the accused give bail as provided in section 29-744, or until he shall be legally discharged.

Source: Laws 1963, c. 159, § 15, p. 563.

The illegality of a prisoner's custody prior to the issuance of a rendition warrant from a sister state does not render the warrant void and unenforceable. Bell v. Janing, 188 Neb. 690, 199 N.W.2d 24 (1972).

29-744 Bail; bond; conditions.

Unless the offense with which the prisoner is charged is shown to be an offense punishable by death or life imprisonment under the laws of the state in which it was committed, a judge or magistrate in this state may admit the person arrested to bail by bond, with sufficient sureties, and in such sum as he deems proper, conditioned for his appearance before him at a time specified in such bond, and for his surrender, to be arrested upon the warrant of the Governor of this state.

Source: Laws 1963, c. 159, § 16, p. 564.

29-745 Commitment; discharge, recommitment, or bail.

If the accused is not arrested under warrant of the Governor by the expiration of the time specified in the warrant or bond, a judge or magistrate may

discharge him or may recommit him for a further period not to exceed sixty days, or a judge or magistrate judge may again take bail for his appearance and surrender, as provided in section 29-744, but within a period not to exceed sixty days after the date of such new bond.

Source: Laws 1963, c. 159, § 17, p. 564.

The illegality of a prisoner's custody prior to the issuance of a rendition warrant from a sister state does not render the warrant void and unenforceable. Bell v. Janing, 188 Neb. 690, 199 N.W.2d 24 (1972).

29-746 Bail; forfeiture; effect.

If the prisoner is admitted to bail, and fails to appear and surrender himself according to the conditions of his bond, the judge, or magistrate by proper order, shall declare the bond forfeited and order his immediate arrest without warrant if he be within this state. Recovery may be had on such bond in the name of the state as in the case of other bonds given by the accused in criminal proceedings within this state.

Source: Laws 1963, c. 159, § 18, p. 564.

29-747 Persons under criminal prosecution in this state at time of requisition; Governor; discretionary powers.

If a criminal prosecution has been instituted against such person under the laws of this state and is still pending the Governor, in his discretion, either may surrender him on demand of the Executive Authority of another state or hold him until he has been tried and discharged or convicted and punished in this state.

Source: Laws 1963, c. 159, § 19, p. 564.

29-748 Guilt or innocence of accused; inquiry; when.

The guilt or innocence of the accused as to the crime of which he is charged may not be inquired into by the Governor or in any proceeding after the demand for extradition accompanied by a charge of crime in legal form as above provided shall have been presented to the Governor, except as it may be involved in identifying the person held as the person charged with the crime.

Source: Laws 1963, c. 159, § 20, p. 565.

29-749 Warrant of arrest; recall; issuance.

The Governor may recall his warrant of arrest or may issue another warrant whenever he deems proper.

Source: Laws 1963, c. 159, § 21, p. 565.

29-750 Fugitives from this state; warrant; Governor's duty.

Whenever the Governor of this state shall demand a person charged with crime or with escaping from confinement or breaking the terms of his bail, probation or parole in this state, from the Executive Authority of any other state, or from the Chief Justice or an Associate Justice of the Supreme Court of the District of Columbia authorized to receive such demand under the laws of the United States, he shall issue a warrant under the seal of this state, to some agent, commanding him to receive the person so charged if delivered to him

and convey him to the proper officer of the county in this state in which the offense was committed.

Source: Laws 1963, c. 159, § 22, p. 565.

29-751 Fugitives from this state; requisition; application; contents; filing.

(1) When the return to this state of a person charged with crime in this state is required, the prosecuting attorney shall present to the Governor a written application for a requisition for the return of the person charged in which application shall be stated the name of the person so charged, the crime charged against him or her, the approximate time, place, and circumstances of its commission, the state in which he or she is believed to be, including the location of the accused therein at the time the application is made and certifying that, in the opinion of the said prosecuting attorney the ends of justice require the arrest and return of the accused to this state for trial and that the proceeding is not instituted to enforce a private claim.

(2) When the return to this state is required of a person who has been convicted of a crime in this state and has escaped from confinement or broken the terms of his or her bail, probation, or parole, the prosecuting attorney of the county in which the offense was committed, the parole board, or, if the escape was from an institution of the Department of Correctional Services, the Director of Correctional Services, or sheriff of the county from which escape was made, shall present to the Governor a written application for a requisition for the return of such person, in which application shall be stated the name of the person, the crime of which he or she was convicted, the circumstances of the escape from confinement or of the breach of the terms of bail, probation, or parole, the state in which he or she is believed to be, including the location of the person therein at the time application is made.

(3) The application shall be verified by affidavit, shall be executed in duplicate, and shall be accompanied by two certified copies of the indictment returned, or information and affidavit filed, or of the complaint made to the judge or magistrate, stating the offense with which the accused is charged, or of the judgment of conviction or of the sentence. The prosecuting officer, parole board, director, or sheriff may also attach such further affidavits and other documents in duplicate as he or she shall deem proper to be submitted with such application. One copy of the application, with the action of the Governor indicated by endorsement thereon, and one of the certified copies of the indictment, complaint, information, and affidavits, or of the judgment of conviction or of the sentence shall be filed in the office of the Secretary of State to remain of record in that office. The other copies of all papers shall be forwarded with the Governor's requisition.

Source: Laws 1963, c. 159, § 23, p. 565; Laws 1980, LB 697, § 1.

29-752 Costs; expenses; payment.

When the punishment of the crime is the confinement of the criminal in a Department of Correctional Services adult correctional facility, the expenses shall be paid out of the state treasury on the certificate of the Governor and warrant of the State Treasurer and Director of Administrative Services. In all other cases the expenses shall be paid out of the county treasury in the county wherein the crime is alleged to have been committed. The expenses shall be the fees paid to the officers of the state on whose Governor the requisition is made

and shall be equal to the mileage rate authorized in section 81-1176 for each mile which is necessary to travel in returning such prisoner.

Source: Laws 1963, c. 159, § 24, p. 566; Laws 1981, LB 204, § 39; Laws 1993, LB 31, § 5; Laws 2000, LB 692, § 8.

29-753 Extradition; civil action; immunity from service of process in certain cases.

A person brought into this state by, or after waiver of, extradition based on a criminal charge shall not be subject to service of personal process in civil actions arising out of the same facts as the criminal proceeding to answer which he is being or has been returned, until he has been convicted in the criminal proceeding, or, if acquitted, until he has had reasonable opportunity to return to the state from which he was extradited.

Source: Laws 1963, c. 159, § 25, p. 567.

29-754 Extradition proceedings; written waiver; procedure.

Any person arrested in this state charged with having committed any crime in another state or alleged to have escaped from confinement, or broken the terms of his bail, probation or parole may waive the issuance and service of the warrant provided for in sections 29-735 and 29-736 and all other procedure incidental to extradition proceedings, by executing or subscribing in the presence of a judge of any court of record within this state a writing which states that he consents to return to the demanding state; *Provided however*, that before such waiver shall be executed or subscribed by such person it shall be the duty of such judge to inform such person of his rights to the issuance and service of a warrant of extradition and to obtain a writ of habeas corpus as provided for in section 29-738.

If and when such consent has been duly executed it shall forthwith be forwarded to the office of the Governor of this state and filed therein. The judge shall direct the officer having such person in custody to deliver forthwith such person to the duly accredited agent or agents of the demanding state, and shall deliver or cause to be delivered to such agent or agents a copy of such consent; *Provided, however*, that nothing in this section shall be deemed to limit the rights of the accused person to return voluntarily and without formality to the demanding state, nor shall this waiver procedure be deemed to be an exclusive procedure or to limit the powers, rights or duties of the officers of the demanding state or of this state.

Source: Laws 1963, c. 159, § 26, p. 567.

29-755 Nonwaiver by this state.

Nothing in sections 29-729 to 29-758 contained shall be deemed to constitute a waiver by this state of its right, power or privilege to try such demanded person for crime committed within this state, or of its right, power or privilege to regain custody of such person by extradition proceedings or otherwise for the purpose of trial, sentence or punishment for any crime committed within this state, nor shall any proceedings had under sections 29-729 to 29-758 which result in, or fail to result in, extradition be deemed a waiver by this state of any of its rights, privileges or jurisdiction in any way whatsoever.

Source: Laws 1963, c. 159, § 27, p. 568.

29-756 Extradition; other criminal prosecutions; no right of asylum or immunity.

After a person has been brought back to this state by, or after waiver of extradition proceedings, he may be tried in this state for other crimes which he may be charged with having committed here as well as that specified in the requisition for his extradition.

Source: Laws 1963, c. 159, § 28, p. 568.

The foregoing statute has long been the rule in this state. State v. Dodd, 175 Neb. 533, 122 N.W.2d 518 (1963).

29-757 Sections, how construed.

The provisions of sections 29-729 to 29-758 shall be so interpreted and construed as to effectuate their general purposes to make uniform the law of those states which enact them.

Source: Laws 1963, c. 159, § 29, p. 568.

29-758 Act, how cited.

Sections 29-729 to 29-758 may be cited as the Uniform Criminal Extradition Act.

Source: Laws 1963, c. 159, § 30, p. 568.

(b) AGREEMENT ON DETAINERS

29-759 Text of agreement.

The Agreement on Detainers is hereby enacted into law and entered into by this state with all other jurisdictions legally joining therein in the form substantially as follows:

''TEXT OF THE AGREEMENT ON DETAINERS

The contracting states solemnly agree that:

Article I

The party states find that charges outstanding against a prisoner, detainers based on untried indictments, informations or complaints, and difficulties in securing speedy trial of persons already incarcerated in other jurisdictions, produce uncertainties which obstruct programs of prisoner treatment and rehabilitation. Accordingly, it is the policy of the party states and the purpose of this agreement to encourage the expeditious and orderly disposition of such charges and determination of the proper status of any and all detainers based on untried indictments, informations or complaints. The party states also find that proceedings with reference to such charges and detainers, when emanating from another jurisdiction, cannot properly be had in the absence of cooperative procedures. It is the further purpose of this agreement to provide such cooperative procedures.

Article II

As used in this agreement:

(a) State shall mean a state of the United States; the United States of America; a territory or possession of the United States; the District of Columbia; the Commonwealth of Puerto Rico.

(b) Sending state shall mean a state in which a prisoner is incarcerated at the time that he initiates a request for final disposition pursuant to Article III hereof or at the time that a request for custody or availability is initiated pursuant to Article IV hereof.

(c) Receiving state shall mean the state in which trial is to be had on an indictment, information or complaint pursuant to Article III or Article IV hereof.

Article III

(a) Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a party state, and whenever during the continuance of the term of imprisonment there is pending in any other party state any untried indictment, information or complaint on the basis of which a detainer has been lodged against the prisoner, he shall be brought to trial within one hundred eighty days after he shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information or complaint; *Provided*, that for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance. The request of the prisoner shall be accompanied by a certificate of the appropriate official having custody of the prisoner, stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole agency relating to the prisoner.

(b) The written notice and request for final disposition referred to in paragraph (a) hereof shall be given or sent by the prisoner to the warden, commissioner of corrections or other official having custody of him, who shall promptly forward it together with the certificate to the appropriate prosecuting official and court by registered or certified mail, return receipt requested.

(c) The warden, commissioner of corrections or other official having custody of the prisoner shall promptly inform him of the source and contents of any detainer lodged against him and shall also inform him of his right to make a request for final disposition of the indictment, information or complaint on which the detainer is based.

(d) Any request for final disposition made by a prisoner pursuant to paragraph (a) hereof shall operate as a request for final disposition of all untried indictments, informations or complaints on the basis of which detainers have been lodged against the prisoner from the state to whose prosecuting official the request for final disposition is specifically directed. The warden, commissioner of corrections or other official having custody of the prisoner shall forthwith notify all appropriate prosecuting officers and courts in the several jurisdictions within the state to which the prisoner's request for final disposition is being sent of the proceeding being initiated by the prisoner. Any notification sent pursuant to this paragraph shall be accompanied by copies of the prisoner's written notice, request, and the certificate. If trial is not had on any indictment, information or complaint contemplated hereby prior to the return of the prisoner to the original place of imprisonment, such indictment, information or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

(e) Any request for final disposition made by a prisoner pursuant to paragraph (a) hereof shall also be deemed to be a waiver of extradition with respect to any charge or proceeding contemplated thereby or included therein by reason of paragraph (d) hereof, and a waiver of extradition to the receiving state to serve any sentence there imposed upon him, after completion of his term of imprisonment in the sending state. The request for final disposition shall also constitute a consent by the prisoner to the production of his body in any court where his presence may be required in order to effectuate the purposes of this agreement and a further consent voluntarily to be returned to the original place of imprisonment in accordance with the provisions of this agreement. Nothing in this paragraph shall prevent the imposition of a concurrent sentence if otherwise permitted by law.

(f) Escape from custody by the prisoner subsequent to his execution of the request for final disposition referred to in paragraph (a) hereof shall void the request.

Article IV

(a) The appropriate officer of the jurisdiction in which an untried indictment, information or complaint is pending shall be entitled to have a prisoner against whom he has lodged a detainer and who is serving a term of imprisonment in any party state made available in accordance with Article V (a) hereof upon presentation of a written request for temporary custody or availability to the appropriate authorities of the state in which the prisoner is incarcerated; *Provided*, that the court having jurisdiction of such indictment, information or complaint shall have duly approved, recorded and transmitted the request; *and provided further*, that there shall be a period of thirty days after receipt by the appropriate authorities before the request be honored, within which period the governor of the sending state may disapprove the request for temporary custody or availability, either upon his own motion or upon motion of the prisoner.

(b) Upon receipt of the officer's written request as provided in paragraph (a) hereof, the appropriate authorities having the prisoner in custody shall furnish the officer with a certificate stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole agency relating to the prisoner. Said authorities simultaneously shall furnish all other officers and appropriate courts in the receiving state who have lodged detainers against the prisoner with similar certificates and with notices informing them of the request for custody or availability and of the reasons therefor.

(c) In respect of any proceeding made possible by this article, trial shall be commenced within one hundred twenty days of the arrival of the prisoner in the receiving state, but for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance.

(d) Nothing contained in this article shall be construed to deprive any prisoner of any right which he may have to contest the legality of his delivery as provided in paragraph (a) hereof, but such delivery may not be opposed or denied on the ground that the executive authority of the sending state has not affirmatively consented to or ordered such delivery.

(e) If trial is not had on any indictment, information or complaint contemplated hereby prior to the prisoner's being returned to the original place of

imprisonment pursuant to Article V(e) hereof, such indictment, information or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

Article V

(a) In response to a request made under Article III or Article IV hereof, the appropriate authority in a sending state shall offer to deliver temporary custody of such prisoner to the appropriate authority in the state where such indictment, information or complaint is pending against such person in order that speedy and efficient prosecution may be had. If the request for final disposition is made by the prisoner, the offer of temporary custody shall accompany the written notice provided for in Article III of this agreement. In the case of a federal prisoner, the appropriate authority in the receiving state shall be entitled to temporary custody as provided by this agreement or to the prisoner's presence in federal custody at the place for trial, whichever custodial arrangement may be approved by the custodian.

(b) The officer or other representative of a state accepting an offer of temporary custody shall present the following upon demand:

(1) Proper identification and evidence of his authority to act for the state into whose temporary custody the prisoner is to be given.

(2) A duly certified copy of the indictment, information or complaint on the basis of which the detainer has been lodged and on the basis of which the request for temporary custody of the prisoner has been made.

(c) If the appropriate authority shall refuse or fail to accept temporary custody of said person, or in the event that an action on the indictment, information or complaint on the basis of which the detainer has been lodged is not brought to trial within the period provided in Article III or Article IV hereof, the appropriate court of the jurisdiction where the indictment, information or complaint has been pending shall enter an order dismissing the same with prejudice, and any detainer based thereon shall cease to be of any force or effect.

(d) The temporary custody referred to in this agreement shall be only for the purpose of permitting prosecution on the charge or charges contained in one or more untried indictments, informations or complaints which form the basis of the detainer or detainers or for prosecution on any other charge or charges arising out of the same transaction. Except for his attendance at court and while being transported to or from any place at which his presence may be required, the prisoner shall be held in a suitable jail or other facility regularly used for persons awaiting prosecution.

(e) At the earliest practicable time consonant with the purposes of this agreement, the prisoner shall be returned to the sending state.

(f) During the continuance of temporary custody or while the prisoner is otherwise being made available for trial as required by this agreement, time being served on the sentence shall continue to run but good time shall be earned by the prisoner only if, and to the extent that, the law and practice of the jurisdiction which imposed the sentence may allow.

(g) For all purposes other than that for which temporary custody as provided in this agreement is exercised, the prisoner shall be deemed to remain in the custody of and subject to the jurisdiction of the sending state and any escape from temporary custody may be dealt with in the same manner as an escape

from the original place of imprisonment or in any other manner permitted by law

(h) From the time that a party state receives custody of a prisoner pursuant to this agreement until such prisoner is returned to the territory and custody of the sending state, the state in which the one or more untried indictments, informations or complaints are pending or in which trial is being had shall be responsible for the prisoner and shall also pay all costs of transporting, caring for, keeping and returning the prisoner. The provisions of this paragraph shall govern unless the states concerned shall have entered into a supplementary agreement providing for a different allocation of costs and responsibilities as between or among themselves. Nothing herein contained shall be construed to alter or affect any internal relationship among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor. The costs contemplated by this section which must be paid by the State of Nebraska or the appropriate political subdivision thereof shall be paid in the same manner and extent and from the same funds which would have been used in the case of extradition of a prisoner from another state.

Article VI

(a) In determining the duration and expiration dates of the time periods provided in Articles III and IV of this agreement, the running of said time periods shall be tolled whenever and for as long as the prisoner is unable to stand trial, as determined by the court having jurisdiction of the matter.

(b) No provision of this agreement, and no remedy made available by this agreement, shall apply to any person who is adjudged to be mentally ill.

Article VII

Each state party to this agreement shall designate an officer who, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more effectively the terms and provisions of this agreement, and who shall provide, within and without the state, information necessary to the effective operation of this agreement.

Article VIII

This agreement shall enter into full force and effect as to a party state when such state has enacted the same into law. A state party to this agreement may withdraw herefrom by enacting a statute repealing the same. However, the withdrawal of any state shall not affect the status of any proceedings already initiated by inmates or by state officers at the time such withdrawal takes effect, nor shall it affect their rights in respect thereof.

Article IX

This agreement shall be liberally construed so as to effectuate its purposes. The provisions of this agreement shall be severable and if any phrase, clause, sentence or provision of this agreement is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this agreement and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this agreement shall be held contrary to the constitution of any state party hereto, the agreement shall remain in full force and effect as to the remaining

states and in full force and effect as to the state affected as to all severable matters.''

Source: Laws 1963, c. 154, § 1, p. 543.

1. Detainer
2. Speedy trial
3. Sending and receiving states
4. Miscellaneous

1. Detainer

For purposes of the Agreement on Detainers, a ''detainer'' is a notification filed with the institution in which an individual is serving a sentence, advising the prisoner that he is wanted to face criminal charges pending in another jurisdiction. State v. Rieger, 270 Neb. 904, 708 N.W.2d 630 (2006).

A detainer is a notification filed with the institution in which an individual is serving a sentence, advising the prisoner that he or she is wanted to face criminal charges pending in another jurisdiction. More specifically, a detainer is a request filed by a criminal justice agency with the institution in which a prisoner is incarcerated, asking the institution either to hold the prisoner for the agency after his or her release or to notify the agency when release of the prisoner is imminent. A state writ of habeas corpus ad prosequendum, seeking the immediate delivery of a prisoner for trial on criminal charges, does not constitute a detainer. Mere notice of pending criminal charges is insufficient to invoke the provisions of the Agreement on Detainers. State v. Williams, 253 Neb. 619, 573 N.W.2d 106 (1997).

Under the Agreement on Detainers, a detainer is a notification filed with the institution in which an individual is serving a sentence, advising the prisoner that he is wanted to face criminal charges pending in another jurisdiction. State v. Reynolds, 218 Neb. 753, 359 N.W.2d 93 (1984).

2. Speedy trial

A court may not apply Nebraska's 6-month speedy trial statute under section 29-1207 to determine whether a prisoner is timely brought to trial under article III(a) of the Agreement on Detainers. State v. Rieger, 270 Neb. 904, 708 N.W.2d 630 (2006).

The Agreement on Detainers has separate speedy trial provisions depending upon whether its procedures are initiated by the prisoner or authorities in the jurisdiction where the charge is pending. Article III of the agreement prescribes the procedure by which a prisoner against whom a detainer has been lodged may demand a speedy disposition of outstanding charges. State v. Rieger, 270 Neb. 904, 708 N.W.2d 630 (2006).

The 180-day trial limitation under article III(a) of the Agreement on Detainers begins to run on the day the prisoner's request for disposition of untried charges is received by the prosecutor and court of jurisdiction. State v. Rieger, 270 Neb. 904, 708 N.W.2d 630 (2006).

Upon receipt of a prisoner's proper request for disposition of untried charges under article III of the Agreement on Detainers, authorities in the state where a charge is pending must bring the prisoner to trial within 180 days. State v. Rieger, 270 Neb. 904, 708 N.W.2d 630 (2006).

When seeking a discharge on speedy trial grounds under article III(a) of the Agreement on Detainers, defense counsel's performance is deficient when he or she fails to present evidence showing the time limitation for trial under article III(a) has been triggered. The prisoner was prejudiced by counsel's failure when there was a reasonable probability that an appeal or petition for further review from the district court's denial of prisoner's motion to discharge would have resulted in a reversal had the evidence been submitted. State v. Rieger, 270 Neb. 904, 708 N.W.2d 630 (2006).

The Agreement on Detainers controls a defendant's speedy trial rights when he or she is already incarcerated in another state or in a federal facility before an information is filed against the defendant in Nebraska. State v. Steele, 261 Neb. 541, 624 N.W.2d 1 (2001).

Article III of the Agreement on Detainers prescribes the procedure by which a prisoner against whom a detainer has been lodged may demand a speedy disposition of outstanding charges. Upon receipt of a proper request for disposition under this article, the receiving state must bring the prisoner to trial within one hundred eighty days. Also, under this article, for a prisoner's demand for disposition of the charges to trigger the one hundred eighty day period, it must be made in the manner required by Article III. State v. Reynolds, 218 Neb. 753, 359 N.W.2d 93 (1984).

A ruling on a motion to discharge, based on the speedy trial provisions of the Agreement on Detainers, is a final, appealable order. State v. Rieger, 8 Neb. App. 20, 588 N.W.2d 206 (1999).

Under Article III of the Agreement on Detainers, for a prisoner's demand for disposition to trigger the 180-day period, it must be made in the manner therein required. State v. Nearhood, 2 Neb. App. 915, 518 N.W.2d 165 (1994).

3. Sending and receiving states

A prisoner is not returned to his original place of imprisonment when he is returned to the sending state simply to face pending charges. State v. Reed, 266 Neb. 641, 668 N.W.2d 245 (2003).

If one jurisdiction is actively prosecuting a defendant on current and pending charges, the defendant is unable to stand trial in the state in which he requested final disposition until resolution of the pending charges in the sending state. State v. Reed, 266 Neb. 641, 668 N.W.2d 245 (2003).

A ruling denying a motion to dismiss with prejudice for failure to bring an individual to trial within 120 days from the date of his or her arrival in the receiving state is a final, appealable order. The speedy trial provisions of the Agreement on Detainers are triggered only when a detainer is filed with the state where an individual is a prisoner by the state having untried charges pending against the individual. State v. Williams, 253 Neb. 619, 573 N.W.2d 106 (1997).

Article IV of the Agreement on Detainers sets forth the procedures by which the authorities where the charges are pending may initiate the process whereby a prisoner is returned to the state for trial. In respect of any proceedings made possible under this article, trial shall be commenced within one hundred twenty days of the arrival of the prisoner in the receiving state. State v. Reynolds, 218 Neb. 753, 359 N.W.2d 93 (1984).

Article V(d) of this section permits the receiving state to prosecute a defendant not only for the charge or charges forming the basis of the detainer but also on all other charges arising out of the same transaction. State v. Steele, 7 Neb. App. 110, 578 N.W.2d 508 (1998).

The right of a prisoner under Article IV(c) of the Agreement on Detainers to be tried within 120 days of being brought into the state is a statutory right and not a constitutional right. A prisoner may waive this right by not raising the issue prior to or during trial. State v. Harper, 2 Neb. App. 220, 508 N.W.2d 584 (1993).

4. Miscellaneous

If an action for untried charges is not brought to trial within the time periods authorized by articles III and IV of the Agreement on Detainers, the action shall be dismissed with prejudice under article V(c) of the agreement. State v. Rieger, 270 Neb. 904, 708 N.W.2d 630 (2006).

In a ruling on a motion to dismiss with prejudice based on alleged violations of the Agreement on Detainers, a trial court's

pretrial factual findings regarding the application of provisions of the agreement will not be disturbed on appeal unless clearly wrong. State v. Rieger, 270 Neb. 904, 708 N.W.2d 630 (2006).

To avoid prolonged interference with rehabilitation programs, the Agreement on Detainers provides the procedure whereby persons who are imprisoned in one state or by the United States, and who are also charged with crimes in another state or by the United States, can be tried expeditiously for the pending charges while they are serving their current sentences. State v. Rieger, 270 Neb. 904, 708 N.W.2d 630 (2006).

The Interstate Agreement on Detainers applies solely to persons who have entered upon a term of imprisonment and therefore does not include pretrial detainees. State v. Reed, 266 Neb. 641, 668 N.W.2d 245 (2003).

The provisions of the Agreement on Detainers apply only when a detainer has been lodged against a prisoner who has entered a term of imprisonment in a party state. State v. Steele, 261 Neb. 541, 624 N.W.2d 1 (2001).

In ruling on a motion to dismiss with prejudice based on alleged violations of the Agreement on Detainers, it is proper for the trial court to hold a pretrial evidentiary hearing to determine whether a detainer was filed against the defendant and, if a detainer was filed, to determine whether the provisions of the agreement were violated. The Agreement on Detainers provides the procedure whereby persons who are imprisoned in one state or by the United States, and who are also charged with crimes in another state or by the United States, can be tried expeditiously for the pending charges while they are serving their current sentences, in order to avoid prolonged interference with rehabilitation programs. Because the Agreement on Detainers is a congressionally sanctioned interstate compact, it is a federal law subject to federal construction and, thus, U.S. Supreme Court interpretations of the Agreement on Detainers are binding upon state courts. Articles IV and V of the Agreement on Detainers provide the procedures by which the authorities in the state where the charges are pending, the receiving state, may initiate the process whereby a prisoner is transferred to the receiving state for trial on the pending charges. State v. Williams, 253 Neb. 619, 573 N.W.2d 106 (1997).

Habeas corpus is not the proper action to challenge the validity of a detainer based upon an untried complaint, where the state filing the detainer has not requested transfer of the prisoner. Wickline v. Gunter, 233 Neb. 878, 448 N.W.2d 584 (1989).

Article V(c) of the Agreement on Detainers provides for dismissal of a pending complaint on which a detainer is based if the appropriate authority shall refuse or fail to accept custody of the prisoner against whom the charges are pending or fail to bring that prisoner to trial within the period provided in Article III or Article IV. The Agreement also provides the remedy of dismissal of charges with prejudice in those specific cases not including possible errors made by another party's prison officials. State v. Reynolds, 218 Neb. 753, 359 N.W.2d 93 (1984).

The Agreement on Detainers was designed to promote the expeditious and orderly disposition of outstanding charges against a prisoner and to determine the proper status of any and all detainers based on untried indictments, informations, or complaints. State v. Reynolds, 218 Neb. 753, 359 N.W.2d 93 (1984).

The provisions of the Agreement on Detainers apply only when a detainer has been lodged against a prisoner who has entered a term of imprisonment in a party state. State v. Reynolds, 218 Neb. 753, 359 N.W.2d 93 (1984).

The phrase ''unable to stand trial'' included in article VI(a) of this section includes those periods of delay occasioned by the defendant. Failure to appear at a preliminary hearing due to reincarceration is clearly an example of a delay occasioned by the defendant. State v. Meyer, 7 Neb. App. 963, 588 N.W.2d 200 (1998).

29-760 Appropriate court, defined.

The phrase appropriate court as used in the Agreement on Detainers shall, with reference to the courts of this state, mean any court with criminal jurisdiction in the matter involved.

Source: Laws 1963, c. 154, § 2, p. 551.

29-761 Enforcement of agreement.

All courts, departments, agencies, officers and employees of this state and its political subdivisions are hereby directed to enforce the Agreement on Detainers and to cooperate with one another and with other party states in enforcing the agreement and effectuating its purpose.

Source: Laws 1963, c. 154, § 3, p. 551.

29-762 Escape from custody; penalty.

Escape from custody while in another state pursuant to the Agreement on Detainers shall constitute an offense against the laws of this state to the same extent and degree as an escape from the institution in which the prisoner was confined immediately prior to having been sent to another state pursuant to the provisions of the Agreement on Detainers and shall be punishable in the same manner as an escape from said institution.

Source: Laws 1963, c. 154, § 4, p. 551.

29-763 Official in charge of penal or correctional institution; duties.

It shall be lawful and mandatory upon the warden or other official in charge of a penal or correctional institution in this state to give over the person of any inmate thereof whenever so required by the operation of the Agreement on Detainers.

Source: Laws 1963, c. 154, § 5, p. 552.

29-764 Central administrator; appointment; powers.

Pursuant to said agreement, the Governor is hereby authorized and empowered to designate an officer or alternate who shall be the central administrator of and the information agent for the Agreement on Detainers and who, acting jointly with like officers of other party states, shall have power to formulate rules and regulations to carry out more effectively the terms of the agreement, and shall serve subject to the pleasure of the Governor.

Source: Laws 1963, c. 154, § 6, p. 552.

29-765 Copies of sections; distribution.

Copies of sections 29-759 to 29-765 shall, upon its approval, be transmitted by the Secretary of State to the Governor of each state, the Attorney General and the administrator of general services of the United States, and the Council of State Governments.

Source: Laws 1963, c. 154, § 7, p. 552.

ARTICLE 8

SEARCH AND SEIZURE

(a) SEARCH AND SEIZURE

Section
29-801. Repealed. Laws 1963, c. 161, § 12.
29-802. Repealed. Laws 1963, c. 161, § 12.
29-803. Repealed. Laws 1963, c. 161, § 12.
29-804. Repealed. Laws 1963, c. 161, § 12.
29-805. Repealed. Laws 1963, c. 161, § 12.
29-806. Repealed. Laws 1963, c. 161, § 12.
29-807. Repealed. Laws 1963, c. 161, § 12.
29-808. Repealed. Laws 1963, c. 161, § 12.
29-809. Repealed. Laws 1963, c. 161, § 12.
29-810. Repealed. Laws 1963, c. 161, § 12.
29-811. Repealed. Laws 1963, c. 161, § 12.
29-812. Search warrant; issuance.
29-813. Search warrant; issuance; limitation; terms, defined.
29-814. Repealed. Laws 1980, LB 731, § 7.
29-814.01. Search warrant; issuance on affidavit; procedure.
29-814.02. Search warrant; issuance on oral statement; procedure.
29-814.03. Search warrant; issuance on telephonic statement; procedure.
29-814.04. Search warrant; issuance on written affidavit or oral statement; contents; restriction.
29-814.05. Search warrant; issuance on telephonic statement; duplicate original; contents; procedure.
29-814.06. Original statement; lost, destroyed, or unintelligible; effect.
29-815. Search warrant; executed and returned; inventory required.
29-816. Search warrant; return; inventory; filing; received in evidence; when.
29-817. Sections, how construed; property, defined; search warrant; confidential issuance; violation; penalty.

(b) DISPOSITION OF SEIZED PROPERTY

29-818. Seized property; custody.

Section
29-819. Seized property; transfer to another jurisdiction; when.
29-820. Seized property; disposition.
29-821. Sections; supplemental to other laws.
29-822. Motion to suppress; filing; time; failure to file; effect; exception.
29-823. Motion to suppress; issues of fact; trial.
29-824. Motion to suppress; appeal; review; appeal after conviction.
29-825. Motion to suppress; appeal; application.
29-826. Motion to suppress; appeal; time limit; order for custody.
29-827. Repealed. Laws 1998, LB 218, § 29.
29-828. Search for weapons; when authorized.
29-829. Stop and search of person for dangerous weapon; when authorized; peace officer, defined.

(c) INSPECTION WARRANTS

29-830. Inspection warrant, defined.
29-831. Peace officer, defined.
29-832. Inspection warrant; when issued.
29-833. Inspection warrant; issuance; procedure.
29-834. Inspection warrants; laws applicable.
29-835. Violations; penalty.

(a) SEARCH AND SEIZURE

29-801 Repealed. Laws 1963, c. 161, § 12.

29-802 Repealed. Laws 1963, c. 161, § 12.

29-803 Repealed. Laws 1963, c. 161, § 12.

29-804 Repealed. Laws 1963, c. 161, § 12.

29-805 Repealed. Laws 1963, c. 161, § 12.

29-806 Repealed. Laws 1963, c. 161, § 12.

29-807 Repealed. Laws 1963, c. 161, § 12.

29-808 Repealed. Laws 1963, c. 161, § 12.

29-809 Repealed. Laws 1963, c. 161, § 12.

29-810 Repealed. Laws 1963, c. 161, § 12.

29-811 Repealed. Laws 1963, c. 161, § 12.

29-812 Search warrant; issuance.

A search warrant authorized by sections 29-812 to 29-821 may be issued by any judge of the county court, district court, Court of Appeals, or Supreme Court for execution anywhere within the State of Nebraska. A similar search warrant authorized by such sections may be issued, subject to section 24-519, by any clerk magistrate within the county in which the property sought is located.

Source: Laws 1963, c. 161, § 1, p. 570; Laws 1973, LB 226, § 17; Laws 1974, LB 735, § 2; Laws 1982, LB 928, § 24; Laws 1984, LB 13, § 56; Laws 1986, LB 529, § 30; Laws 1991, LB 732, § 72; Laws 1992, LB 1059, § 22; Laws 2006, LB 1115, § 19.

Cross References

Nebraska Liquor Control Act, issuance under, see section 53-1,108 et seq.

Failure of magistrate to collect fee for issuing search warrant does not invalidate it. State v. McCown, 189 Neb. 495, 203 N.W.2d 445 (1973).

On a hearing on a motion to suppress evidence, it is within the discretion of the trial court to permit withdrawal of rest and the taking of further evidence. State v. Putnam, 178 Neb. 445, 133 N.W.2d 605 (1965).

29-813 Search warrant; issuance; limitation; terms, defined.

(1) A warrant may be issued under sections 29-812 to 29-821 to search for and seize any property (a) stolen, embezzled, or obtained under false pretenses in violation of the laws of the State of Nebraska, (b) designed or intended for use or which is or has been used as the means of committing a criminal offense, (c) possessed, controlled, designed, or intended for use or which is or has been possessed, controlled, designed, or used in violation of any law of the State of Nebraska making such possession, control, design, or use, or intent to use, a criminal offense, or (d) which constitutes evidence that a criminal offense has been committed or that a particular person has committed a criminal offense.

(2) Notwithstanding subsection (1) of this section, no warrant shall be issued to search any place or seize anything in the possession, custody, or control of any person engaged in procuring, gathering, writing, editing, or disseminating news or other information for distribution to the public through a medium of communication unless probable cause is shown that such person has committed or is committing a criminal offense. For purposes of this subsection, the terms person, information, and medium of communication shall be defined as provided in section 20-145.

Source: Laws 1963, c. 161, § 2, p. 571; Laws 1979, LB 107, § 1.

An arrest may not be used as a pretext to search for evidence. A pretext arrest is one where the arrest is only a sham, a front being used as an excuse for making a search. The determination of whether an arrest is pretextual is a question of fact for the trial court. This court will not reverse a trial court's finding on this question unless the finding is clearly erroneous. State v. Vann, 230 Neb. 601, 432 N.W.2d 810 (1988).

A warrant to search a house also covers the land around the house and associated outbuildings used by the inhabitants of the house. State v. Vicars, 207 Neb. 325, 299 N.W.2d 421 (1980).

Items not listed on a search warrant but in plain view of officers searching an area described in the warrant for items listed on the warrant may be seized. State v. King, 207 Neb. 270, 298 N.W.2d 168 (1980).

The eyewitness report of a citizen informant may be self-corroborating; the fact that a citizen voluntarily came forward with information is itself an indicium of reliability. State v. King, 207 Neb. 270, 298 N.W.2d 168 (1980).

The fact that defendant's arrest may have been illegal does not render inadmissible evidence seized pursuant to a valid search warrant received by police shortly after they entered the defendant's apartment. State v. Smith, 207 Neb. 263, 298 N.W.2d 162 (1980).

29-814 Repealed. Laws 1980, LB 731, § 7.

29-814.01 Search warrant; issuance on affidavit; procedure.

A search warrant may be issued under section 29-814.04 pursuant to written affidavit sworn to before a magistrate, a judge, or any other person authorized to administer oaths under the laws of this state by the person making it. Such affidavit shall particularly describe the persons or places to be searched and the persons or property to be seized. Such affidavit shall set forth the facts and circumstances tending to show that such person or property is in the place, or the property is in the possession of the person, to be searched. Such affidavit may be submitted to the magistrate or judge in person or by facsimile or other electronic means and the warrant may be issued to the affiant in person or by facsimile or other electronic means.

Source: Laws 1980, LB 731, § 1; Laws 2006, LB 1115, § 20.

It is well established that affidavits for search warrants must be tested and interpreted in a common-sense and realistic fashion. Where the circumstances are detailed and reasons for crediting a source of information are given resulting in a finding of probable cause by the magistrate, the court should not invalidate the warrant by interpreting the affidavit in a hyper-technical manner and should find it sufficient if it will support the issuance of a warrant after the deletion of any inaccurate statements. State v. Longa, 211 Neb. 356, 318 N.W.2d 733 (1982).

29-814.02 Search warrant; issuance on oral statement; procedure.

In lieu of, or in addition to, written affidavit, a search warrant may be issued under section 29-814.04 pursuant to an oral statement given in person and under oath to a magistrate or judge. The oral statement shall be taken by means of a voice recording device in the custody of the magistrate or judge. If no voice recording device is available, the statement may be taken stenographically. The magistrate or judge shall direct that the recorded or stenographic statement be transcribed and the magistrate or judge shall certify the accuracy of the transcription. The magistrate or judge shall file with the clerk of the district court of the county in which the property was seized the original of the record and the transcribed statement. Such filing shall be made at the same time the warrant, copy of the return, inventory, and all other papers connected with the warrant are filed pursuant to section 29-816. For purposes of sections 29-814.01 to 29-814.06, an oral statement authorized by this section shall be considered to be an affidavit.

Source: Laws 1980, LB 731, § 2.

Where the judge incorporated an officer's oral statement into the officer's affidavit by interlineation, there was no need to comply with this section. State v. Nelson, 6 Neb. App. 519, 574 N.W.2d 770 (1998).

29-814.03 Search warrant; issuance on telephonic statement; procedure.

A search warrant may be issued under section 29-814.05 pursuant to a telephonic statement made to a magistrate or judge in accordance with the procedures set forth in this section. Prior to telephonically contacting a magistrate or judge, the law enforcement officer requesting the warrant shall contact the county attorney or a deputy county attorney of the county in which the warrant is to be issued for purposes of explaining the reasons why a search warrant should be issued pursuant to a telephonic statement. If the county attorney or deputy county attorney is satisfied that a warrant is justified, and that circumstances justify its immediate issuance, the county attorney or deputy county attorney shall contact the magistrate or judge and state that he or she is convinced that a warrant should be issued by telephone. The county attorney or deputy county attorney shall provide the magistrate or judge with a telephone number at which the officer requesting the warrant may be contacted. The magistrate or judge shall call the officer at the number provided and shall place the officer under oath and take his or her statement. The statement shall be taken by means of a voice recording device in the custody of the magistrate or judge. The magistrate or judge shall direct that the recorded statement be transcribed and the magistrate or judge shall certify the accuracy of the transcription. The magistrate or judge shall file with the clerk of the district court of the county in which the property was seized the original of the recording and the transcribed statement. Such filing shall be made at the same time the warrant, copy of the return, inventory, and all other papers connected with the warrant are filed pursuant to section 29-816. For purposes of sections 29-814.01 to 29-814.06, a telephonic statement authorized by this section shall be considered to be an affidavit.

Source: Laws 1980, LB 731, § 3.

29-814.04 Search warrant; issuance on written affidavit or oral statement; contents; restriction.

If the magistrate or judge is satisfied that probable cause exists for the issuance of a search warrant, as a result of written affidavit or oral statement authorized pursuant to sections 29-814.01 and 29-814.02, the magistrate or judge shall issue the warrant which shall identify the person or place to be searched and the person or property to be seized. The warrant shall be directed to a law enforcement officer of the State of Nebraska or one of its governmental subdivisions, which officer shall be specifically named or described by the title of his or her office in the warrant. The warrant shall state whether the grounds or proper cause of its issuance is a written affidavit, an oral statement, or a combination of both. The warrant shall indicate the name or names of the person or persons whose affidavit or statement has been taken in support thereof. The warrant shall command the officer named in the warrant to search the person or place named for the purpose specified. The warrant shall direct that it be served in the daytime unless the magistrate or judge is satisfied that the public interest requires that it should not be so restricted, in which case the warrant may direct that it may be served at any time. The warrant shall designate the magistrate or judge to whom it shall be returned. For purposes of this section, daytime shall mean the hours from 7 a.m. to 8 p.m. according to local time.

Source: Laws 1980, LB 731, § 4; Laws 1989, LB 267, § 1.

A factual basis that shows the reviewing judicial officer that the public interest requires a nighttime search is a prerequisite to the issuance of a warrant authorizing a nighttime search under this section. State v. Fitch, 255 Neb. 108, 582 N.W.2d 342 (1998).

Where the use of the catchall phrase "John and/or Jane Doe" is not based on probable cause that all persons to whom the phrase might be applied will be engaged in illegal activity, the warrant does not satisfy the requirements of this section. State v. Pecha, 225 Neb. 673, 407 N.W.2d 760 (1987).

In order to authorize the issuance of a search warrant for service during the nighttime, the magistrate or judge must only be satisfied from a commonsense reading of the affidavit in support of such issuance that it reasonably supports the inference that the interests of justice are best served by the authorization of such nighttime service. An affidavit in support of the issuance of a search warrant which alleges facts which would lead a reasonable person to believe that a delay in service of the warrant would permit the possible destruction of contraband may be sufficient to authorize immediate nighttime service. State v. Paul, 225 Neb. 432, 405 N.W.2d 608 (1987).

The showing of probable cause necessary to support a search warrant requires only the probability, and not a prima facie showing, of criminal activity, and probable cause is to be evaluated by the collective information of the police as reflected in the affidavit, and is not limited to the firsthand knowledge of the officer who executes the affidavit. State v. Longa, 211 Neb. 356, 318 N.W.2d 733 (1982).

In order to authorize the issuance of a search warrant for service during the nighttime under this section, the magistrate or judge must only be satisfied from a commonsense reading of the affidavit in support of such issuance that it reasonably supports the inference that the interests of justice are best served by the authorization of nighttime service. State v. Moore, 2 Neb. App. 206, 508 N.W.2d 305 (1993).

The receipt of information concerning defendant's drug involvement at 6:45 p.m. from informant under arrest and with access to phones satisfied public interest requirement justifying nighttime execution of search warrant. State v. Flemming, 1 Neb. App. 12, 487 N.W.2d 564 (1992).

29-814.05 Search warrant; issuance on telephonic statement; duplicate original; contents; procedure.

(1) If the magistrate or judge is satisfied that probable cause exists for the issuance of a search warrant, as the result of a telephonic statement taken under section 29-814.03, and if the magistrate or judge is further satisfied that sufficient reason exists to issue such warrant by telephone, the magistrate or judge shall authorize the officer requesting the warrant to complete a duplicate original warrant which shall contain a description of the person or place to be searched, a description of the person or property to be seized, a command to the officer to conduct the search for the purposes specified, the date and time of issuance, a statement that the grounds or proper cause for its issuance is by telephonic statement, the name or names of the person or persons whose statement has been taken in support of the warrant, and the name of the judge

to whom it is to be returned. The magistrate or judge shall authorize the officer to sign his or her name to the duplicate original warrant and to also sign the name of the officer thereto. A duplicate original warrant shall be deemed to be a search warrant for purposes of Chapter 29, article 8.

(2) At the time the magistrate or judge authorizes the officer to complete the duplicate original warrant under subsection (1) of this section, the magistrate or judge shall immediately complete and sign the original warrant which shall contain the information which is required for a duplicate original warrant under subsection (1) of this section. The magistrate or judge shall also enter on the face of the original warrant the exact time when the warrant was ordered to be issued.

(3) The duplicate original warrant shall be returned according to section 29-815. Upon the duplicate original warrant being returned, the magistrate or judge shall sign it and shall file it, together with the original warrant, in the same manner as that required under section 29-816.

(4) A search warrant issued pursuant to a telephonic statement shall be invalid unless the duplicate original warrant is signed by the issuing magistrate or judge pursuant to subsection (3) of this section.

(5) A search warrant issued under this section may be executed immediately upon issuance.

Source: Laws 1980, LB 731, § 5.

29-814.06 Original statement; lost, destroyed, or unintelligible; effect.

If the original of the oral or telephonic statement, taken pursuant to section 29-814.02 or 29-814.03, shall be lost, destroyed, or a critical portion thereof is unintelligible, a search warrant issued pursuant to such oral or telephonic statement shall be deemed to be invalid.

Source: Laws 1980, LB 731, § 6.

29-815 Search warrant; executed and returned; inventory required.

The warrant must be executed and returned within ten days after its date. The officer taking property under the warrant shall give to the person from whom or from whose premises the property was taken a copy of the warrant and a receipt for the property or shall leave the copy and the receipt at the place from which the property was taken. The return shall be made promptly and shall be accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the applicant for the warrant and the person from whose possession or premises the property was taken if they are present, or in the presence of at least one credible witness other than the applicant for the warrant or the person from whose possession or premises the property was taken, and shall be verified by the officer. The judge or magistrate shall deliver a copy of the inventory upon request to the person from whom or from whose premises the property was taken and to the applicant for the warrant.

Source: Laws 1963, c. 161, § 4, p. 572.

Cross References

Fees for service, see section 33-117.

Irrespective of compliance with a rule or statutory time limit within which a search must be executed, a delay in the execution of a warrant may be constitutionally impermissible under the Fourth Amendment. State v. Swift, 251 Neb. 204, 556 N.W.2d 243 (1996).

The execution of the warrant 6 days after its issuance does not require suppression of evidence obtained based on the warrant. State v. Moore, 2 Neb. App. 206, 508 N.W.2d 305 (1993).

29-816 Search warrant; return; inventory; filing; received in evidence; when.

The judge or magistrate who has issued the search warrant shall attach to the warrant a copy of the return, inventory, and all other papers in connection therewith and shall file them with the clerk of the district court for the county in which the property was seized. Copy of such warrant, return, inventory, and all other such papers so filed with such clerk, when certified as a true copy by such clerk shall be received in evidence in all proceedings where relevant without further foundation. The clerk of the district court shall file and index such warrant, together with the return thereon, the inventory, and other papers in connection therewith as a separate criminal proceeding. No fee shall be charged or collected for such service.

Source: Laws 1963, c. 161, § 5, p. 572.

Failure to comply strictly with post service statutory proceedings will not invalidate search under valid warrant in absence of clear showing of prejudice. State v. McCown, 189 Neb. 495, 203 N.W.2d 445 (1973).

29-817 Sections, how construed; property, defined; search warrant; confidential issuance; violation; penalty.

Sections 29-812 to 29-821 do not modify any act inconsistent with it relating to search warrants, their issuance, and the execution of search warrants and acts relating to disposition of seized property in circumstances for which special provision is made. The term property is used in sections 29-812 to 29-821 to include documents, books, papers, and any other tangible objects. Nothing in sections 29-812 to 29-821 shall be construed as restricting or in any way affecting the constitutional right of any officer to make reasonable searches and seizures as an incident to a lawful arrest nor to restrict or in any way affect reasonable searches and seizures authorized or consented to by the person being searched or in charge of the premises being searched, or in any other manner or way authorized or permitted to be made under the Constitution of the United States and the Constitution of the State of Nebraska.

All search warrants shall be issued with all practicable secrecy and the complaint, affidavit, or testimony upon which it is based shall not be filed with the clerk of the court or made public in any way until the warrant is executed. Whoever discloses, prior to its execution, that a warrant has been applied for or issued, except so far as may be necessary to its execution, shall be guilty of a Class III misdemeanor, or he may be punished as for a criminal contempt of court.

Source: Laws 1963, c. 161, § 6, p. 572; Laws 1977, LB 40, § 113.

(b) DISPOSITION OF SEIZED PROPERTY

29-818 Seized property; custody.

Property seized under a search warrant or validly seized without a warrant shall be safely kept by the officer seizing the same unless otherwise directed by the judge or magistrate, and shall be so kept so long as necessary for the purpose of being produced as evidence on any trial. Property seized may not be

taken from the officer having it in custody by replevin or other writ so long as it is or may be required as evidence in any trial, nor may it be so taken in any event where a complaint has been filed in connection with which the property was or may be used as evidence, and the court in which such complaint was filed shall have exclusive jurisdiction for disposition of the property or funds and to determine rights therein, including questions respecting the title, possession, control, and disposition thereof.

Source: Laws 1963, c. 161, § 7, p. 573.

Cross References

Seizure of vehicle and component parts, see section 60-2608.

A police officer's failure to ''safely'' keep a seized vehicle can give rise to liability under the Political Subdivisions Tort Claims Act. Section 29-818 requires a police officer to exercise reasonable care and diligence for the safekeeping of property within his custody. Nash v. City of North Platte, 205 Neb. 480, 288 N.W.2d 51 (1980).

The trial court's decision on the return of seized property is reviewed for an abuse of discretion. State v. Maestas, 11 Neb. App. 262, 647 N.W.2d 122 (2002).

29-819 Seized property; transfer to another jurisdiction; when.

Where seized property is no longer required as evidence in the prosecution of any complaint or information the court which has jurisdiction of such property may transfer the same to the jurisdiction of any other court, including courts of another state or federal courts, where it is shown to the satisfaction of the court that such property is required as evidence in any prosecution in such other court.

Source: Laws 1963, c. 161, § 8, p. 574.

29-820 Seized property; disposition.

(1) Unless other disposition is specifically provided by law, when property seized or held is no longer required as evidence, it shall be disposed of by the law enforcement agency on such showing as the law enforcement agency may deem adequate, as follows:

(a) Property stolen, embezzled, obtained by false pretenses, or otherwise obtained unlawfully from the rightful owner thereof shall be restored to the owner;

(b) Money shall be restored to the owner unless it was used in unlawful gambling or lotteries or it was used or intended to be used to facilitate a violation of Chapter 28, article 4, in which case the money shall be forfeited and disposed of as required by Article VII, section 7, of the Constitution of Nebraska;

(c) Property which is unclaimed or the ownership of which is unknown shall be sold at a public auction held by the officer having custody thereof and the net proceeds disposed of as provided in subdivision (b) of this subsection, as shall any money which is unclaimed or the ownership of which is unknown;

(d) Except as provided in subdivision (2)(b) of this section, articles of contraband shall be destroyed; and

(e) Except as provided in subdivision (2)(a) of this section, firearms, ammunition, explosives, bombs, and like devices which have been used in the commission of crime shall be destroyed.

(2) When the following property is seized or held and is no longer required as evidence, such property shall be disposed of on order of the court as the court may deem adequate:

(a) Firearms which may have a lawful use; and

(b) Goods which are declared to be contraband but may reasonably be returned to a condition or state in which such goods may be lawfully used, possessed, or distributed by the public.

(3) When any animal as defined by section 28-1008 is seized or held and is no longer required as evidence, such animal may be disposed of in such manner as the court may direct. The court may consider adoption alternatives through humane societies or comparable institutions and the protection of such animal's welfare. For a humane society or comparable institution to be considered as an adoption alternative under this subsection, it must first be licensed by the Department of Agriculture as having passed the inspection requirements in the Commercial Dog and Cat Operator Inspection Act and paid the fee for inspection under the act. The court may prohibit an adopting or purchasing party from selling such animal for a period not to exceed one year.

(4) Unless otherwise provided by law, all other property shall be disposed of in such manner as the court in its sound discretion shall direct.

Source: Laws 1963, c. 161, § 9, p. 574; Laws 1986, LB 543, § 1; Laws 2002, LB 82, § 12.

Cross References

Commercial Dog and Cat Operator Inspection Act, see section 54-625.

Illegal gambling devices forfeited to the State constitute contraband, which this section requires the State to destroy. State v. Dodge City, 238 Neb. 439, 470 N.W.2d 795 (1991).

29-821 Sections; supplemental to other laws.

The provisions of sections 29-812 to 29-821 relating to the disposition of seized property shall not be exclusive, but shall be supplemental to other laws on the subject.

Source: Laws 1963, c. 161, § 10, p. 575.

29-822 Motion to suppress; filing; time; failure to file; effect; exception.

Any person aggrieved by an unlawful search and seizure may move for return of the property so seized and to suppress its use as evidence. The motion shall be filed in the district court where a felony is charged and may be made at any time after the information or indictment is filed, and must be filed at least ten days before trial or at the time of arraignment, whichever is the later, unless otherwise permitted by the court for good cause shown. Where the charge is other than a felony, the motion shall be filed in the court where the complaint is pending, and must be filed at least ten days before trial or at the time of the plea to the complaint, whichever is the later, unless otherwise permitted by the court for good cause shown. Unless claims of unlawful search and seizure are raised by motion before trial as herein provided, all objections to use of the property as evidence on the ground that it was obtained by an unlawful search and seizure shall be deemed waived; *Provided*, that the court may entertain such motions to suppress after the commencement of trial where the defendant is surprised by the possession of such evidence by the state, and also may in its

discretion then entertain the motion where the defendant was not aware of the grounds for the motion before commencement of the trial. In the event that the trial court entertains any such motion after the commencement of trial, the defendant shall be deemed to have waived any jeopardy which may have attached.

Source: Laws 1963, c. 155, § 1, p. 553.

1. Waiver
2. Procedure

1. Waiver

The ten-day rule of this section is valid and operable; it prevails over inconsistent, local court rules. State v. Vaughan, 227 Neb. 753, 419 N.W.2d 876 (1988).

Objection to illegally seized evidence is waived if objection is not made at least 10 days prior to trial. State v. Madsen, 226 Neb. 722, 414 N.W.2d 280 (1987).

Failure to make timely motion to suppress is a waiver of such right where evidence not a surprise. State v. Donald, 199 Neb. 70, 256 N.W.2d 107 (1977).

Error claimed because of defendant's absence was held waived for reasons stated. State v. Turner, 194 Neb. 252, 231 N.W.2d 345 (1975).

A waiver of objections to evidence on the ground that it was seized in an unreasonable search occurs when no objection is made at least ten days before trial and where the exceptions herein have no application. State v. Stowell, 190 Neb. 615, 211 N.W.2d 130 (1973).

Failure to move for suppression of evidence seized unlawfully waives the objection. State v. Howell, 188 Neb. 687, 199 N.W.2d 21 (1972).

2. Procedure

After a ruling granting a motion to suppress has been appealed, the single-judge opinion on the ruling is binding on the trial court and the parties as a determination of the suppression issue in a subsequent trial. However, if the defendant wishes to reopen the motion to suppress, the defendant must (1) put the State and trial court on notice of such intention by filing a new motion to suppress at least 10 days before trial or (2) make a showing that the existence of one of the exceptions provided in this section excuses the 10-day requirement. State v. March, 265 Neb. 447, 658 N.W.2d 20 (2003).

The distinction between a motion to quash and a motion to suppress is not mere form over substance. The filing of a motion to quash clearly notifies the State that the defendant's challenge is to the propriety of the entire proceedings. In contrast to a motion to quash, a motion to suppress seeks to exclude certain evidence from being presented at trial. A motion to suppress, with certain exceptions, must be made in writing. State v. Kanarick, 257 Neb. 358, 598 N.W.2d 430 (1999).

There is no statutory requirement to file a second motion to suppress after the granting of a new trial where the new motion to suppress would be identical to the original motion. State v. Schoonmaker, 249 Neb. 330, 543 N.W.2d 194 (1996).

The validity of a search of a defendant's property depends upon whether the defendant's consent to do so was given voluntarily. State v. Graham, 241 Neb. 995, 492 N.W.2d 845 (1992).

The intention embodied in this section is that unless a motion to suppress falls within one of the statutorily specified exceptions, such a motion is to be ruled upon and finally determined before trial. State v. Giessinger, 235 Neb. 140, 454 N.W.2d 289 (1990).

It is clearly the intention of this section that motions to suppress evidence are to be ruled on and finally determined before trial, unless the motion is within the exceptions contained in the statute. State v. Harms, 233 Neb. 882, 449 N.W.2d 1 (1989).

A person against whom a search is directed and whose property is seized in a search has standing to challenge the validity of the search where the case against him depends upon the defendant's possession of the goods. State v. Van Ackeren, 194 Neb. 650, 235 N.W.2d 210 (1975).

Where defendant fails to timely move to suppress hereunder, he cannot secure the results of an order of suppression by a late motion to suppress testimony or to limit interrogation of his own witnesses on relevant and material matters. State v. Bartlett, 194 Neb. 502, 233 N.W.2d 904 (1975).

Unless within exceptions herein, motions to suppress evidence should be finally determined before trial, but the trial court may correct errors at the trial. State v. Pope, 192 Neb. 755, 224 N.W.2d 521 (1974).

An exception to the exclusionary rules of search and seizure is the rule of harmless error beyond a reasonable doubt. State v. Reed, 188 Neb. 815, 199 N.W.2d 707 (1972).

Trial court's action in permitting filing and hearing of defendant's motion to suppress evidence after time provided herein approved, but overruling of motion sustained on other grounds. State v. Huggins, 186 Neb. 704, 185 N.W.2d 849 (1971).

Section intends that motions to suppress evidence be determined before trial, but trial court be not precluded from correcting errors at trial. State v. Smith, 184 Neb. 363, 167 N.W.2d 568 (1969).

29-823 Motion to suppress; issues of fact; trial.

Issues of fact arising on motions to suppress shall be tried by the court without a jury, in a summary manner, on affidavits or otherwise, as the court may direct. No evidence shall be suppressed because of technical irregularities not affecting the substantial rights of the accused.

Source: Laws 1963, c. 155, § 2, p. 553.

Henceforth, trial courts shall articulate in writing or from the bench their general findings when denying or granting a motion to suppress. State v. Osborn, 250 Neb. 57, 547 N.W.2d 139 (1996).

An order not containing a provision that the authorization to intercept calls shall be conducted in such a way so as to avoid and prevent interception of confidential information is not per se invalid absent a showing that any substantial right of the

defendant has been violated. State v. Brennen, 214 Neb. 734, 336 N.W.2d 79 (1983).

Applications for successive wiretaps which failed to disclose earlier applications are technical irregularities only, not affecting substantial rights of the accused. State v. Kohout, 198 Neb. 90, 251 N.W.2d 723 (1977).

Evidence should not be suppressed because of technical irregularities not affecting the substantial rights of the accused. State v. Putnam, 178 Neb. 445, 133 N.W.2d 605 (1965).

29-824 Motion to suppress; appeal; review; appeal after conviction.

(1) In addition to any other right to appeal, the state shall have the right to appeal from an order granting a motion for the return of seized property and to suppress evidence in the manner provided in sections 29-824 to 29-826.

(2) If such motion has been granted in district court, the Attorney General or the county attorney or prosecuting attorney with the consent of the Attorney General may file his or her application with the Clerk of the Supreme Court asking for a summary review of the order granting the motion. The review shall be made by a judge of the Court of Appeals at chambers upon such notice, briefs, and argument as the judge directs, after which such judge shall enter his or her order affirming, reversing, or modifying the order submitted for review, and upon any trial on the general issue thereafter the parties and the trial court shall be bound by such order. Upon conviction after trial the defendant may on appeal challenge the correctness of the order by the judge.

(3) If such motion has been granted in the county court, the Attorney General or the county attorney or prosecuting attorney may file his or her application with the clerk of the district court in the district in which the motion has been granted asking for a summary review of the order granting the motion. The review shall be made by a judge of the district court upon such notice, briefs, and arguments as the judge directs, after which such judge shall enter his or her order affirming, reversing, or modifying the order submitted for review, and upon any trial on the general issue thereafter the parties and the trial court shall be bound by such order. Upon conviction after trial the defendant may on appeal challenge the correctness of the order by the judge.

Source: Laws 1963, c. 155, § 3, p. 554; Laws 1981, LB 411, § 6; Laws 1991, LB 732, § 73; Laws 1998, LB 218, § 13.

1. Motion to suppress
2. Appeal
3. Review
4. Miscellaneous

1. Motion to suppress

Motion to suppress evidence was improperly sustained. State v. Forney, 181 Neb. 757, 150 N.W.2d 915 (1967).

The trial court should not have suppressed evidence obtained by a law enforcement officer when he squeezed a backpack located in an overhead compartment on a public bus in order to smell the contents of the backpack to determine if it contained contraband. State v. Lancelotti, 8 Neb. App. 516, 595 N.W.2d 558 (1999).

2. Appeal

After a ruling granting a motion to suppress has been appealed, the single-judge opinion on the ruling is binding on the trial court and the parties as a determination of the suppression issue in a subsequent trial. However, if the defendant wishes to reopen the motion to suppress, the defendant must (1) put the State and trial court on notice of such intention by filing a new motion to suppress at least 10 days before trial or (2) make a showing that the existence of one of the exceptions provided in section 29-822 excuses the 10-day requirement. State v. March, 265 Neb. 447, 658 N.W.2d 20 (2003).

This section authorizes an interlocutory appeal by the State from the sustaining of a motion to suppress only when the motion is sustained in district court. The State must look to section 29-827 in regard to review of the sustaining of a motion to suppress in county court. State v. Dail, 228 Neb. 653, 424 N.W.2d 99 (1988).

Appeals by the state from an order suppressing evidence under section 84-705(12), R.R.S.1943, shall be made pursuant to section 29-824, R.R.S.1943. State v. Hinchion, DiBiase, Olsen, and Cullen, 207 Neb. 478, 299 N.W.2d 748 (1980).

On appeal to a single judge, under this section, the trial court's order suppressing evidence as involuntarily given, is affirmed. State v. McNitt, 207 Neb. 296, 298 N.W.2d 465 (1980).

If the state, after prevailing on motion to suppress, was again required to prove legality of search at trial, the state's right to appeal hereunder would be defeated in many cases. State v. Pope, 192 Neb. 755, 224 N.W.2d 521 (1974).

The docket fee requirement contained in section 25-2729 necessarily applies to appeal brought by a prosecuting attorney pursuant to this section and sections 29-825 and 29-826, because section 25-2728 does not expressly exclude this section and sections 29-825 and 29-826 from the application of section

25-2729. State v. McArthur, 12 Neb. App. 657, 685 N.W.2d 733 (2004).

Where the State is appealing an order of a county court granting a motion for the return of seized property or to suppress evidence pursuant to sections 29-824 to 29-826, the State must comply with the standard procedures for appeal as provided in section 25-2729, as well as with the requirements specified within sections 29-824 to 29-826; failure to do so deprives the district court of subject matter jurisdiction to review the order. State v. McArthur, 12 Neb. App. 657, 685 N.W.2d 733 (2004).

Upon conviction after the reversal of a suppression order, a defendant may raise the suppression issue before the Nebraska Court of Appeals and, if unsuccessful, again before the Nebraska Supreme Court. State v. March, 9 Neb. App. 907, 622 N.W.2d 694 (2001).

3. Review

An application for review, as provided in section 29-824 et seq., must be filed within the time set in the trial court's order setting the time within which the application must be filed, and the time set in that order may not exceed thirty days. State v. Goreham, 227 Neb. 460, 418 N.W.2d 234 (1988).

Order suppressing evidence may be reviewed by single Judge of Supreme Court. State v. Hagen, 180 Neb. 564, 143 N.W.2d 904 (1966).

4. Miscellaneous

A ruling in a pretrial hearing that a defendant's statement is admissible is not a final order that may be appealed from by a defendant. State v. Pointer, 224 Neb. 892, 402 N.W.2d 268 (1987).

Prosecuting attorney means any county attorney and also any city attorney or assistant city attorney in a city of the metropolitan class when such attorney is prosecuting any violation designated as a misdemeanor or traffic infraction. Deputy city attorney for city of any other class may not properly prosecute an appeal under this statute. State v. Peterson, 219 Neb. 866, 366 N.W.2d 780 (1985).

An opinion by a single judge of the Nebraska Court of Appeals is not an opinion of ''the court'', and therefore a motion for rehearing is not appropriate. State v. March, 9 Neb. App. 907, 622 N.W.2d 694 (2001).

For an officer to validly seize an item, it must be immediately apparent that the item is or contains incriminatory evidence. Observation of baggies within a fanny pack located on an individual late at night, absent observation of an incriminating substance inside the baggies or other incriminating circumstances, is insufficient to justify a seizure. State v. Runge, 8 Neb. App. 715, 601 N.W.2d 554 (1999).

29-825 Motion to suppress; appeal; application.

The application for review provided in section 29-824 shall be accompanied by a copy of the order of the trial court granting the motion to suppress and a bill of exceptions containing all of the evidence, including affidavits, considered by the trial court in its ruling on the motion, and so certified by the trial court. The application shall be filed with the Clerk of the Supreme Court, if the trial court is the district court, or with the clerk of the district court, if the trial court is the county court, within such time as may be ordered by the trial court, which in fixing such time shall take into consideration the length of time required to prepare the bill of exceptions, and shall also consider whether the defendant is in jail or whether he or she is on bail, but in no event shall more than thirty days be given in which to file such application.

Source: Laws 1963, c. 155, § 4, p. 554; Laws 1998, LB 218, § 14; Laws 2000, LB 921, § 31.

The docket fee requirement contained in section 25-2729 necessarily applies to appeal brought by a prosecuting attorney pursuant to this section and sections 29-824 and 29-826, because section 25-2728 does not expressly exclude this section and sections 29-824 and 29-826 from the application of section 25-2729. State v. McArthur, 12 Neb. App. 657, 685 N.W.2d 733 (2004).

Where the State is appealing an order of a county court granting a motion for the return of seized property or to suppress evidence pursuant to sections 29-824 to 29-826, the State must comply with the standard procedures for appeal as provided in section 25-2729, as well as with the requirements specified within sections 29-824 to 29-826; failure to do so deprives the district court of subject matter jurisdiction to review the order. State v. McArthur, 12 Neb. App. 657, 685 N.W.2d 733 (2004).

An appellate court lacks jurisdiction where the State failed to file a transcript of the relevant evidence with the appellate court when filing an application for review. State v. Ruiz-Medina, 8 Neb. App. 529, 597 N.W.2d 403 (1999).

29-826 Motion to suppress; appeal; time limit; order for custody.

In making an order granting a motion to suppress and to return property, the trial court shall in such order fix a time, not exceeding ten days, in which the county attorney or other prosecuting attorney may file a notice with the clerk of such court of his or her intention to seek a review of the order. Upon the filing of such notice the trial court shall fix the time in which the application for review shall be filed with the appellate court, and shall make an appropriate order for custody of the property pending completion of the review.

Source: Laws 1963, c. 155, § 5, p. 554; Laws 1998, LB 218, § 15.

State may appeal an order sustaining a motion to suppress evidence. State v. Hagen, 180 Neb. 564, 143 N.W.2d 904 (1966).

The docket fee requirement contained in section 25-2729 necessarily applies to appeal brought by a prosecuting attorney pursuant to this section and sections 29-824 and 29-825, because section 25-2728 does not expressly exclude this section and sections 29-824 and 29-825 from the application of section 25-2729. State v. McArthur, 12 Neb. App. 657, 685 N.W.2d 733 (2004).

Where a county court fails to fix a time in which the State may appeal under this section, the State must file its notice of intention to seek review of the county court's order within 10 days; failure to do so deprives the district court of subject matter jurisdiction to hear the State's appeal. State v. McArthur, 12 Neb. App. 657, 685 N.W.2d 733 (2004).

Where the State is appealing an order of a county court granting a motion for the return of seized property or to suppress evidence pursuant to sections 29-824 to 29-826, the State must comply with the standard procedures for appeal as provided in section 25-2729, as well as with the requirements specified within sections 29-824 to 29-826; failure to do so deprives the district court of subject matter jurisdiction to review the order. State v. McArthur, 12 Neb. App. 657, 685 N.W.2d 733 (2004).

29-827 Repealed. Laws 1998, LB 218, § 29.

29-828 Search for weapons; when authorized.

Where the circumstances reasonably indicate to an officer of the law that a search of an individual for weapons is indicated in order to protect the life of such officer such search for weapons may lawfully be made.

Source: Laws 1963, c. 156, § 1, p. 556.

29-829 Stop and search of person for dangerous weapon; when authorized; peace officer, defined.

A peace officer may stop any person in a public place whom he reasonably suspects of committing, who has committed, or who is about to commit a crime and may demand of him his name, address and an explanation of his actions. When a peace officer has stopped a person for questioning pursuant to this section and reasonably suspects he is in danger of life or limb, he may search such person for a dangerous weapon. If the peace officer finds such a weapon or any other thing the possession of which may constitute a crime, he may take and keep it until the completion of questioning, at which time he shall either return it, if lawfully possessed, or arrest such person. For purposes of this section, peace officer shall include credentialed conservation officers of the Game and Parks Commission.

Source: Laws 1965, c. 132, § 1, p. 471.

1. Detention of person
2. Search
3. Miscellaneous

1. Detention of person

Totality of circumstances provided sufficient justification for investigatory stop where defendant fit "profile" of burglary suspect and engaged in specific activities which aroused the suspicions of the police. State v. Van Ackeren, 242 Neb. 479, 495 N.W.2d 630 (1993).

For a detention pursuant to this section to be lawful and justifiable, the police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion. State v. Bridge, 234 Neb. 781, 452 N.W.2d 542 (1990).

A brief stop of a suspicious individual in order to determine his identity or to maintain the status quo momentarily while obtaining more information may be most reasonable in light of the facts known to the officer at the time. State v. DeJesus, 216 Neb. 907, 347 N.W.2d 111 (1984).

An investigative stop under this provision is justified by objective manifestation that the person is, has been, or is about to be engaged in criminal activity. To determine if the cause is sufficient to authorize a stop, the totality of the circumstances must be considered. State v. Ebberson, 209 Neb. 41, 305 N.W.2d 904 (1981).

Informal detention for investigation may be lawful although probable cause for formal arrest may not exist. State v. Von Suggs, 196 Neb. 757, 246 N.W.2d 206 (1976).

A peace officer may stop any person, whom he suspects, in a public place, and demand his name, address, and an explanation of his actions. State v. Brewer, 190 Neb. 667, 212 N.W.2d 90 (1973).

Peace officer may stop person in public place whom he reasonably suspects of committing, having committed, or is about to commit a crime and may demand his name, address, and an explanation of his actions. State v. McCune, 189 Neb. 165, 201 N.W.2d 852 (1972).

Detention and search without a warrant based on statements of informer and observations of the officers was proper. State v. Goings, 184 Neb. 81, 165 N.W.2d 366 (1969).

Peace officer may stop a person for questioning whom he reasonably suspects of having committed or is about to commit a crime. State v. Carpenter, 181 Neb. 639, 150 N.W.2d 129 (1967).

Informal detention is permissible in spite of lack of probable cause. State v. Hoffman, 181 Neb. 356, 148 N.W.2d 321 (1967).

2. Search

Where four officers were required to subdue defendant who ran from investigatory stop which was justified by reasonable articulable suspicion, it was also reasonable to pat defendant down for a weapon. State v. Van Ackeren, 242 Neb. 479, 495 N.W.2d 630 (1993).

During an investigatory stop, officers may search a suspect's vehicle in order to secure their safety or the safety of another if they have reasonable belief, based on articulable facts, that they or other persons are in danger. State v. Gross, 225 Neb. 798, 408 N.W.2d 297 (1987).

The search of the passenger compartment of an automobile, limited to those areas in which a weapon may be placed or hidden, is permissible if the police officer possesses a reasonable belief, based on specific and articulable facts, which reasonably warrants the officer to believe the suspect may gain immediate control of weapons. State v. Pierce and Wells, 215 Neb. 512, 340 N.W.2d 122 (1983).

Investigative stop and search of auto by police held unconstitutional where officer had no reasonable suspicion the occupants were committing, had committed, or were about to commit a crime. State v. Colgrove, 198 Neb. 319, 253 N.W.2d 20 (1977).

3. Miscellaneous

The officers' actions in parking their car behind the appellant's vehicle, approaching the appellant and a companion with guns holstered and identifying themselves as officers, and then inquiring whether either possessed a controlled substance or a large amount of cash were not tantamount to an arrest and did not require probable cause, but instead required a lesser standard, namely, that the officers possess a particularized and objective basis for suspecting the person stopped of criminal activity. State v. Longa, 211 Neb. 356, 318 N.W.2d 733 (1982).

(c) INSPECTION WARRANTS

29-830 Inspection warrant, defined.

An inspection warrant is an order in writing in the name of the people, signed by a judge of a court of record, directed to a peace officer as defined in section 29-831, and commanding him to conduct any inspection required or authorized by state or local law or regulation relating to health, welfare, fire or safety.

Source: Laws 1969, c. 231, § 1, p. 858.

Cross References

Chemigation Act, Nebraska, enforcement, see section 46-1124.
Controlled premises, inspection pursuant to Uniform Controlled Substances Act, see section 28-428.
Energy Code, Nebraska, enforcement, see section 81-1617.
Plant Protection and Plant Pest Act, enforcement, see section 2-1091.

29-831 Peace officer, defined.

As used in sections 29-830 to 29-835, unless the context otherwise requires:

All state, county, city and village officers and their agents and employees, charged by statute or municipal ordinance with powers or duties involving inspection of real or personal property, building premises and contents, including but not limited by enumeration to housing, electrical, plumbing, heating, gas, fire, health, food, zoning, pollution, water, and weights and measures inspections, shall be peace officers for the purpose of applying for, obtaining and executing inspection warrants.

Source: Laws 1969, c. 231, § 2, p. 859.

29-832 Inspection warrant; when issued.

Inspection warrants shall be issued only upon showing that consent to entry for inspection purposes has been refused. In emergency situations neither consent nor a warrant shall be required.

Source: Laws 1969, c. 231, § 3, p. 859.

29-833 Inspection warrant; issuance; procedure.

An inspection warrant shall be issued only by a judge of a court of record upon reasonable cause, supported by affidavit describing the place and purpose

of inspection. The judge may examine the applicant and other witnesses, on oath, to determine sufficient cause for inspection.

Source: Laws 1969, c. 231, § 4, p. 859.

29-834 Inspection warrants; laws applicable.

All general laws pertaining to search warrants, including but not limited to the filing costs involved and the conditions and time for return, shall be applicable to inspection warrants, unless in conflict with sections 29-830 to 29-833.

Source: Laws 1969, c. 231, § 5, p. 859.

29-835 Violations; penalty.

Any person who willfully refuses to permit, interferes with, or prevents any inspection authorized by inspection warrant shall be guilty of a Class III misdemeanor.

Source: Laws 1969, c. 231, § 6, p. 859; Laws 1977, LB 40, § 114.

ARTICLE 9

BAIL

Cross References

Bail, see Article I, section 9, Constitution of Nebraska.

Section
29-901. Bail; personal recognizance; conditions.
29-901.01. Conditions of release; how determined.
29-901.02. Release; order; contents.
29-901.03. Conditions of release; review; procedure.
29-901.04. Conditions of release; amendment; review.
29-901.05. Bail; uniform schedule; how adopted; payment; procedure.
29-901.06. Bailable defendant; duty of court to inform of rights and duties.
29-902. Bail; proceeding for taking.
29-902.01. Presiding judge of certain county courts; designate a judge on call; custodial officer; duties.
29-903. Bail; amount; pretrial release agency; release recommendation; release without bond; when.
29-904. Recognizance; deposit with clerk; discharge of prisoner.
29-905. Surrender of accused by surety to court; discharge of surety; new recognizance; conditions.
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29-907. Surrender of accused by surety to sheriff; duty of sheriff; discharge of surety.
29-908. Bail, recognizance, or conditional release; failure to appear; penalties.
29-909. Pretrial release agency; authority to designate; recommendations; recognizance; when.
29-910. Pretrial release agency; designation; order; contents.

29-901 Bail; personal recognizance; conditions.

Any bailable defendant shall be ordered released from custody pending judgment on his or her personal recognizance unless the judge determines in the exercise of his or her discretion that such a release will not reasonably assure the appearance of the defendant as required. When such determination is made, the judge shall either in lieu of or in addition to such a release impose the first of the following conditions of release which will reasonably assure the

appearance of the person for trial or, if no single condition gives that assurance, any combination of the following conditions:

(1) Place the defendant in the custody of a designated person or organization agreeing to supervise the defendant;

(2) Place restrictions on the travel, association, or place of abode of the defendant during the period of such release;

(3) Require, at the option of any bailable defendant, either of the following:

(a) The execution of an appearance bond in a specified amount and the deposit with the clerk of the court in cash of a sum not to exceed ten percent of the amount of the bond, ninety percent of such deposit to be returned to the defendant upon the performance of the appearance or appearances and ten percent to be retained by the clerk as appearance bond costs, except that when no charge is subsequently filed against the defendant or if the charge or charges which are filed are dropped before the appearance of the defendant which the bond was to assure, the entire deposit shall be returned to the defendant. If the bond is subsequently reduced by the court after the original bond has been posted, no additional appearance bond costs shall be retained by the clerk. The difference in the appearance bond costs between the original bond and the reduced bond shall be returned to the defendant. In no event shall the deposit be less than twenty-five dollars. Whenever jurisdiction is transferred from a court requiring an appearance bond under this subdivision to another state court, the transferring court shall transfer the ninety percent of the deposit remaining after the appearance bond costs have been retained. No further costs shall be levied or collected by the court acquiring jurisdiction; or

(b) The execution of a bail bond with such surety or sureties as shall seem proper to the judge or, in lieu of such surety or sureties, at the option of such person, a cash deposit of such sum so fixed, conditioned for his or her appearance before the proper court, to answer the offense with which he or she may be charged and to appear at such times thereafter as may be ordered by the proper court. The cash deposit shall be returned to the defendant upon the performance of all appearances.

If the amount of bail is deemed insufficient by the court before which the offense is pending, the court may order an increase of such bail and the defendant shall provide the additional undertaking, written or cash, to secure his or her release. All recognizances in criminal cases shall be in writing and be continuous from term to term until final judgment of the court in such cases and shall also extend, when the court has suspended execution of sentence for a limited time, as provided in section 29-2202, or, when the court has suspended execution of sentence to enable the defendant to apply for a writ of error to the Supreme Court or Court of Appeals, as provided in section 29-2301, until the period of suspension has expired. When two or more indictments or informations are returned against the same person at the same term of court, the recognizance given may be made to include all offenses charged therein. Each surety on such recognizance shall be required to justify under oath in a sum twice the amount of such recognizance and give the description of real estate owned by him or her of a value above encumbrance equal to the amount of such justification and shall name all other cases pending in which he or she is a surety. No one shall be accepted as surety on recognizance aggregating a sum in excess of his or her equity in the real estate, but such recognizance shall not

constitute a lien on the real estate described therein until judgment is entered thereon against such surety; or

(4) Impose any other condition deemed reasonably necessary to assure appearances as required, including a condition requiring that the defendant return to custody after specified hours.

Source: G.S.1873, c. 58, §§ 346 to 348, p. 802; R.S.1913, § 9003; Laws 1921, c. 203, § 1, p. 733; C.S.1922, § 10027; C.S.1929, § 29-901; R.S.1943, § 29-901; Laws 1951, c. 87, § 1, p. 250; Laws 1953, c. 90, § 1, p. 261; Laws 1961, c. 132, § 1, p. 384; Laws 1972, LB 1032, § 174; Laws 1974, LB 828, § 1; Laws 1975, LB 284, § 2; Laws 1984, LB 773, § 1; Laws 1991, LB 732, § 74; Laws 1999, LB 51, § 1.

Cross References

Appeals, suspension of sentence, see section 29-2301.
Forfeiture of recognizance, see sections 29-1105 to 29-1110.
Suspension of sentence, see section 29-2202.

1. Applicability of section
2. Bonds
3. Discretion of court
4. Miscellaneous

1. Applicability of section

This section does not apply after judgment has been rendered. State v. Woodward, 210 Neb. 740, 316 N.W.2d 759 (1982).

This section does not apply to prisoner held under extradition warrant. In re Application of Campbell, 147 Neb. 382, 23 N.W.2d 698 (1946).

2. Bonds

Obligation of surety on bail bond is to have principal appear forthwith, where no date is fixed. State v. Casey, 180 Neb. 888, 146 N.W.2d 370 (1966).

Since 1953, a cash appearance bond may be given. Koop v. City of Omaha, 173 Neb. 633, 114 N.W.2d 380 (1962).

In prosecution for violation of National Prohibition Act where bail bond had been declared forfeited before repeal of act, surety was liable. La Grotta v. United States, 77 F.2d 673 (8th Cir. 1935).

3. Discretion of court

Not error for court to remand defendant on bail to custody following jury instructions, but prior to verdict. State v. Starks, 198 Neb. 433, 253 N.W.2d 166 (1977).

Fixation of the amount of bail is a matter resting in the sound discretion of the trial court. Kennedy v. Corrigan, 169 Neb. 586, 100 N.W.2d 550 (1960).

Acceptance and approval of bail bonds is a judicial function. Summit Fidelity & Surety Co. v. Nimtz, 158 Neb. 762, 64 N.W.2d 803 (1954).

Order fixing amount of bail will not be reviewed on habeas corpus unless it appears that amount is unreasonably great and disproportionate to the offense charged. In re Scott, 38 Neb. 502, 56 N.W. 1009 (1893).

4. Miscellaneous

The deposit of cash in lieu of or in support of bail under this section is for the purpose only of ensuring the defendant's appearance in court when required, and upon full compliance with any such court order and release of bail, the statutory refund must be made. State v. McKichan, 219 Neb. 560, 364 N.W.2d 47 (1985).

Court when releasing a defendant on bond need only inform defendant of special or unusual condition of his bail attached thereto and no duty exists to inform the defendant of obvious condition to return to the court as ordered nor inform defendant of possible penalty for failure to appear. State v. King, 214 Neb. 855, 336 N.W.2d 576 (1983).

Record did not show that cash deposit was made. State v. Mills, 179 Neb. 853, 140 N.W.2d 826 (1966).

Surety was estopped to question irregularities of the proceeding. Berkowitz v. United States, 90 F.2d 881 (8th Cir. 1937).

29-901.01 Conditions of release; how determined.

In determining which condition or conditions of release shall reasonably assure appearance, the judge shall, on the basis of available information, take into account the nature and circumstances of the offense charged, the defendant's family ties, employment, financial resources, character and mental condition, the length of his residence in the community, his record of convictions, and his record of appearances at court proceedings or of flight to avoid prosecution or of failure to appear at court proceedings.

Source: Laws 1974, LB 828, § 2.

29-901.02 Release; order; contents.

Any judge who shall authorize the release of a defendant under section 29-901 shall issue a written order containing a statement of the condition or conditions imposed, shall inform the defendant of the penalties for violating any of the conditions of such release, and shall advise the defendant that a warrant for his arrest shall be issued immediately upon such violation.

Source: Laws 1974, LB 828, § 3.

Court when releasing a defendant on bond need only inform defendant of special or unusual condition of his bail attached thereto and no duty exists to inform the defendant of obvious condition to return to the court as ordered nor inform defendant of possible penalty for failure to appear. State v. King, 214 Neb. 855, 336 N.W.2d 576 (1983).

29-901.03 Conditions of release; review; procedure.

When a defendant first appears before a judge pursuant to section 29-901, he shall be advised of his right to obtain review of the conditions of release imposed if he is unable to fulfill such conditions and remains in custody for more than twenty-four hours thereafter. Any defendant who shall remain in custody for more than twenty-four hours after a judge other than a district court judge imposes bail or any other condition of release, as a result of his inability to fulfill such condition or conditions, may request a review by the judge who imposed the conditions and, upon such request, the defendant shall be brought before the judge at the first regular court day. If the defendant is indigent and unable to retain legal counsel, the judge shall appoint an attorney to represent the defendant for the purpose of such review. Unless the conditions of release are amended and the defendant is thereupon released, the judge shall set forth in writing the reasons for requiring such condition or conditions. Any defendant who shall be ordered released by a judge other than a district court judge on a condition which requires that he return to custody after specified hours shall, upon application, be entitled to a review by the judge who imposed the condition in the same manner as a defendant who remains in full-time custody. In the event that the judge who imposed the condition or conditions of release is not available, any other judge in the district or of the same court may review such conditions.

Source: Laws 1974, LB 828, § 4; Laws 1975, LB 284, § 3.

29-901.04 Conditions of release; amendment; review.

Any judge who shall order the release of a defendant on any condition specified in section 29-901 may at any time amend his order to impose additional or different conditions of release, but if the imposition of different or additional conditions results in the detention of the defendant as a result of his inability to meet such conditions, the provisions of section 29-901.03 shall apply.

Source: Laws 1974, LB 828, § 5.

29-901.05 Bail; uniform schedule; how adopted; payment; procedure.

(1) It shall be the duty of the judges of the county court in each county to prepare and adopt, by a majority vote, a schedule of bail for all misdemeanor offenses and such other offenses as the judges deem necessary. It shall contain a list of such offenses and the amounts of bail applicable thereto as the judges determine to be appropriate. If the schedule does not list all misdemeanor and other offenses specifically, it shall contain a general clause for misdemeanors and a separate one for any other offenses providing for designated amounts of

bail as the judges of the county determine to be appropriate for all such offenses. The schedule of bail may be revised from time to time by the judges of the county, and the presiding county court judge at each county seat shall call not more than two meetings nor less than one meeting each year of all judges of the county court in the county for the purpose of establishing or revising a countywide uniform bail schedule. A copy of the schedule shall be sent to the officer in charge of the county jail and to the officer in charge of each city jail within the county.

(2) When bail has been set by a judge for a particular offense or offender, any sheriff or other peace officer may take bail in accordance with the provisions of section 29-901 and release the offender to appear in accordance with the conditions of the bail bond, the notice to appear, or the summons. Such officer shall give a receipt to the offender for the bail so taken and within a reasonable time deposit such bail with the clerk of the court having jurisdiction of the offense.

Source: Laws 1974, LB 828, § 6; Laws 1977, LB 112, § 1; Laws 1984, LB 13, § 57.

29-901.06 Bailable defendant; duty of court to inform of rights and duties.

When a bailable defendant appears at any judicial proceeding in which such defendant's bail is being considered, the judge at such proceeding shall inform the defendant of the condition or conditions imposed on his release, the penalties for violating any of the conditions of such release, and any options or alternatives available to such defendant.

Source: Laws 1974, LB 828, § 7.

Court when releasing a defendant on bond need only inform defendant of special or unusual condition of his bail attached thereto and no duty exists to inform the defendant of obvious condition to return to the court as ordered nor inform defendant of possible penalty for failure to appear. State v. King, 214 Neb. 855, 336 N.W.2d 576 (1983).

29-902 Bail; proceeding for taking.

For taking such bail, the judge may, by his special warrant under his hand and seal, require the sheriff or jailer to bring such accused before him at the courthouse of the proper county at such time as in such warrant the judge may direct.

Source: G.S.1873, c. 58, § 347, p. 802; R.S.1913, § 9004; C.S.1922, § 10028; C.S.1929, § 29-902.

29-902.01 Presiding judge of certain county courts; designate a judge on call; custodial officer; duties.

(1) The presiding judge of the county court in each county having a population of three hundred thousand or more inhabitants shall, as often as is necessary, meet and designate on a schedule not less than one judge of the county court to be reasonably available on call for the setting of orders for discharge from actual custody upon bail, the issuance of search warrants, and for such other matters as may be deemed appropriate, at all times when a court is not in session in the county.

(2) The officer in charge of a jail, or a person such officer designates, in which an arrested person is held in custody shall assist the arrested person or

such person's attorney in contacting the judge on call as soon as possible for the purpose of obtaining release on bail.

Source: Laws 1977, LB 11, § 1; Laws 1984, LB 13, § 58.

29-903 Bail; amount; pretrial release agency; release recommendation; release without bond; when.

In fixing the amount of bail, the judge admitting to the same shall be governed in the amount and quality of bail required by the direction of the district court in all cases where such court shall have made any order or direction in that behalf. In the event that the district court shall designate an official pretrial release agency for the district, the judge may give consideration to a report and recommendation of such agency and in the event that such agency should recommend the release of the prisoner on his own recognizance, the court may order release of such prisoner without the necessity of posting a cash deposit or requiring the sureties set out in section 29-901.

Source: G.S.1873, c. 58, § 348, p. 802; R.S.1913, § 9005; C.S.1922, § 10029; C.S.1929, § 29-903; R.S.1943, § 29-903; Laws 1971, LB 316, § 1; Laws 1972, LB 1248, § 1; Laws 1974, LB 828, § 8.

29-904 Recognizance; deposit with clerk; discharge of prisoner.

In all cases when a judge or examining court shall recognize a prisoner under the provisions of the three sections 29-901, 29-902, and 29-903, he shall forthwith deposit with the clerk of the proper court the recognizance so taken, and also a warrant directed to the jailer requiring him to discharge the prisoner.

Source: G.S.1873, c. 58, § 349, p. 803; R.S.1913, § 9006; C.S.1922, § 10030; C.S.1929, § 29-904.

29-905 Surrender of accused by surety to court; discharge of surety; new recognizance; conditions.

When any person, who is surety in a recognizance for the appearance of any defendant before any court in this state, desires to surrender the defendant, he shall, by delivering the defendant in open court, be discharged from any further responsibility on such recognizance; and the defendant shall be committed by the court to the jail of the county, unless he shall give a new recognizance, with good and sufficient sureties in such amount as the court may determine, conditioned as the original recognizance.

Source: G.S.1873, c. 58, § 350, p. 803; R.S.1913, § 9007; C.S.1922, § 10031; C.S.1929, § 29-905.

Section applies to giving bond for personal appearance of defendant prior to the trial and not after. State v. Swedland, 114 Neb. 280, 207 N.W. 29 (1926).

Rearrest discharges liability of sureties on recognizance. Smith v. State, 12 Neb. 309, 11 N.W. 317 (1882).

29-906 Surrender of accused by surety to sheriff; authority.

In all cases of bail for the appearance of any person or persons charged with any criminal offense, the surety or sureties of such person or persons may, at any time before judgment is rendered against him or them, seize and surrender

such person or persons charged as aforesaid to the sheriff of the county wherein the recognizance shall be taken.

Source: G.S.1873, c. 58, § 351, p. 803; R.S.1913, § 9008; C.S.1922, § 10032; C.S.1929, § 29-906.

Section applies to giving bond for personal appearance of defendant prior to the trial and not after. State v. Swedland, 114 Neb. 280, 207 N.W. 29 (1926).

29-907 Surrender of accused by surety to sheriff; duty of sheriff; discharge of surety.

It shall be the duty of such sheriff, on such surrender and the delivery to him of a certified copy of the recognizance by which such surety or sureties are bound, to take such person or persons so charged as aforesaid into custody, and by writing acknowledge such surrender, and thereupon the surety or sureties shall be discharged from any such recognizance, upon payment of all costs occasioned thereby.

Source: G.S.1873, c. 58, § 352, p. 803; R.S.1913, § 9009; C.S.1922, § 10033; C.S.1929, § 29-907.

29-908 Bail, recognizance, or conditional release; failure to appear; penalties.

Whoever is charged with a felony and is released from custody under bail, recognizance, or a conditioned release and willfully fails to appear before the court granting such release when legally required or to surrender himself within three days thereafter, shall be guilty of a Class IV felony, in addition to any other penalties or forfeitures provided by law.

Whoever is charged with a misdemeanor or violation of city or village ordinance, conviction of which would carry a jail sentence of more than ninety days, who is released from custody under bail or recognizance or conditioned release and who willfully fails to appear before the court granting such release when legally required to surrender himself or within three days thereafter, shall be guilty of a Class II misdemeanor, in addition to any other penalties or forfeitures provided by law.

Source: Laws 1971, LB 274, § 1; Laws 1977, LB 40, § 115.

As used in this section, failure to appear before the court includes a convicted defendant who willfully fails to comply with a sentencing court's order to report to a court-designated officer who is legally authorized to take him into custody so that he may begin his sentence after a conditioned release or a release under recognizance. State v. Moss, 240 Neb. 21, 480 N.W.2d 198 (1992).

Court when releasing a defendant on bond need only inform defendant of special or unusual condition of his bail attached thereto and no duty exists to inform the defendant of obvious condition to return to the court as ordered nor inform defendant of possible penalty for failure to appear. State v. King, 214 Neb. 855, 336 N.W.2d 576 (1983).

A defendant who is released following imposition of sentence under a stay of execution with orders to reappear upon further order of the court has been "released from custody under a conditioned release" within the meaning of this section, and violates said provision by failing to appear when so ordered by the court. State v. Robinson, 209 Neb. 726, 311 N.W.2d 7 (1981).

A person already found guilty of a felony is still a person "charged with a felony," under the terms of this section. State v. McDaniel, 205 Neb. 53, 285 N.W.2d 841 (1979).

29-909 Pretrial release agency; authority to designate; recommendations; recognizance; when.

The district courts of this state are authorized to designate an official pretrial release agency for a district, or for any county within a district, whenever the court is satisfied that such agency can render competent and effective assistance to the court in making its determination of the terms and conditions

under which any court should release a prisoner from jail prior to trial. When such a pretrial release agency has been designated, the judge of any court within the district or county in which such agency has been authorized to operate may give consideration to a report and recommendation of such agency and in the event that such agency should recommend the release of the prisoner on his own recognizance, the court may order the release of the prisoner without the necessity of posting a cash deposit or requiring any surety set out in section 29-901. Nothing in this section shall restrict any court from releasing a prisoner on his own recognizance, whether or not he has received a report or recommendation from a pretrial release agency, if the judge determines that such type of release would adequately serve the ends of justice.

Source: Laws 1971, LB 412, § 1; Laws 1972, LB 1249, § 1; Laws 1974, LB 828, § 9.

29-910 Pretrial release agency; designation; order; contents.

In the event the district court shall designate an official pretrial release agency, an order designating such agency shall be filed with the clerk of each district court in such district and shall affect all courts within such district. The order shall set out the name of the agency, its sponsoring agencies, if any, and the terms and conditions under which such agency shall operate.

Source: Laws 1971, LB 412, § 2; Laws 1972, LB 1249, § 2; Laws 1984, LB 13, § 59.

ARTICLE 10

CUSTODY AND MAINTENANCE OF PRISONERS

Section
29-1001. Prisoner; where confined.
29-1002. Repealed. Laws 1998, LB 695, § 10.
29-1003. Repealed. Laws 1998, LB 695, § 10.
29-1004. Repealed. Laws 1998, LB 695, § 10.
29-1005. Repealed. Laws 1998, LB 695, § 10.
29-1006. Repealed. Laws 1990, LB 829, § 3.

29-1001 Prisoner; where confined.

Whenever it shall be lawful and necessary to confine any prisoner in custody previous to conviction upon a criminal accusation, or in custody for contempt or alleged contempt of court, or upon an attachment by order of a court or judge, or otherwise in lawful custody, or upon conviction for any offense, the officer or person having him in such custody may convey him to and confine him in the jail of any county in this state, or other secure and convenient place of confinement in this state, to be procured by such officer or person having such prisoner in custody.

Source: G.S.1873, c. 58, § 377, p. 810; R.S.1913, § 9010; C.S.1922, § 10034; C.S.1929, § 29-1001.

Counties are obligated to pay costs and expenses of prosecutions, including fees and expenses of attorneys appointed to represent indigent defendants in criminal cases, and there is no requirement that a property tax be levied therefor. Kovarik v. County of Banner, 192 Neb. 816, 224 N.W.2d 761 (1975).

Transfer of prisoner sentenced to county jail governed by this section. State v. Curry, 184 Neb. 682, 171 N.W.2d 163 (1969).

Sheriff may hold person in custody for contempt of court in secure and convenient place of confinement. Rhodes v. Sigler, 172 Neb. 439, 109 N.W.2d 731 (1961).

In confining persons to jail in another county, when there is no secure jail in county, sheriff acts in official capacity, and surety on bond is liable for money received and not accounted for. Martin v. Seeley, 15 Neb. 136, 17 N.W. 346 (1883).

Where sheriff has custody of prisoners from two different counties for safekeeping, compensation is no greater than if they came from same county. James v. Lincoln County, 5 Neb. 38 (1876).

29-1002 Repealed. Laws 1998, LB 695, § 10.

29-1003 Repealed. Laws 1998, LB 695, § 10.

29-1004 Repealed. Laws 1998, LB 695, § 10.

29-1005 Repealed. Laws 1998, LB 695, § 10.

29-1006 Repealed. Laws 1990, LB 829, § 3.

ARTICLE 11

PROCEEDINGS UPON FORFEITURE OF RECOGNIZANCE

Cross References

Bail and personal recognizance, see sections 29-901 to 29-910.

Section
29-1101. Repealed. Laws 1953, c. 88, § 6.
29-1102. Repealed. Laws 1953, c. 88, § 6.
29-1103. Repealed. Laws 1953, c. 88, § 6.
29-1104. Repealed. Laws 1953, c. 88, § 6.
29-1105. Recognizance forfeited; recovery notwithstanding defects.
29-1106. Recognizance forfeited; when.
29-1107. Recognizance forfeited; set aside; conditions.
29-1108. Recognizance forfeited; motion; notice; judgment; cash deposit, disposition.
29-1109. Recognizance forfeited; judgment; remission; conditions.
29-1110. Recognizance forfeited; satisfaction; forfeiture set aside or remitted; exoneration of surety.

29-1101 Repealed. Laws 1953, c. 88, § 6.

29-1102 Repealed. Laws 1953, c. 88, § 6.

29-1103 Repealed. Laws 1953, c. 88, § 6.

29-1104 Repealed. Laws 1953, c. 88, § 6.

29-1105 Recognizance forfeited; recovery notwithstanding defects.

No action brought on any recognizance shall be barred or defeated, nor shall judgment thereon be reversed by reason of any neglect or omission to note or record the default, nor by reason of any defect in the form of the recognizance if it sufficiently appears from the tenor thereof at what court the party or witness was bound to appear and that the court or officer before whom it was taken was authorized by law to require and take such recognizance.

Source: G.S.1873, c. 58, § 388, p. 812; R.S.1913, § 9019; C.S.1922, § 10043.

Lack of specific date for appearance in bail bond did not operate to relieve surety from liability. State v. Casey, 180 Neb. 888, 146 N.W.2d 370 (1966).

29-1106 Recognizance forfeited; when.

When there is a breach of condition of a recognizance, the court shall declare a forfeiture of the bail.

Source: Laws 1953, c. 88, § 1, p. 259.

When the defendant failed to appear in court as his bond required, the liability on the bond became absolute and forfeiture was proper. State v. Hart, 198 Neb. 164, 252 N.W.2d 139 (1977).

Bail bond was properly forfeited where defendant absconded during trial of case. State v. Reed, 178 Neb. 370, 133 N.W.2d 591 (l965).

Action of district court in entering judgment in excess of penalty on bond did not deprive court of jurisdiction. State v. Morse, 171 Neb. 87, 105 N.W.2d 572 (1960).

On breach of condition of recognizance, court should declare forfeiture. State v. Konvalin, 165 Neb. 499, 86 N.W.2d 361 (1957; State v. Honey, 165 Neb. 494, 86 N.W.2d 187 (1957).

Appeal bond properly forfeited where defendant breached condition that he not violate the law. Trial court did not abuse its discretion by prescribing that the defendant not violate the law as a condition of the appeal bond. State v. Hernandez, 1 Neb. App. 830, 511 N.W.2d 535 (1993).

29-1107 Recognizance forfeited; set aside; conditions.

The court may direct that a forfeiture of the recognizance be set aside, upon such conditions as the court may impose, if it appears that justice does not require the enforcement of the forfeiture.

Source: Laws 1953, c. 88, § 2, p. 259.

District court has authority to remit a part or all the penalty of a bail bond in its discretion, to be exercised as to what is right and equitable under circumstances of the individual case. State v. Kennedy, 193 Neb. 472, 227 N.W.2d 607 (1975).

Discretion rests in district court to remit all or any part of forfeited bail bond. State v. Reed, 178 Neb. 370, 133 N.W.2d 591 (1965).

Action under this section is to be measured in the light of the requirements of justice. State v. Seaton, 170 Neb. 687, 103 N.W.2d 833 (1960).

Court may direct that forfeiture of recognizance be set aside. State v. Konvalin, 165 Neb. 499, 86 N.W.2d 361 (1957).

29-1108 Recognizance forfeited; motion; notice; judgment; cash deposit, disposition.

When a forfeiture of a recognizance has not been set aside, the court in which the proceeding is pending shall on motion enter a judgment of default and execution may issue thereon. Where a cash deposit has been made in lieu of a surety or sureties as provided in section 29-901, the cash deposit shall upon forfeiture of the recognizance be paid into the county treasury upon the entry of order of forfeiture of the bond after first deducting all court costs due and owing such court. By entering into a bond, the obligors submit to the jurisdiction of the court, and irrevocably appoint the clerk of the court as their agent upon whom any papers affecting their liability may be served. The liability upon the bond may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the court prescribes may be served on the clerk of the court, who shall forthwith mail copies thereof to the obligors to their last-known addresses.

Source: Laws 1953, c. 88, § 3, p. 259; Laws 1961, c. 133, § 1, p. 386; Laws 1971, LB 959, § 5.

Cross References

Disposition of funds of forfeited recognizance, see section 29-2708.

Judgment of forfeiture was properly entered on bail bond. State v. Casey, 180 Neb. 888, 146 N.W.2d 370 (1966).

Judgment on forfeited bail bond may not exceed the amount of the penalty of the bond. State v. Morse, 171 Neb. 87, 105 N.W.2d 572 (1960).

On motion of state, bail bond may be forfeited. State v. Seaton, 170 Neb. 687, 103 N.W.2d 833 (1960).

On forfeiture of recognizance, court should enter judgment. State v. Konvalin, 165 Neb. 499, 86 N.W.2d 361 (1957); State v. Honey, 165 Neb. 494, 86 N.W.2d 187 (1957).

29-1109 Recognizance forfeited; judgment; remission; conditions.

After entry of such judgment on the recognizance, the court may remit it in whole or in part under the conditions applying to the setting aside of forfeiture as provided in section 29-1107.

Source: Laws 1953, c. 88, § 4, p. 260.

It is within the discretion of the trial court to remit a part or all of the penalty of a bail bond. State v. Ernest, 203 Neb. 290, 278 N.W.2d 355 (1979).

Procedure followed was proper to obtain a remission of bail. State v. Seaton, 170 Neb. 687, 103 N.W.2d 833 (1960).

Remission of part or all of penalty on forfeiture of recognizance rests in sound discretion of trial court. State v. Konvalin, 165 Neb. 499, 86 N.W.2d 361 (1957) .

29-1110 Recognizance forfeited; satisfaction; forfeiture set aside or remitted; exoneration of surety.

When the conditions of the recognizance have been satisfied or the forfeiture thereof has been set aside or remitted, the court shall exonerate the obligors and release any bail. A surety may be exonerated by a deposit of cash in the amount of the recognizance or by a timely surrender of the defendant into custody.

Source: Laws 1953, c. 88, § 5, p. 260.

Cross References

Disposition of funds of forfeited recognizance, see section 29-2708.

ARTICLE 12

DISCHARGE FROM CUSTODY OR RECOGNIZANCE

Section

29-1201. Prisoner held without indictment; discharge or recognizance; when.
29-1202. Repealed. Laws 1971, LB 436, § 6.
29-1203. Repealed. Laws 1971, LB 436, § 6.
29-1204. Repealed. Laws 1971, LB 436, § 6.
29-1205. Right of accused to a speedy trial; preferences.
29-1206. Continuance; how granted.
29-1207. Trial within six months; time; how computed.
29-1208. Discharge from offense charged; when.
29-1209. Failure of defendant to move for discharge prior to trial or entry of plea; effect.

29-1201 Prisoner held without indictment; discharge or recognizance; when.

Any person held in jail charged with an indictable offense shall be discharged if he be not indicted at the term of court at which he is held to answer, unless such person shall have been committed to jail on such charge after the rising and final report of the regular grand jury for that term, in which case the court may discharge such person, or require such person to enter into recognizance with sufficient security for his appearance before such court to answer such charge at the next term thereof; *Provided*, such person so held in jail without indictment shall not be discharged, if it appears to the satisfaction of the court that the witnesses on the part of the state have been enticed or kept away or are detained and prevented from attending court by sickness or some inevitable accident.

Source: G.S.1873, c. 58, § 389, p. 812; R.S.1913, § 9020; C.S.1922, § 10044; C.S.1929, § 29-1201.

Cross References

Prisoners, disposition of untried charges, see section 29-3801 et seq.

Nebraska has created a statutory speedy trial right, which generally provides that a person who has been indicted for a criminal offense must be brought to trial within 6 months of his or her indictment. State v. Kula, 254 Neb. 962, 579 N.W.2d 541 (1998).

The procedure set out in sections 29-3801 et seq., rather than that in sections 29-1201 et seq., applies to instate prisoners. State v. Ebert, 235 Neb. 330, 455 N.W.2d 165 (1990).

Record did not show delay entitling defendant to discharge hereunder. Shaffer v. State, 123 Neb. 121, 242 N.W. 364 (1932).

Where jury called for term was excused before felony was committed, information was properly filed at beginning of next regular term. Nichols v. State, 109 Neb. 335, 191 N.W. 333 (1922).

Where no information or indictment is filed against defendant during the term at which he was held to answer, he is entitled to discharge. Cerny v. State, 62 Neb. 626, 87 N.W. 336 (1901).

Information filed in time and amended at next term does not entitle accused to discharge. Barker v. State, 54 Neb. 53, 74 N.W. 427 (1898).

When accused is fugitive from justice, he is not entitled to discharge because of failure to file information. Ex parte Trester, 53 Neb. 148, 73 N.W. 545 (1897).

Upon failure to indict or file information in term to which recognized, defendant is discharged. State ex rel. Conroy v. Miller, 43 Neb. 860, 62 N.W. 238 (1895).

When witnesses for state are not prevented from attending and no indictment is brought, accused is entitled to discharge. Ex parte Two Calf, 11 Neb. 221, 9 N.W. 44 (1881).

29-1202 Repealed. Laws 1971, LB 436, § 6.

29-1203 Repealed. Laws 1971, LB 436, § 6.

29-1204 Repealed. Laws 1971, LB 436, § 6.

29-1205 Right of accused to a speedy trial; preferences.

To effectuate the right of the accused to a speedy trial and the interest of the public in prompt disposition of criminal cases, insofar as is practicable:

(1) The trial of criminal cases shall be given preference over civil cases; and

(2) The trial of defendants in custody and defendants whose pretrial liberty is reasonably believed to present unusual risks shall be given preference over other criminal cases. It shall be the duty of the county attorney to bring to the attention of the trial court any cases falling within this subdivision, and he shall generally advise the court of facts relevant in determining the order of cases to be tried.

Source: Laws 1971, LB 436, § 1.

Cross References

Constitutional provision:

Rights of accused, see Article I, section 11, Constitution of Nebraska.

The speedy trial right does not apply to parental termination proceedings. In re Interest of C.P., 235 Neb. 276, 455 N.W.2d 138 (1990).

The right to a speedy trial applies only to criminal trials and, thus, does not apply to postconviction actions, which are civil in nature. State v. Bostwick, 233 Neb. 57, 443 N.W.2d 885 (1989).

Sections considered in reviewing order restricting publication of certain information before trial of murder case. State v. Simants, 194 Neb. 783, 236 N.W.2d 794 (1975).

This section is directory and does not grant any right of discharge short of six months. State v. Watkins, 190 Neb. 450, 209 N.W.2d 184 (1973).

Defendant received a speedy trial within ambit of Chapter 29, article 12, R.S.Supp.,1972. State v. Kennedy, 189 Neb. 423, 203 N.W.2d 106 (1972).

The primary burden is upon the state to bring accused to trial within time provided by law and if it does not he is entitled to discharge in absence of express waiver or waiver as provided by statute. State v. Brown, 189 Neb. 297, 202 N.W.2d 585 (1972); State v. Alvarez, 189 Neb. 281, 202 N.W.2d 604 (1972).

29-1206 Continuance; how granted.

Applications for continuances shall be made in accordance with section 25-1148, but in criminal cases in the district court the court shall grant a continuance only upon a showing of good cause and only for so long as is necessary, taking into account not only the request or consent of the prosecution or defense, but also the public interest in prompt disposition of the case.

Source: Laws 1971, LB 436, § 2.

This section and section 25-1148 do not define whether a defendant's right to a speedy trial has been violated. State v. Turner, 252 Neb. 620, 564 N.W.2d 231 (1997).

A trial court may, in a proper case, order a continuance on its own motion and in the absence of a showing of abuse of discretion, its ruling on a motion for a continuance will not be disturbed on appeal. State v. Lee, 195 Neb. 348, 237 N.W.2d 880 (1976).

A defendant in a criminal case may not discharge his counsel on the eve of trial and obtain a continuance without demonstrat-

ing good cause therefor. State v. Coleman, 190 Neb. 441, 208 N.W.2d 690 (1973).

To support a continuance of trial for good cause beyond six months from filing of information, the court must make specific findings, based upon substantial preponderance of evidence, as to the cause or causes of such extension and the period of extension attributable to such cause or causes. State v. Brown, 189 Neb. 297, 202 N.W.2d 585 (1972); State v. Alvarez, 189 Neb. 281, 202 N.W.2d 604 (1972).

29-1207 Trial within six months; time; how computed.

(1) Every person indicted or informed against for any offense shall be brought to trial within six months, and such time shall be computed as provided in this section.

(2) Such six-month period shall commence to run from the date the indictment is returned or the information filed, unless the offense is a misdemeanor offense involving intimate partners, as that term is defined in section 28-323, in which case the six-month period shall commence from the date the defendant is arrested on a complaint filed as part of a warrant for arrest.

(3) If a defendant is to be tried again following a mistrial, an order for a new trial, or an appeal or collateral attack, such period shall commence to run from the date of the mistrial, order granting a new trial, or the mandate on remand.

(4) The following periods shall be excluded in computing the time for trial:

(a) The period of delay resulting from other proceedings concerning the defendant, including, but not limited to, an examination and hearing on competency and the period during which he or she is incompetent to stand trial; the time from filing until final disposition of pretrial motions of the defendant, including motions to suppress evidence, motions to quash the indictment or information, demurrers and pleas in abatement, and motions for a change of venue; and the time consumed in the trial of other charges against the defendant;

(b) The period of delay resulting from a continuance granted at the request or with the consent of the defendant or his or her counsel. A defendant without counsel shall not be deemed to have consented to a continuance unless he or she has been advised by the court of his or her right to a speedy trial and the effect of his or her consent;

(c) The period of delay resulting from a continuance granted at the request of the prosecuting attorney, if:

(i) The continuance is granted because of the unavailability of evidence material to the state's case, when the prosecuting attorney has exercised due diligence to obtain such evidence and there are reasonable grounds to believe that such evidence will be available at the later date; or

(ii) The continuance is granted to allow the prosecuting attorney additional time to prepare the state's case and additional time is justified because of the exceptional circumstances of the case;

(d) The period of delay resulting from the absence or unavailability of the defendant;

(e) A reasonable period of delay when the defendant is joined for trial with a codefendant as to whom the time for trial has not run and there is good cause for not granting a severance. In all other cases, the defendant shall be granted a severance so that he or she may be tried within the time limits applicable to him or her; and

(f) Other periods of delay not specifically enumerated in this section, but only if the court finds that they are for good cause.

Source: Laws 1971, LB 436, § 3; Laws 2008, LB623, § 1.
Effective date July 18, 2008.

Cross References

Juvenile in custody, adjudication hearing, see sections 43-271 and 43-277.
Rights of accused, see Article I, section 11, Constitution of Nebraska.

1. Speedy trial, computation
2. Trial not within six months
3. Miscellaneous
4. Waiver

1. Speedy trial, computation

A motion for discovery filed by a defendant is a pretrial motion and the time period during which it is pending should be excluded for speedy trial calculation purposes. State v. Washington, 269 Neb. 728, 695 N.W.2d 438 (2005).

In determining whether time is excludable for speedy trial purposes under subsection (4)(d) of this section, a trial date that is scheduled within 6 months after the defendant's reappearance will be presumed to be the next reasonably available trial date without the State being required to present further evidence to justify the setting. State v. Petty, 269 Neb. 205, 691 N.W.2d 101 (2005).

An amended complaint or information which charges a different crime, without charging the original crime, constitutes an abandonment of the first complaint or information and acts as a dismissal of the same; the time between the dismissal and refiling of the same or a similar charge is not includable in calculating the 6-month time period. State v. Karch, 263 Neb. 230, 639 N.W.2d 118 (2002).

Pursuant to subsection (1) of this section, where a felony offense is involved, the 6-month speedy trial period commences to run from the date the indictment is returned or the information filed, and not from the time the complaint is filed. State v. Karch, 263 Neb. 230, 639 N.W.2d 118 (2002).

The time between the dismissal and refiling of the same or a similar charge is not includable in calculating the 6-month time period set forth in this section. To avoid a defendant's absolute discharge from an offense charged, as dictated by section 29-1208, the State must prove by a preponderance of the evidence the existence of a period of time which is authorized by subsection (4) of this section to be excluded in computing the time for commencement of the defendant's trial. State v. French, 262 Neb. 664, 633 N.W.2d 908 (2001).

For purposes of calculating the 6-month speedy trial act time period in a direct information case, the direct information should be deemed filed the day the order is entered finding probable cause or the day the defendant waives the preliminary hearing, and the speedy trial act calculations should be measured from either of these events. Pursuant to the Nebraska Supreme Court's case law interpreting the speedy trial act, the statutory 6-month speedy trial time period begins to run the day following the filing of the information, and in the case of a direct information, the day the information is filed for speedy trial act purposes is the day the district court finds probable cause or the day the defendant waives the preliminary hearing. State v. Boslau, 258 Neb. 39, 601 N.W.2d 769 (1999).

Where a retrial is ordered, it is the trial for the specific criminal offenses originally charged and other offenses required by law to be joined therewith that must begin within 6 months of the retrial order. The 6-month period is computed by moving forward 6 months, backing up 1 day, and then adding any excludable periods. State v. Blackson, 256 Neb. 104, 588 N.W.2d 827 (1999).

The 6-month period in which the trial must begin commences to run from the date the information is filed and not from the time the complaint is filed. State v. Trammell, 240 Neb. 724, 484 N.W.2d 263 (1992).

Time between dismissal and refiling of a charge is not includable in calculating the six-month time period set forth in this section. State v. Batiste, 231 Neb. 481, 437 N.W.2d 125 (1989).

A delay may be justified for a good cause, such as a congested docket in the trial court, or scheduling difficulties on the part of the trial judge or the prosecutor. Where a defendant fails to appear for a scheduled trial and does not reappear until after the jury term, the period between the trial date and the next regular jury term may be excluded in determining whether the defendant has been denied a speedy trial. State v. Kriegler, 225 Neb. 486, 406 N.W.2d 137 (1987).

Judicial delay, absent a showing of good cause, does not suspend a defendant's right to a speedy trial. Where the court took 1 year 7 months 24 days to resolve a single motion to suppress, the delay suffered by the defendant was not the reasonable consequence of filing a motion and did not toll the speedy trial statute. State v. Wilcox, 224 Neb. 138, 395 N.W.2d 772 (1986).

The time from filing to final disposition of pretrial motions must be excluded in computing the last day permissible for trial. State v. Brown, 214 Neb. 665, 335 N.W.2d 542 (1983).

The six-month period within which an accused is to be brought to trial is computed by excluding the day of the filing of the information, and refers to a period of six calendar months, not 180 days. State v. Jones, 208 Neb. 641, 305 N.W.2d 355 (1981).

If a trial court relies upon section 29-1207(4)(f), R.R.S.1943, in excluding a period of delay from the six-month computation, a general finding of ''good cause'' will not suffice; there must be specific findings as to the good cause. State v. Kinstler, 207 Neb. 386, 299 N.W.2d 182 (1980); State v. Johnson, 201 Neb. 322, 268 N.W.2d 85 (1978).

The time from filing of pretrial motions to their final disposition is excluded in computing the time for trial. State v. Long, 206 Neb. 446, 293 N.W.2d 391 (1980).

This section requires that every person charged with a criminal offense be brought to trial within six months. In cases commenced and tried in the county court, the six-month period begins to run on the date the complaint is filed in that court. State v. Johnson, 201 Neb. 322, 268 N.W.2d 85 (1978).

In felony cases, the six-month period runs from the date the indictment is returned or information filed, not from date complaint is filed in county court. State v. Costello, 199 Neb. 43, 256 N.W.2d 97 (1977).

Under time schedule of this case, defendant was not denied his constitutional or statutory right to a speedy trial. State v. Clouse, 195 Neb. 671, 240 N.W.2d 36 (1976).

A defendant's right to a speedy trial begins when he is indicted or informed against or arrested. State v. Spidell, 192 Neb. 42, 218 N.W.2d 431 (1974).

Where a felony offense is involved, the six-month period commences to run from the date the indictment is returned or the information filed. State v. Born, 190 Neb. 767, 212 N.W.2d 581 (1973).

The limitation for time of trial of criminal cases is six months from date indictment is returned or information filed. State v. Watkins, 190 Neb. 450, 209 N.W.2d 184 (1973).

Nebraska case law and the plain language of this section make it clear that the 6-month speedy trial period begins to run upon the filing of the information in district court. The time during which an underlying complaint is pending in county court before the defendant is bound over to district court is not counted. State v. Timmerman, 12 Neb. App. 934, 687 N.W.2d 24 (2004).

Where misdemeanor counts are filed with felony counts and it is clear that the State intends to try the misdemeanor and felony offenses together, the time that the misdemeanors and felonies were pending in county court is not tacked on for speedy trial purposes. State v. Timmerman, 12 Neb. App. 934, 687 N.W.2d 24 (2004).

The 6-month timeframe provided by this section is a useful standard for assessing whether the length of the delay under the Barker v. Wingo, 407 U.S. 514, 92 S. Ct. 1282, 33 L. Ed. 2d 101 (1972), speedy trial test is unreasonable under the Constitutions, both state and federal. State v. Robinson, 12 Neb. App. 897, 687 N.W.2d 15 (2004).

For purposes of speedy trial calculation, the period of time which elapses between scheduled pretrial hearings for which a defendant fails to appear and bond review hearings for which the defendant does appear is excluded from the 6-month statutory speedy trial period. State v. Rhoads, 11 Neb. App. 731, 660 N.W.2d 181 (2003).

Speedy trial time is calculated by excluding the date the information was filed, counting forward 6 calendar months, backing up 1 day, and then adding the excludable time periods to that date. State v. Feldhacker, 11 Neb. App. 608, 657 N.W.2d 655 (2003).

A defendant's successful motion in the district court to suppress evidence is not finally granted or determined, unless there is no appeal, until a judge of the Court of Appeals has decided the matter under section 29-116. The time from the defendant's filing of such a motion until final determination is excluded in the speedy trial calculation. State v. Hayes, 10 Neb. App. 833, 639 N.W.2d 418 (2002).

2. Trial not within six months

To obtain absolute discharge under section 29-1208, a defendant is not required to show prejudice sustained as the result of failure to bring the defendant to trial within 6 months in accordance with subsection (2) of this section. State v. Knudtson, 262 Neb. 917, 636 N.W.2d 379 (2001).

The State has the burden of proving that one or more of the excluded periods of time under subsection (4) of this section are applicable if defendant is not tried within 6 months of the filing of the information in a criminal action. State v. Groves, 238 Neb. 137, 469 N.W.2d 364 (1991); State v. Beck, 212 Neb. 701, 325 N.W.2d 148 (1982); State v. Bolton, 210 Neb. 694, 316 N.W.2d 619 (1982).

It may be reasonably argued that the exclusionary period set forth in section 29-1207(4), R.R.S.1943, would cover the period from a defendant's commitment as a sexual sociopath to the court's opinion in State v. Shaw, 202 Neb. 766, 277 N.W.2d 106 (1979) or the Legislature's enactment of sections 29-2911 to 29-2921, R.R.S.1943. However, since this defendant was not brought to trial within six months of either date, the issue of when to begin computing the time will not be decided here. State v. Kinstler, 207 Neb. 386, 299 N.W.2d 182 (1980).

If a defendant is not tried within six months of the commencement of a criminal action, the State has the burden of proving by a substantial preponderance of the evidence that one or more of the excluded periods of time under subsection (4) of this section, is applicable. State v. Johnson, 201 Neb. 322, 268 N.W.2d 85 (1978).

Where trial not commenced within six months of filing the information, upon motion for discharge, burden is on the state to prove one or more of the excluded periods is applicable, or defendant is entitled to an absolute discharge. State v. Hankins, 200 Neb. 69, 262 N.W.2d 197 (1978).

To support a continuance of trial for good cause beyond six months from filing of information, the court must make specific findings, based upon substantial preponderance of evidence, as to the cause or causes of such extension and the period of extension attributable to such cause or causes. State v. Brown, 189 Neb. 297, 202 N.W.2d 585 (1972); State v. Alvarez, 189 Neb. 281, 202 N.W.2d 604 (1972).

Where a defendant has not been brought to trial within six months and before trial or plea of guilty or nolo contendere he moves for his discharge, the state's burden is to prove by a substantial preponderance of the evidence that one or more of the excludable periods hereunder is applicable. State v. Brown, 189 Neb. 297, 202 N.W.2d 585 (1972); State v. Alvarez, 189 Neb. 281, 202 N.W.2d 604 (1972).

Pursuant to subsection (4) of this section, the State has the burden of proving that one or more of the excluded periods of time under this section are applicable if the defendant is not tried within 6 months of the filing of the information in a criminal action. State v. Washington, 11 Neb. App. 598, 658 N.W.2d 302 (2003).

3. Miscellaneous

A court may not apply Nebraska's 6-month speedy trial statute under this section to determine whether a prisoner is timely brought to trial under article III(a) of the Agreement on Detainers. State v. Rieger, 270 Neb. 904, 708 N.W.2d 630 (2006).

When a defendant has commenced a period of delay due to his or her absence or unavailability, the period of time from the defendant's later availability to the next reasonably available trial date is excludable under subsection (4)(d) of this section. State v. Petty, 269 Neb. 205, 691 N.W.2d 101 (2005).

There is no meaningful distinction between the phrases ''period of time'' and ''period of delay.'' State v. Feldhacker, 267 Neb. 145, 672 N.W.2d 627 (2004).

Subsection (3) of this section does not apply to a defendant who has not yet been brought to trial. State v. Baker, 264 Neb. 867, 652 N.W.2d 612 (2002).

Where further proceedings are to be had following an interlocutory appeal, for speedy trial purposes, the period of time excludable due to the appeal concludes when the district court first reacquires jurisdiction over the case by taking action on the mandate of the appellate court. State v. Baker, 264 Neb. 867, 652 N.W.2d 612 (2002).

Pursuant to subsection (4)(f) of this section, good cause is not shown simply because there has been no proof that the State acted in bad faith or because the substantive issue raised by the appeal has not previously been decided. State v. Recek, 263 Neb. 644, 641 N.W.2d 391 (2002).

Pursuant to subsection (1) of this section, the constitutional right to a speedy trial is guaranteed by U.S. Const. amend. VI and Neb. Const. art. I, section 11; the constitutional right to a speedy trial and the statutory implementation of that right exist independently of each other. State v. Karch, 263 Neb. 230, 639 N.W.2d 118 (2002).

Once the operation of Nebraska's speedy trial statutes have been triggered by the filing of an indictment or information, the statutory right of a defendant under the control of prosecuting authorities who knowingly extradite him or her to another state or to federal authorities is governed by this section, not the Agreement on Detainers. State v. Steele, 261 Neb. 541, 624 N.W.2d 1 (2001).

For purposes of this section, the date of the mandate on remand is the date on which the district court first takes action pursuant to the mandate. State v. White, 257 Neb. 943, 601 N.W.2d 731 (1999).

Where further proceedings are to be had following an interlocutory appeal, for speedy trial purposes, the period of time excludable due to the appeal concludes when the district court first reacquires jurisdiction over the case by taking action on the mandate of the appellate court. An interlocutory appeal taken by

the defendant is a period of delay resulting from other proceedings concerning the defendant within the meaning of subsection (4)(a) of this section. State v. Ward, 257 Neb. 377, 597 N.W.2d 614 (1999).

For purposes of subsection (3) of this section, the date of the ''mandate on remand'' is the date on which the district court first takes action pursuant to the mandate. State v. Kinser, 256 Neb. 56, 588 N.W.2d 794 (1999).

The period of time from the trial court's ruling on a motion for depositions until the depositions are concluded is not excludable under subsection (4)(a) of this section. However, such a period may or may not be excluded under subsection (4)(f) of this section, the inquiry turning upon whether there is good cause for the delay. Pursuant to subsection (4)(a) of this section, a proceeding is an application to a court of justice, however made, for aid in the enforcement of rights, for relief, for redress of injuries, for damages, or for any remedial object. State v. Murphy, 255 Neb. 797, 587 N.W.2d 384 (1998).

A ruling on a motion for absolute discharge based upon an accused criminal's nonfrivolous claim that his or her statutory speedy trial rights were violated is final and appealable. For the purpose of determining whether an accused's speedy trial rights under this section have been violated, successive informations charging the same offenses are not to be considered separately. Where a retrial is ordered, it is the trial for the specific criminal offenses originally charged and other offenses required by law to be joined therewith that must begin within 6 months of the retrial order, not a trial on a specific information. State v. Gibbs, 253 Neb. 241, 570 N.W.2d 326 (1997).

Pursuant to subsection (4)(a) of this section, it will be presumed that a delay in hearing defense pretrial motions is attributable to the defendant unless the record affirmatively indicates otherwise. State v. Turner, 252 Neb. 620, 564 N.W.2d 231 (1997).

An excludable period under subsection (4)(d) of this section does not commence when a defendant fails to appear at a hearing of which he or she has no notice. The period of time during which a warrant is pending is not excludable when the warrant is issued after defendant's failure to appear at a hearing of which he had no notice, unless the State shows that diligent efforts to obtain defendant's presence have been tried and failed. State v. Richter, 240 Neb. 223, 481 N.W.2d 200 (1992).

When the State dismissed a criminal charge contained in an information against defendant and subsequently files an information against defendant which alleges (1) the same offense charged in the previously dismissed information, (2) an offense committed simultaneously with a lesser-included offense charged in the information previously dismissed, or (3) commission of a crime that is a lesser-included offense of the crime charged in the dismissed information, time which elapses during the pendency of the informations shall be charged against the State in determining the last day for commencement of a defendant's trial pursuant to the Nebraska speedy trial act. State v. Sumstine, 239 Neb. 707, 478 N.W.2d 240 (1991).

An excludable time period under subsection (4)(a) of this section commences on the day immediately after the filing of a defendant's pretrial motion. To avoid a defendant's absolute discharge from an offense charged, as dictated by section 29-1208, the State, by a preponderance of evidence, must prove existence of a time period to be excluded under subsection (4) of this section. State v. Oldfield, 236 Neb. 433, 461 N.W.2d 554 (1990).

Pursuant to subsection (4)(a) of this section, a defendant must accept reasonable delay as a consequence of the defendant's pretrial motions. State v. Oldfield, 236 Neb. 433, 461 N.W.2d 554 (1990).

When a defendant has commenced a period of delay due to his or her absence or unavailability, the period of time from the defendant's later availability to the next reasonably available trial date is excludable under this section. State v. Letscher, 234 Neb. 858, 452 N.W.2d 767 (1990).

The constitutional right to a speedy trial and the statutory implementation of that right under this section exist independently of each other. Determining whether a defendant's constitutional right to a speedy trial has been violated requires a balancing test in which courts must approach each case on an ad hoc basis. This balancing test involves four factors: length of delay, the reason for the delay, the defendant's assertion of the right, and prejudice to the defendant. None of these four factors standing alone is a necessary or sufficient condition to the finding of a deprivation of the right of speedy trial. Rather, the factors are related and must be considered together with such other circumstances as may be relevant. State v. Andersen, 232 Neb. 187, 440 N.W.2d 203 (1989).

The constitutional right to a speedy trial and the statutory implementation of that right under this section exist independently of each other. State v. Sardeson, 231 Neb. 586, 437 N.W.2d 473 (1989).

The speedy trial act also applies to prosecutions on complaint. State v. Vrtiska, 227 Neb. 600, 418 N.W.2d 758 (1988).

The purpose of Nebraska's speedy trial act, sometimes called the ''6-month rule,'' is protection of an accused from a criminal charge pending for an undue length of time. State v. Lafler, 225 Neb. 362, 405 N.W.2d 576 (1987).

Length of delay, the reason for the delay, the defendant's assertion of the right to speedy trial, and prejudice to the defendant are factors to consider in the balancing process which weighs the conduct of both the State and the defendant. These factors did not need to be considered where a delay of 17 weeks from the return of a mandate to a trial did not constitute an unreasonable delay. State v. Palmer, 224 Neb. 282, 399 N.W.2d 706 (1986).

In computing the time for trial the period of delay resulting from a continuance granted at the request of the defendant or his counsel is excluded. State v. Jameson, 224 Neb. 38, 395 N.W.2d 744 (1986).

It is the state's burden to prove by a preponderance of the evidence that there has been compliance with this section. State v. Bennett, 219 Neb. 601, 365 N.W.2d 423 (1985).

A plea agreement, which by its very terms delays the time for a defendant to plead, tolls the speedy trial statute. State v. McNitt, 216 Neb. 837, 346 N.W.2d 259 (1984).

Time utilized in disposing of pretrial motion filed by defendant is excluded by statute. State v. Classen, 216 Neb. 323, 343 N.W.2d 749 (1984).

Generally, an accused cannot take advantage of a delay in being brought to trial where his action or inaction was responsible for the delay. State v. Searles, 214 Neb. 849, 336 N.W.2d 571 (1983).

The reasonable time used to obtain a deposition requested by a defendant in preparation for trial is excluded in computing the last day permissible for commencement of trial. State v. Fatica, 214 Neb. 776, 336 N.W.2d 101 (1983).

Unreasonable delays occurring prior to the filing of an information will be considered in determining whether a defendant has been denied a speedy trial. State v. Gingrich, 211 Neb. 786, 320 N.W.2d 445 (1982).

Trial is to be held within six months after filing of information, but time from filing to final disposition of pretrial motions, or delay caused by defendant's absence, is excluded. State v. Stewart, 195 Neb. 90, 236 N.W.2d 834 (1975).

In computation of the six months within which accused must be brought to trial, periods of delay because of motions for change of venue and for continuance granted at the request, or with the consent, of defense counsel are excluded. State v. Ogden, 191 Neb. 7, 213 N.W.2d 349 (1973).

Although statutory requirements for speedy trial refer only to indictments and informations, the references held to include complaints. State v. Stevens, 189 Neb. 487, 203 N.W.2d 499 (1973).

Because a transcript of a previous court proceeding is something to which a defendant would normally be entitled as a matter of right and because a praecipe is simply a directive to the court reporter to prepare such official transcript, the time

period while the reporter prepares the transcript is simply trial preparation and does not automatically become a period of delay under this section. State v. Feldhacker, 11 Neb. App. 872, 663 N.W.2d 143 (2003).

It is a misapplication of the ''good cause'' provision of the speedy trial statute to exclude a defendant's trial preparation time, such as securing a transcript of a previous hearing, which is not specifically within this section, when the State has not proved both a period of delay and good cause for it. State v. Feldhacker, 11 Neb. App. 872, 663 N.W.2d 143 (2003).

Pursuant to subsection (4) of this section, it is the State's burden to establish that facts showing good cause under the speedy trial statute exist to delay a defendant's trial beyond the 6-month time period. State v. Rhoads, 11 Neb. App. 731, 660 N.W.2d 181 (2003).

Statements made by a judge cannot be used to show good cause under subsection (4)(f) of this section. State v. Roundtree, 11 Neb. App. 628, 658 N.W.2d 308 (2003).

Under subsection (4) of this section, the court may grant a prosecutor's oral motion for continuance upon oral statements of the prosecutor where the defense does not object to the procedure and where facts as stated by the prosecutor would be sufficient had they been sworn. State v. Roundtree, 11 Neb. App. 628, 658 N.W.2d 308 (2003).

An inmate request form which is not an application to a court of justice for relief is not a proceeding under this section. State v. Feldhacker, 11 Neb. App. 608, 657 N.W.2d 655 (2003).

The excludable period under this section commences on the day immediately after the filing of a defendant's pretrial motion. State v. Feldhacker, 11 Neb. App. 608, 657 N.W.2d 655 (2003).

The purpose of the speedy trial act, sometimes called the ''6-month rule,'' is protection of an accused from a criminal charge pending for an undue length of time. State v. Feldhacker, 11 Neb. App. 608, 657 N.W.2d 655 (2003).

There is no reasonableness inquiry required with regard to excludable periods that properly fall under this section because such periods are automatically excluded in computing the time for trial. State v. Feldhacker, 11 Neb. App. 608, 657 N.W.2d 655 (2003).

Where an information was filed directly in district court, the 6-month time period did not commence until a preliminary hearing was held and the defendant was bound over for trial. State v. Boslau, 8 Neb. App. 275, 593 N.W.2d 747 (1999).

Where a defendant moves for discharge on denial of speedy trial grounds and the record affirmatively shows that 6 months has not elapsed between the filing of the information and the defendant's motion, the burden to show a denial of the right to a speedy trial is then placed on the defendant. State v. Bassette, 6 Neb. App. 192, 571 N.W.2d 133 (1997).

Subsection (4)(b) clearly excludes from the 6-month time limit periods of delay resulting from continuances granted at the request of defendant's counsel. State v. Stubbs, 5 Neb. App. 38, 555 N.W.2d 55 (1996).

4. Waiver

The statutory right to a speedy trial is not a personal right that can be waived only by a defendant. Defense counsel's request for a continuance in order to prepare for trial waives a defendant's statutory right to a speedy trial despite the defendant's objections to the continuance. State v. McHenry, 268 Neb. 219, 682 N.W.2d 212 (2004).

This section does not address waivers of the right to a speedy trial, nor does it suggest that a waiver cannot be limited in time. This section does not provide that by requesting a continuance, a defendant has completely waived the right to a speedy trial. Rather, it provides that the delay caused by a continuance granted for the defendant is excluded from the 6-month period and counted against the defendant. State v. Knudtson, 262 Neb. 917, 636 N.W.2d 379 (2001).

A defendant may waive his right to a speedy trial under this section so long as he is properly advised of his right to a speedy trial and the waiver is entered voluntarily, knowingly, and intelligently. A defendant may terminate his waiver of a speedy trial by filing a written request for trial with the clerk of the court in which the defendant is to be tried. From the date the defendant files his written request for trial, the six-month period for the state to bring a defendant to trial provided in this section shall begin anew. State v. Andersen, 232 Neb. 187, 440 N.W.2d 203 (1989).

Where a defendant has waived his right to a speedy trial and thereafter withdraws that waiver and renews his request for a speedy trial, the time between the initial waiver and the later request to withdraw must be excluded from the computation of the six-month period. State v. Williams, 211 Neb. 650, 319 N.W.2d 748 (1982).

The failure of the accused to object to the setting of a trial date more than six months after charges were filed did not constitute a waiver of his rights under this section. State v. Kinstler, 207 Neb. 386, 299 N.W.2d 182 (1980).

It was not the duty of the trial court to suggest to the defendant or his counsel that he file a motion for discharge. State v. Hert, 192 Neb. 751, 224 N.W.2d 188 (1974).

Once a defendant has unconditionally waived his or her right to a speedy trial, it is his or her burden to show by a preponderance of the evidence that the waiver was conditional or was otherwise invalid. State v. Herngren, 8 Neb. App. 207, 590 N.W.2d 871 (1999).

29-1208 Discharge from offense charged; when.

If a defendant is not brought to trial before the running of the time for trial, as extended by excluded periods, he shall be entitled to his absolute discharge from the offense charged and for any other offense required by law to be joined with that offense.

Source: Laws 1971, LB 436, § 4.

1. Discharge
2. Miscellaneous

1. Discharge

To obtain absolute discharge under this section, a defendant is not required to show prejudice sustained as the result of failure to bring the defendant to trial within 6 months in accordance with subsection (2) of section 29-1207. State v. Knudtson, 262 Neb. 917, 636 N.W.2d 379 (2001).

To avoid a defendant's absolute discharge from an offense charged, as dictated by this section, the State must prove by a preponderance of the evidence the existence of a period of time which is authorized by subsection (4) of section 29-1207 to be excluded in computing the time for commencement of the defendant's trial. State v. French, 262 Neb. 664, 633 N.W.2d 908 (2001).

Where a motion to discharge on speedy trial grounds is submitted to a trial court, that motion is inferentially denied where the trial court proceeds to trial without expressly ruling on the motion. State v. Ward, 257 Neb. 377, 597 N.W.2d 614 (1999).

Resolution of a nonfrivolous motion to discharge pursuant to this section is a ruling affecting a substantial right made in a special proceeding and is therefore final and appealable. State v. Kinser, 256 Neb. 56, 588 N.W.2d 794 (1999).

Per this section, a motion to discharge for lack of a speedy trial is a final, appealable order pursuant to section 25-1912(1). State v. Jacques, 253 Neb. 247, 570 N.W.2d 331 (1997).

The primary burden to bring the accused person to trial within the time provided by law is upon the State, and failure to do so entitles defendant to an absolute discharge. State v. Richter, 240 Neb. 223, 481 N.W.2d 200 (1992).

To avoid a defendant's absolute discharge from an offense charged, as dictated by this section, the State, by a preponderance of evidence, must prove existence of a time period to be excluded under section 29-1207(4). State v. Oldfield, 236 Neb. 433, 461 N.W.2d 554 (1990).

To avoid a defendant's absolute discharge from an offense charged, the State, by a preponderance of evidence, must prove existence of a period of time which is authorized by section 29-1207(4) to be excluded in computing the time for commencement of the defendant's trial. State v. Lafler, 225 Neb. 362, 405 N.W.2d 576 (1987).

The primary burden is upon the state to bring the accused person to trial within the time provided by law, and if he is not brought to trial within that time, he is entitled to an absolute discharge from the offense alleged in the absence of an express waiver or waiver as provided by statute. State v. Beck, 212 Neb. 701, 325 N.W.2d 148 (1982).

Where trial not commenced within six months of filing the information, upon motion for discharge, burden is on the state to prove one or more of the excluded periods is applicable, or defendant is entitled to an absolute discharge. State v. Hankins, 200 Neb. 69, 262 N.W.2d 197 (1978).

The primary burden is upon the state to bring accused to trial within time provided by law and if it does not he is entitled to discharge in absence of express waiver or waiver as provided by statute. State v. Brown, 189 Neb. 297, 202 N.W.2d 585 (1972); State v. Alvarez, 189 Neb. 281, 202 N.W.2d 604 (1972).

The denial of a motion to discharge is an appealable order from which an appeal must be taken within 30 days. State v. Erb, 6 Neb. App. 672, 576 N.W.2d 839 (1998).

2. Miscellaneous

Failure of defendant to move for discharge prior to trial or entry of a plea of guilty or nolo contendere is a waiver of right to speedy trial. State v. Hert, 192 Neb. 751, 224 N.W.2d 188 (1974).

Absolute preference to trial of criminal cases is not required. State v. Watkins, 190 Neb. 450, 209 N.W.2d 184 (1973).

Although statutory requirements for speedy trial refer only to indictments and informations, the references held to include complaints. State v. Stevens, 189 Neb. 487, 203 N.W.2d 499 (1973).

Two counts of an amended information, which were the same as counts found in the original information, were required to be dismissed under this section, but a new count was not affected, because 6 months had not passed since that charge had been filed. State v. Thompson, 10 Neb. App. 69, 624 N.W.2d 657 (2001).

29-1209 Failure of defendant to move for discharge prior to trial or entry of plea; effect.

Failure of the defendant to move for discharge prior to trial or entry of a plea of guilty or nolo contendere shall constitute a waiver of the right to speedy trial.

Source: Laws 1971, LB 436, § 5.

It is incumbent upon defendant and his counsel to file a timely motion for discharge in order to avoid the waiver provided for by this section. State v. Kearns, 245 Neb. 728, 514 N.W.2d 844 (1994).

As long as a defendant was properly advised of his rights, by either counsel or the court, by knowingly, intelligently, and voluntarily pleading guilty, the defendant waives his statutory right to a speedy trial. State v. McNitt, 216 Neb. 837, 346 N.W.2d 259 (1984).

It was not the duty of the trial court to suggest to the defendant or his counsel that he file a motion for discharge. State v. Hert, 192 Neb. 751, 224 N.W.2d 188 (1974).

ARTICLE 13
VENUE

Section
29-1301. Venue; change; when allowed.
29-1301.01. Venue; crime committed in different counties.
29-1301.02. Venue; crime committed on moving means of transportation.
29-1301.03. Venue; jurisdiction in two or more counties; effect of conviction or acquittal.
29-1302. Change of venue; how effected; costs; payment.
29-1303. Change of venue; transfer of prisoner.
29-1304. Change of venue; witnesses recognized to appear.
29-1305. Venue; crime committed on county line.
29-1306. Venue; death occurring in another county or state.
29-1307. Venue; receiver of stolen property.

29-1301 Venue; change; when allowed.

All criminal cases shall be tried in the county where the offense was committed, except as otherwise provided in section 25-412.03 or sections

29-1301.01 to 29-1301.03, or unless it shall appear to the court by affidavits that a fair and impartial trial cannot be had therein. In such case the court, upon motion of the defendant, shall transfer the proceeding to any other district or county in the state as determined by the court.

Source: G.S.1873, c. 58, § 455, p. 823; R.S.1913, § 9024; C.S.1922, § 10048; C.S.1929, § 29-1301; R.S.1943, § 29-1301; Laws 1957, c. 103, § 1, p. 363; Laws 1975, LB 97, § 7; Laws 1978, LB 562, § 1.

Cross References

Change of venue, criminal case pending in county with population of four thousand or less without adequate facilities for jury trials, see section 25-412.01.
Trial, agreements under Interlocal Cooperation Act, see section 25-412.03.

1. Venue of offense
2. Change of venue
3. Miscellaneous

1. Venue of offense

A criminal defendant has a right to be tried in the county in which the criminal offense is alleged to have been committed. In re Interest of Leo L. II, 258 Neb. 877, 606 N.W.2d 783 (2000).

The right to be tried in the county in which the criminal offense is alleged to have been committed is secured by statute rather than by the federal or state constitution. When a criminal defendant does not object at trial to holding the trial in a county other than the county in which the criminal offense is alleged to have been committed, the defendant waives his or her objection to the statutorily designated trial provision in this section. State v. Meers, 257 Neb. 398, 598 N.W.2d 435 (1999).

Venue may be proven like any fact, by testimony or by conclusion reached as the only logical inference under the facts. State v. Liberator, 197 Neb. 857, 251 N.W.2d 709 (1977).

Where defendant resisted officer in execution of his office on county line road, prosecution could be in either of the counties divided by the road. State v. Lindsey, 193 Neb. 442, 227 N.W.2d 599 (1975).

Trial of offense of failing to support child was properly held in county where child resided. State ex rel. Brito v. Warrick, 176 Neb. 211, 125 N.W.2d 545 (1964).

Criminal cases must be tried in county where crime was committed, or in county to which change of venue is taken. State v. Furstenau, 167 Neb. 439, 93 N.W.2d 384 (1958).

Venue of an offense may be proven like any other fact. Gates v. State, 160 Neb. 722, 71 N.W.2d 460 (1955).

Where defendant had entered a plea of guilty, he could not on error proceedings retry issue of fact as to venue of offense. Clark v. State, 150 Neb. 494, 34 N.W.2d 877 (1948).

Where an offense consists of a series of acts, prosecution may be had in any county where any one of the acts took place. Yost v. State, 149 Neb. 584, 31 N.W.2d 538 (1948).

Where a person in one county procures the commission of a crime in another through the agency of an innocent person, he is subject to prosecution in the county where the acts were done by the agent. Robeen v. State, 144 Neb. 910, 15 N.W.2d 69 (1944).

Conviction was sustained as not violative of this section. Forney v. State, 123 Neb. 179, 242 N.W. 441 (1932).

County in which matrimonial domicile of husband and wife is located fixes venue in action for abandonment. Preston v. State, 106 Neb. 848, 184 N.W. 925 (1921).

2. Change of venue

Pretrial publicity regarding a retrial after a conviction may in some cases present more difficult venue issues than those of an initial trial, but a determination of whether a change in venue is necessary remains within the discretion of the trial court. State v. McHenry, 250 Neb. 614, 550 N.W.2d 364 (1996).

Trial court does not abuse its discretion in denying defendant's motion for change of venue when there is no evidence that jury could not be fair and impartial after viewing news reports which reference a polygraph examination. State v. McHenry, 247 Neb. 167, 525 N.W.2d 620 (1995).

A party seeking change of venue must show that publicity has made it impossible to secure a fair and impartial jury. The factors to be evaluated in determining whether a change of venue is required due to pretrial publicity include the nature of the publicity, the degree to which the publicity has circulated throughout the community, the degree to which the publicity circulated in areas to which venue could be changed, the length of time between the dissemination of the publicity complained of and the date of trial, the care exercised and ease encountered in the selection of the jury, the number of challenges exercised during voir dire, the severity of the offenses charged, and the size of the area from which the venire was drawn. State v. Phelps, 241 Neb. 707, 490 N.W.2d 676 (1992).

The factors to be considered in determining whether this section authorizes a change in venue due to pretrial publicity include the nature of the publicity, the degree to which the publicity has circulated in the areas to which venue could be changed, the length of time between the dissemination of the publicity complained of and the date of trial, the care exercised and ease encountered in selection of the jury, the number of challenges exercised during voir dire, the severity of the offenses charged, and the size of the area from which the venire is drawn. A trial court's ruling on a motion for a change of venue under this section will not be disturbed on appeal absent an abuse of discretion. State v. Williams, 239 Neb. 985, 480 N.W.2d 390 (1992).

The factors to be evaluated in determining whether a change of venue is required due to pretrial publicity include the nature of the publicity, the degree to which the publicity has circulated throughout the community, the degree to which the publicity has circulated in areas to which venue could be changed, the length of time between the dissemination of the publicity complained of and the date of trial, the care exercised and ease encountered in the selection of the jury, the number of challenges exercised during voir dire, the severity of the offenses charged, and the size of the area from which the venire is drawn. State v. Jacobs, 226 Neb. 184, 410 N.W.2d 468 (1987).

Showing made was insufficient to require change of venue. Onstott v. State, 156 Neb. 55, 54 N.W.2d 380 (1952); Medley v. State, 156 Neb. 25, 54 N.W.2d 233 (1952).

Motion for change of venue was properly denied in first degree murder case. Sundahl v. State, 154 Neb. 550, 48 N.W.2d 689 (1951).

Application for change of venue is addressed to sound discretion of trial court; ruling will not be disturbed unless abuse of discretion is shown. Simmons v. State, 111 Neb. 644, 197 N.W. 398 (1924); Clarence v. State, 89 Neb. 762, 132 N.W. 395 (1911); Sweet v. State, 75 Neb. 263, 106 N.W. 31 (1905); Jahnke v. State, 68 Neb. 154, 94 N.W. 158 (1903), reversed on rehearing 68 Neb. 181, 104 N.W. 154 (1905).

Change of venue on application of accused is waiver of his right to trial in county where crime is charged. Kennison v. State, 83 Neb. 391, 119 N.W. 768 (1909).

Ruling of district court upon motion supported by affidavits will not be disturbed unless clearly without support of sufficient evidence. Lindsay v. State, 46 Neb. 177, 64 N.W. 716 (1895).

Change can only be granted by court of county where offense was committed. Gandy v. State, 27 Neb. 707, 43 N.W. 747, 44 N.W. 108 (1889).

Party seeking change of venue must show by best evidence that can be obtained bias and prejudice against him. Simmerman v. State, 16 Neb. 615, 21 N.W. 387 (1884).

On showing made, change of venue should have been granted. Richmond v. State, 16 Neb. 388, 20 N.W. 282 (1884).

Motion for change to particular county is bad, and may be overruled. Olive v. State, 11 Neb. 1, 7 N.W. 444 (1880).

Requirements of this section have no application to receiving plea of guilty and imposing sentence in chambers. Canada v. Jones, 170 F.2d 606 (8th Cir. 1948).

3. Miscellaneous

The State has the burden to prove proper venue beyond a reasonable doubt in the absence of defendant's waiver. State v. Phelps, 241 Neb. 707, 490 N.W.2d 676 (1992).

Voir dire examination provides the best opportunity to determine whether venue should be changed. Mere jury exposure to news accounts of a crime does not presumptively deprive a criminal defendant of due process; rather, to warrant a change of venue, a defendant must show the existence of pervasive misleading pretrial publicity. State v. Phelps, 241 Neb. 707, 490 N.W.2d 676 (1992).

Voir dire examination is the better, more probative forum for ascertaining the existence of community and individual prejudice or hostility toward the accused than is a public opinion poll. State v. Bradley, 236 Neb. 371, 461 N.W.2d 524 (1990).

A defendant may waive the issue of statutorily designated venue by requesting a change of venue in accordance with this section, but does not waive the venue issue by failing to raise venue before or during trial. State v. Vejvoda, 231 Neb. 668, 438 N.W.2d 461 (1989).

A motion to change venue under this provision is addressed to the discretion of the trial judge, whose ruling will not be disturbed absent an abuse thereof. An abuse occurs where a defendant establishes that local conditions and pretrial publicity make it impossible to secure a fair trial. State v. Jacobs, 226 Neb. 184, 410 N.W.2d 468 (1987).

Under facts in this case it was not error to deny motions grounded on pretrial publicity for change of venue and continuance, sequestration of jury during voir dire and trial, and for admission of a photograph which merely illustrated testimony received without objection. State v. Ell, 196 Neb. 800, 246 N.W.2d 594 (1976).

Section considered in reviewing order restricting publication of certain information before trial of murder case. State v. Simants, 194 Neb. 783, 236 N.W.2d 794 (1975).

Appeal by a county in criminal case from order allowing attorney's fees is not authorized as the district court merely determines the reasonable charges for which claim may be filed with the county board. State v. Berry, 192 Neb. 826, 224 N.W.2d 767 (1975).

Where state and local purposes are commingled, the crucial issue turns upon a determination of whether the controlling purposes are state or local. Counties may be required to pay attorney's fees for one appointed to defend an indigent defendant. Kovarik v. County of Banner, 192 Neb. 816, 224 N.W.2d 761 (1975).

29-1301.01 Venue; crime committed in different counties.

If any person shall commit an offense against the person of another, such accused person may be tried in the county in which the offense is committed, or in any county into or out of which the person upon whom the offense was committed may, in the prosecution of the offense, have been brought, or in which an act is done by the accused in instigating, procuring, promoting, or aiding in the commission of the offense, or in aiding, abetting, or procuring another to commit such offense.

Source: Laws 1957, c. 103, § 2, p. 364.

Although another county was the situs of the felonious sexual assault and where victim's clothing was found, venue was proper where sufficient circumstantial evidence existed from which a fact finder could reasonably conclude that the victim was originally abducted in county where trial was held. State v. Phelps, 241 Neb. 707, 490 N.W.2d 676 (1992).

A motion for change of venue filed pursuant to this statute is addressed to the sound discretion of the trial court, whose ruling will not be disturbed on appeal absent a clear abuse of that discretion. State v. Kern, 224 Neb. 177, 397 N.W.2d 23 (1986).

Where defendant resisted officer in execution of his office on county line road, prosecution could be in either of the counties divided by the road. State v. Lindsey, 193 Neb. 442, 227 N.W.2d 599 (1975).

This section permits trial either in county where offense was committed or in any county into or out of which the person upon whom the offense was committed may, in the prosecution of the offense, have been brought, or in which an act is done by accused in instigating, procuring, promoting, or aiding in the commission of the offense. State v. Garza, 191 Neb. 118, 214 N.W.2d 30 (1974).

District court for Douglas County had jurisdiction of rape case where prisoner allegedly committed acts in county in furtherance of offense and prosecutrix was brought back into county after alleged rape. Garza v. Wolff, 528 F.2d 208 (8th Cir. 1975).

29-1301.02 Venue; crime committed on moving means of transportation.

When an offense is committed in this state, on board a vessel navigating a river, bay, slough, lake, or canal, or lying therein, in the prosecution of its

voyage, or on a railroad train, or car, motor vehicle, common carrier transporting passengers, or on an aircraft prosecuting its trip, the accused may be tried in any county through, on, or over which the vessel, train, car, motor vehicle, common carrier, or aircraft passes in the course of its voyage or trip, or in the county in which the voyage or trip terminates.

Source: Laws 1957, c. 103, § 3, p. 364.

Venue confirmed in county where auto trip originated and ended, during which sexual assault occurred. State v. Tiff, 199 Neb. 519, 260 N.W.2d 296 (1977).

29-1301.03 Venue; jurisdiction in two or more counties; effect of conviction or acquittal.

Where an offense is within the jurisdiction of two or more counties, a conviction or acquittal thereof in one county is a bar to a prosecution or indictment therefor in another.

Source: Laws 1957, c. 103, § 4, p. 364.

29-1302 Change of venue; how effected; costs; payment.

When the venue is changed, the clerk of the court in which the indictment was found shall make a certified transcript of all the proceedings in the case, which, together with the original indictment, he shall transmit to the clerk of the court to which the venue is changed, and the trial shall be conducted in all respects as if the offender had been indicted in the county to which the venue has been changed. All costs, fees, charges and expenses accruing from a change of venue, together with all costs, fees, charges and expenses made or incurred in the trial of, or in keeping, guarding and maintaining the accused shall be paid by the county in which the indictment was found, and the clerk of the trial court shall make a statement of such costs, fees, charges and expenses, and certify and transmit the same to the clerk of the district court where the indictment was found, to be by him entered upon his docket, and collected and paid as if a change of venue had not been had.

Source: G.S.1873, c. 58, § 456, p. 824; Laws 1883, c. 84, § 1, p. 329; Laws 1887, c. 109, § 1, p. 667; R.S.1913, § 9025; C.S.1922, § 10049; C.S.1929, § 29-1302; R.S.1943, § 29-1302; Laws 1978, LB 562, § 2.

Cross References

Prisoners, cost of maintenance, see section 47-119.01.

Counties are obligated to pay costs and expenses of prosecutions, including fees and expenses of attorneys appointed to represent indigent defendants in criminal cases, and there is no requirement that a property tax be levied therefor. Kovarik v. County of Banner, 192 Neb. 816, 224 N.W.2d 761 (1975).

Transcript of proceedings is transmitted to adjoining county upon change of venue. State v. Furstenau, 167 Neb. 439, 93 N.W.2d 384 (1958).

County from which change of venue is taken is not liable for fees of jurors of regular panel not sitting on trial of case. Dawes County v. Sioux County, 77 Neb. 567, 110 N.W. 378 (1906).

Filing of transcript and original indictment of information in office of clerk of court to which change is granted is jurisdictional. Barr v. State, 45 Neb. 458, 63 N.W. 856 (1895).

Compensation for assistant to county attorney is to be paid by county where crime was committed. Fuller v. Madison County, 33 Neb. 422, 50 N.W. 255 (1891).

29-1303 Change of venue; transfer of prisoner.

When a court has ordered a change of venue, a warrant shall be issued by the clerk, directed to the sheriff, commanding him safely to convey the prisoner to the jail of the county where he is to be tried, there to be safely kept by the jailer thereof until discharged by due course of law.

Source: G.S.1873, c. 58, § 457, p. 824; R.S.1913, § 9026; C.S.1922, § 10050; C.S.1929, § 29-1303.

Upon change of venue, transfer of accused to jail of county where he is to be tried is provided. State v. Furstenau, 167 Neb. 439, 93 N.W.2d 384 (1958).

29-1304 Change of venue; witnesses recognized to appear.

When a change of venue is allowed, the court shall recognize the witnesses on the part of the state to appear before the court in which the prisoner is to be tried.

Source: G.S.1873, c. 58, § 458, p. 824; R.S.1913, § 9027; C.S.1922, § 10051; C.S.1929, § 29-1304.

Upon change of venue, recognizance may be required of witnesses to appear before the court in which the accused is to be tried. State v. Furstenau, 167 Neb. 439, 93 N.W.2d 384 (1958).

Court cannot create indebtedness against county by appointing bailiff to detain witness. Shaw v. Holt County, 88 Neb. 348, 129 N.W. 552 (1911).

29-1305 Venue; crime committed on county line.

When an offense shall be committed on a county line, the trial may be in either county divided by such line; and where any offense shall be committed against the person of another, and the person committing the offense shall be in one county, and the person receiving the injury shall be in another county, the trial may be had in either of such counties.

Source: G.S.1873, c. 58, § 424, p. 819; R.S.1913, § 9028; C.S.1922, § 10052; C.S.1929, § 29-1305.

Where an offense is committed on a county line, prosecution may be in either of the counties divided by such line. State v. Lindsey, 193 Neb. 442, 227 N.W.2d 599 (1975).

29-1306 Venue; death occurring in another county or state.

If any person shall give any mortal blow or administer any poison to another, in any county within this state, with intent to kill, and the party so stricken or poisoned thereof shall die in any other county or state, the person giving such mortal blow or administering such poison may be tried and convicted of murder or manslaughter, as the case may be, in the county where such mortal blow was given or poison administered.

Source: G.S.1873, c. 58, § 545, p. 844; R.S.1913, § 9029; C.S.1922, § 10053; C.S.1929, § 29-1306.

Venue of a homicide may be established by circumstantial evidence. Hawkins v. State, 60 Neb. 380, 83 N.W. 198 (1900).

29-1307 Venue; receiver of stolen property.

Whenever any person shall be liable to prosecution as the receiver of any personal property that shall have been feloniously stolen, taken or embezzled, he may be indicted in any county where he received or had such property, notwithstanding the theft was committed in another county.

Source: G.S.1873, c. 58, § 423, p. 819; R.S.1913, § 9030; C.S.1922, § 10054; C.S.1929, § 29-1307.

If person has stolen property in the county, proof of act of receiving is not necessary to establish proper venue. State v. McKee, 183 Neb. 754, 163 N.W.2d 434 (1969).

This section does not authorize prosecution for burglary in another county than where the crime was committed. State v. Furstenau, 167 Neb. 439, 93 N.W.2d 384 (1958).

ARTICLE 14
GRAND JURY

Cross References

Constitutional provisions, see Article 1, section 10, Constitution of Nebraska.
County attorney, duties, see section 23-1208.
Formation of, procedures, see section 25-1629 et seq.
Jails, examination of, see section 47-108 et seq.
Rules of Evidence, exclusion, see section 27-1101.
School lands, duties, see section 72-247.
Wiretaps, duties, see section 86-2,111.
Witness fees, see section 33-139.

Section
29-1401. Grand jury; when called; death while being apprehended or in custody; procedures.
29-1401.01. Repealed. Laws 2002, LB 935, § 19.
29-1401.02. Grand jury by petition; procedure; failure to call; filing.
29-1402. Grand jury; convening; no limitation on right to prosecute by information.
29-1403. Foreman; appointment.
29-1404. Foreman; oath or affirmation; form.
29-1405. Jurors; oath or affirmation; form.
29-1406. Judge; charge to jury; instruction as to powers and duties.
29-1407. Grand jury; duties.
29-1407.01. Grand jury proceedings; reporter; duties; transcript; statements; availability.
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29-1401 Grand jury; when called; death while being apprehended or in custody; procedures.

(1) The district courts are hereby vested with power to call grand juries.

(2) A grand jury may be called and summoned in the manner provided by law on such day of a regular term of the district court in each year in each county of the state as the district court may direct and at such other times and upon such notice as the district court may deem necessary.

(3) District courts shall call a grand jury in each case that a petition meets the requirements of section 32-628, includes a recital as to the reason for requesting the convening of the grand jury and a specific reference to the statute or statutes which are alleged to have been violated, and is signed not more than

ninety days prior to the date of filing under section 29-1401.02 by not less than ten percent of the registered voters of the county who cast votes for the office of Governor in such county at the most recent general election held for such office.

(4) District courts shall call a grand jury in each case upon certification by the county coroner or coroner's physician that a person has died while being apprehended by or while in the custody of a law enforcement officer or detention personnel. In each case subject to this subsection:

(a) Law enforcement personnel from the jurisdiction in which the death occurred shall immediately secure the scene, preserve all evidence, and investigate the matter as in any other homicide. The case shall be treated as an open, ongoing matter until all evidence, reports, and other relevant material which has been assembled are transferred to the special prosecutor appointed pursuant to subdivision (b) of this subsection;

(b) Except as provided in subdivision (d) of this subsection, as soon as practicable, the court shall appoint a special prosecutor who has had at least five years experience in criminal litigation, including felony litigation. The special prosecutor shall select a team of three peace officers, trained to investigate homicides, from jurisdictions outside the jurisdiction where the death occurred. The team shall examine all evidence concerning the cause of death and present the findings of its investigation to the special prosecutor;

(c) A grand jury shall be impaneled within thirty days after the certification by the county coroner or coroner's physician, unless the court extends such time period upon the showing of a compelling reason; and

(d) A special prosecutor need not be appointed in those cases in which the death has been certified by a licensed practicing physician to be from natural causes and that finding is presented to a grand jury.

Source: Laws 1909, c. 171, § 1, p. 591; R.S.1913, § 9031; Laws 1917, c. 148, § 1, p. 333; C.S.1922, § 10055; C.S.1929, § 29-1401; Laws 1939, c. 18, § 19, p. 111; C.S.Supp.,1941, § 29-1401; R.S.1943, § 29-1401; Laws 1959, c. 118, § 1, p. 449; Laws 1969, c. 237, § 1, p. 874; Laws 1988, LB 676, § 4; Laws 1999, LB 72, § 2; Laws 2002, LB 935, § 2.

The statutory scheme which requires convening a grand jury where a person has died while being apprehended by or while in custody of a law enforcement officer removes the county attorney from the process, and the county attorney has no access to grand jury records. The failure of the grand jury to return an indictment does not prevent the county attorney from proceeding independently. It is not necessary to convene a second grand jury, but, rather, the county attorney may proceed by filing a complaint or information in the district court. In re Grand Jury of Douglas Cty., 263 Neb. 981, 644 N.W.2d 858 (2002).

District court may order grand jury hereunder. Pinn v. State, 107 Neb. 417, 186 N.W. 544 (1922).

Under prior law, grand jury was required to be summoned at first term every year unless otherwise directed in writing by court or judge thereof. Krause v. State, 88 Neb. 473, 129 N.W. 1020 (1911).

29-1401.01 Repealed. Laws 2002, LB 935, § 19.

29-1401.02 Grand jury by petition; procedure; failure to call; filing.

The procedure for calling a grand jury by petition of the registered voters of the county shall be as follows:

(1) The petitions shall be filed in the office of the clerk of the district court, comply with the requirements in section 29-1401, and be filed without a filing fee;

(2) Upon receipt of such petitions, the clerk of the district court shall forthwith certify the petitions so filed to the county clerk or election commis-

sioner in the county in which the signers of such petitions are registered to vote and shall request that the signatures on such petitions be validated according to the list of registered voters;

(3) The county clerk or election commissioner shall, within thirty days after receipt of such petitions, determine the number of valid signatures appearing on such petitions and certify the findings along with the total vote cast for Governor at the most recent election for such office in such county to the presiding judge of the district court in which the petitions were filed;

(4) The presiding judge of the district court shall, upon receipt of the certificate from the county clerk or election commissioner, examine the petitions and within fifteen days after the receipt thereof shall determine: (a) Whether the requisite number of valid signatures appear on such petitions; and (b) whether the formal requirements as to the form of the petition have been satisfied;

(5) The determination of sufficiency of the petitions by the presiding judge shall be based solely upon the certification of valid signatures by the county clerk or election commissioner and upon the presiding judge's personal examination of the form of the petitions. No additional evidence shall be considered by the presiding judge in making the determination of sufficiency and under no circumstances shall any petitioner be required to testify or otherwise present evidence relating to allegations contained in the petitions;

(6) Upon a determination that the requisite number of valid signatures appeared on the petitions and that the petitions otherwise were sufficient as to form, the presiding judge shall call a grand jury forthwith;

(7) If the presiding judge of the district court fails to make a determination as to the sufficiency of the petitions and fails to call a grand jury within fifteen days after the date of delivery of the petitions to the presiding judge, the clerk of the district court shall immediately call a grand jury pursuant to law, notwithstanding the fact that the presiding judge of the district court failed to determine sufficiency of the petitions and did not call the grand jury; and

(8) If the presiding judge or clerk of the district court fails to call a grand jury, the petitioners may file an immediate request with the Chief Justice of the Supreme Court, or in his or her absence, with any judge thereof, and request that the Chief Justice or judge review the petitions and certifications and call a grand jury. If the Chief Justice or judge of the Supreme Court determines sufficiency of the petitions according to law, the Chief Justice or judge shall order the clerk of the district court to call a grand jury.

Source: Laws 1969, c. 237, § 3, p. 876; Laws 2002, LB 935, § 3.

29-1402 Grand jury; convening; no limitation on right to prosecute by information.

The convening of a grand jury shall in no way limit the right of prosecution on information or complaint during the time the grand jury is in session.

Source: G.S.1873, c. 58, § 393, p. 814; R.S.1913, § 9032; C.S.1922, § 10056; C.S.1929, § 29-1402; R.S.1943, § 29-1402; Laws 1959, c. 118, § 3, p. 450.

This section does not allow the district court to enjoin a county attorney from proceeding with a separate preliminary hearing during the time that the grand jury is proceeding on the same matter. In re Grand Jury of Douglas Cty., 263 Neb. 981, 644 N.W.2d 858 (2002).

29-1403 Foreman; appointment.

When the grand jury shall be impaneled the court shall appoint one of the number foreman.

Source: G.S.1873, c. 58, § 394, p. 814; R.S.1913, § 9033; C.S.1922, § 10057; C.S.1929, § 29-1403.

29-1404 Foreman; oath or affirmation; form.

When the foreman shall be appointed, an oath or affirmation shall be administered to him in the following words: Saving yourself and fellow jurors, you, as foreman of this grand inquest, shall diligently inquire and true presentment make, of all such matters and things as shall be given you in charge or otherwise come to your knowledge, touching the present service. The counsel of the state, your own and your fellows, you shall keep secret, unless called on in a court of justice to make disclosures. You shall present no person through malice, hatred or ill will, nor shall you leave any person unpresented through fear, favor or affection, or for any reward or hope thereof; but in all your presentments you shall present the truth, the whole truth, and nothing but the truth, according to the best of your skill and understanding.

Source: G.S.1873, c. 58, § 395, p. 814; R.S.1913, § 9034; C.S.1922, § 10058; C.S.1929, § 29-1404.

Oath construed. Krause v. State, 88 Neb. 473, 129 N.W. 1020 (1911).

29-1405 Jurors; oath or affirmation; form.

Thereupon the following oath or affirmation shall be administered to the other grand jurors: The same oath which A. B., your foreman, hath now taken before you on his part, you, and each of you, shall well and truly observe and keep on your respective parts.

Source: G.S.1873, c. 58, § 396, p. 814; R.S.1913, § 9035; C.S.1922, § 10059; C.S.1929, § 29-1405.

29-1406 Judge; charge to jury; instruction as to powers and duties.

(1) The grand jury, after being sworn, shall be charged as to their duty by the judge, who shall call their attention particularly to the obligation of secrecy which their oaths impose, and to such offenses as he or she is by law required to specially charge.

(2) Upon impanelment of each grand jury, the court shall give to such grand jury adequate and reasonable written notice of and shall assure that the grand jury reasonably understands the nature of:

(a) Its duty to inquire into offenses against the criminal laws of the State of Nebraska alleged to have been committed;

(b) Its right to call and interrogate witnesses;

(c) Its right to request the production of documents or other evidence;

(d) The subject matter of the investigation and the criminal statutes or other statutes involved, if these are known at the time the grand jury is impaneled;

(e) The duty of the grand jury by an affirmative vote of twelve or more members of the grand jury to determine, based on the evidence presented

before it, whether or not there is probable cause for finding indictments and to determine the violations to be included in any such indictments; and

(f) The requirement that the grand jury may not return an indictment in cases of perjury unless at least two witnesses to the same fact present evidence establishing probable cause to return such an indictment.

Source: G.S.1873, c. 58, § 397, p. 814; R.S.1913, § 9036; C.S.1922, § 10060; C.S.1929, § 29-1406; R.S.1943, § 29-1406; Laws 1979, LB 524, § 1.

Wide discretion is allowed judge in charge, which appellate court will not control. Clair v. State, 40 Neb. 534, 59 N.W. 118 (1894).

29-1407 Grand jury; duties.

After the charge of the court, the grand jury shall retire with the officer appointed to attend to them, and shall proceed to inquire of and present all offenses whatever committed within the limits of the county in and for which they were impaneled and sworn or affirmed.

Source: G.S.1873, c. 58, § 398, p. 814; R.S.1913, § 9037; C.S.1922, § 10061; C.S.1929, § 29-1407; Laws 1939, c. 18, § 20, p. 111; C.S.Supp.,1941, § 29-1407; R.S.1943, § 29-1407; Laws 1959, c. 118, § 4, p. 450; Laws 1979, LB 524, § 2.

''All offenses'' embrace misdemeanors. Nelson v. State, 115 Neb. 26, 211 N.W. 175 (1926).

29-1407.01 Grand jury proceedings; reporter; duties; transcript; statements; availability.

(1) A certified or authorized reporter shall be present at all grand jury sessions. All grand jury proceedings and testimony from commencement to adjournment shall be reported. The reporter's notes and any transcripts which may be prepared shall be preserved, sealed, and filed with the court. No release or destruction of the notes or transcripts shall occur without prior court approval.

(2) Upon application by the prosecutor, or by any witness after notice to the prosecutor, the court, for good cause, may enter an order to furnish to that witness a transcript of his or her own grand jury testimony, or minutes, reports, or exhibits relating thereto.

(3) Any witness summoned to testify before a grand jury, or an attorney for such witness with the witness's written approval, shall be entitled, prior to testifying, to examine and copy at the witness's expense any statement in the possession of the prosecuting attorney or the grand jury which such witness has made that relates to the subject matter under inquiry by the grand jury. If a witness is proceeding in forma pauperis, he or she shall be furnished, upon request, a copy of such transcript and shall not pay a fee.

Source: Laws 1979, LB 524, § 3.

Court approval for the release of grand jury proceedings when there has been a ''no true bill'' is limited by statute to witnesses and to other courts. In re Grand Jury of Lancaster Cty., 269 Neb. 436, 693 N.W.2d 285 (2005).

29-1408 County attorney; powers; special prosecutor; when appointed.

The county attorney or the assistant county attorney shall be allowed at all times to appear before the grand jury for the purpose of giving information

relative to any matter cognizable by such jury, or giving such jury advice upon any legal matter the jury may require, and such county attorney or assistant county attorney may interrogate witnesses before the jury when the grand jurors, the county attorney, or the assistant county attorney shall deem it necessary; except that no person shall be permitted to remain in the room with such jury while the grand jurors are expressing their views or giving their votes on any matter before the jury; *Provided*, whenever it shall be made to appear to the judge or judges of the district court that investigation should be made regarding official acts of county officials, the foreman shall forthwith notify the Governor of the state, who shall forthwith appoint a special prosecutor to appear and act in the place of the county attorney or the assistant county attorney in all matters relating thereto before such grand jury in like manner as though county attorney; and the county attorney or the assistant county attorney shall be excluded from the presence of the grand jury during all proceedings which relate to the subject matter for which the special prosecutor was appointed; except that nothing in this section shall prevent the county attorney or assistant county attorney from appearing as a witness before a grand jury for which a special prosecutor has been appointed.

Source: G.S.1873, c. 58, § 399, p. 814; R.S.1913, § 9038; C.S.1922, § 10062; C.S.1929, § 29-1408; Laws 1939, c. 18, § 21, p. 112; C.S.Supp.,1941, § 29-1408; R.S.1943, § 29-1408; Laws 1980, LB 635, § 1.

29-1409 Subpoenas; issuance; advisement of rights; form; effect.

(1) Whenever required by the grand jury, or the prosecuting attorney, the clerk of the court in which such jury is impaneled shall issue subpoenas and other process to bring witnesses to testify before such grand jury.

(2) At the option of the prosecuting attorney, a grand jury subpoena may contain an advisement of rights. If the prosecuting attorney determines that an advisement is necessary, the grand jury subpoena shall contain the following prominently displayed on the front of the subpoena:

NOTICE

(a) You have the right to retain an attorney to represent you and to advise you regarding your grand jury appearance.

(b) Anything you say to the grand jury may be used against you in a court of law.

(c) You have the right to refuse to answer questions if you feel the answers would tend to incriminate you or to implicate you in any illegal activity.

(d) If you cannot afford or obtain an attorney, you may consult with the public defender's office, or request the court to appoint an attorney to represent you.

(3) Any witness who is not advised of his or her rights pursuant to subsection (2) of this section shall not be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he or she testifies or any evidence he or she produces, nor shall any such testimony or evidence be used as evidence in any criminal proceeding, except for perjury, against him or her in any court.

Source: G.S.1873, c. 58, § 400, p. 815; R.S.1913, § 9039; C.S.1922, § 10063; C.S.1929, § 29-1409; R.S.1943, § 29-1409; Laws 1979, LB 524, § 4.

29-1410 Witness; oath or affirmation; administration.

Before any witness shall be examined by the grand jury, an oath or affirmation shall be administered to him by the clerk truly to testify of such matters and things as may be lawfully inquired of before the jury, a certificate whereof the clerk shall make and deliver to such witness, who shall present the same to the foreman of the grand jury when he is admitted for examination.

Source: G.S.1873, c. 58, § 401, p. 815; R.S.1913, § 9040; C.S.1922, § 10064; C.S.1929, § 29-1410.

Oath of secrecy of grand jury deliberations is not prohibited. State v. Abboud, 181 Neb. 84, 147 N.W.2d 152 (1966).

29-1410.01 Request to testify or appear; denial; how treated.

Any person may approach the prosecuting attorney or the grand jury and request to testify or retestify in an inquiry before a grand jury or to appear before a grand jury. The prosecuting attorney or the grand jury shall keep a record of all denials of such requests to that prosecuting attorney or grand jury, including the reasons for not allowing such person to testify or appear. If the person making such request is dissatisfied with the decision of the prosecuting attorney or the grand jury, such person may petition the court for hearing on the denial by the prosecuting attorney or the grand jury. If the court grants the hearing, then the court may permit the person to testify or appear before the grand jury if the court finds that such testimony or appearance would serve the interests of justice.

Source: Laws 1979, LB 524, § 5.

29-1411 Witness; privilege against self-incrimination; immunity; right to counsel; refusal to answer; procedure.

(1) In any proceeding before the grand jury, if the prosecuting attorney has written notice in advance of the appearance of a witness that such witness intends to exercise his or her privilege against self-incrimination, such witness shall not be compelled to appear before the grand jury unless a grant of immunity has been obtained.

(2) Any witness subpoenaed to appear and testify before a grand jury or to produce books, papers, documents, or other objects before such grand jury shall be entitled to assistance of counsel during any time that such witness is being questioned in the presence of such grand jury, and counsel may be present in the grand jury room with his or her client during such questioning. Counsel for the witness shall be permitted only to counsel with the witness and shall not make objections, arguments, or address the grand jury. Such counsel may be retained by the witness or may, for any person financially unable to obtain adequate assistance, be appointed in the same manner as if that person were eligible for appointed counsel. An attorney present in the grand jury room shall take an oath of secrecy. If the court, at an in camera hearing, determines that counsel was disruptive, then the court may order counsel to remain outside the courtroom when advising his or her client. No attorney shall be permitted to provide counsel in the grand jury room to more than one witness in the same criminal investigation, except with the permission of the grand jury.

(3) If any witness appearing before a grand jury shall refuse to answer any interrogatories during the course of his or her examination, the fact shall be communicated to the court in writing, in which the question refused to be

answered shall be stated, together with the excuse for the refusal, if any be given by the person interrogated. The court shall thereupon determine whether the witness is bound to answer or not, and the grand jury shall be immediately informed of the decision.

Source: G.S.1873, c. 58, § 402, p. 815; R.S.1913, § 9041; C.S.1922, § 10065; C.S.1929, § 29-1411; R.S.1943, § 29-1411; Laws 1979, LB 524, § 6.

29-1412 Witness; refusal to testify or provide other information; contempt; right to counsel; penalty; hearing; confinement; limitation.

(1)(a) Whenever a witness in any proceeding before any grand jury refuses, without just cause shown, to comply with an order of the court to testify or provide other information, including any book, paper, document, record, recording, or other material, the prosecuting attorney may submit an application to the court for an order directing the witness to show why the witness should not be held in contempt. After submission of such application and a hearing at which the witness may be represented by counsel, the court may, if the court finds that such refusal was without just cause, hold the witness in contempt and order the witness to be confined or to pay a fine of not to exceed five hundred dollars. Such confinement shall continue until such time as the witness is willing to give such testimony or provide such information, except that the court may release the witness from confinement if the court determines that further confinement will not cause the witness to give such testimony or provide such information. No period of such confinement shall exceed the term of the grand jury, including extensions, before which such refusal to comply with the court order occurred, and in no event shall such confinement exceed six months.

(b) If a witness has been confined in accordance with subsection (1)(a) of this section, he or she may, upon petition filed with the court, request a hearing to be held within ten days to review the contempt order at which hearing he or she shall have the right to be represented by counsel. The court, at the hearing, may rescind, modify, or affirm the order.

(c) In any proceeding conducted under this section, counsel may be appointed for a person financially unable to obtain adequate assistance.

(2) No person who has been confined or fined by a court for refusal to testify or provide other information concerning any criminal incident or incidents in any proceeding before a grand jury impaneled before any district court shall again be confined or fined for a subsequent refusal to testify or provide other information concerning the same criminal incident or incidents before any grand jury.

Source: G.S.1873, c. 58, § 403, p. 815; R.S.1913, § 9042; C.S.1922, § 10066; C.S.1929, § 29-1412; R.S.1943, § 29-1412; Laws 1979, LB 524, § 7.

29-1412.01 Grand jury; subpoena to testify or produce documents; not required to comply; when.

No person subpoenaed to testify or to produce books, papers, documents, or other objects in any proceeding before any grand jury shall be required to testify or to produce such objects, or be confined as provided in section 29-1412, for his or her failure to so testify or produce such object if, upon filing

a motion and, upon an evidentiary hearing before the court which issued such subpoena or a court having jurisdiction under this section, the court finds that:

(1) A primary purpose or effect of requiring such person to so testify or to produce such objects before the grand jury is or will be to secure testimony for trial for which the defendant has already been charged by information, indictment, or criminal complaint;

(2) Compliance with a subpoena would be unreasonable or oppressive;

(3) A primary purpose of the issuance of the subpoena is to harass the witness;

(4) The witness has already been confined or fined under this section for his or her refusal to testify before any grand jury investigating the same transaction, set of transactions, event, or events; or

(5) The witness has not been advised of his or her rights as specified in subsection (2) of section 29-1409.

Source: Laws 1979, LB 524, § 8.

29-1413 Vacancy; how filled.

In case of the sickness, death, discharge or nonattendance of any grand juror, after the grand jury shall be affirmed or sworn, it shall be lawful for the court, at its discretion to cause another to be sworn or affirmed in his stead.

Source: G.S.1873, c. 58, § 404, p. 815; R.S.1913, § 9043; C.S.1922, § 10067; C.S.1929, § 29-1413.

29-1414 Disclosure of indictment; when prohibited.

No grand juror or officer of the court shall disclose that an indictment has been found against any person not in custody or under bail, except by the issuing of process, until the indictment is filed and the case docketed.

Source: G.S.1873, c. 58, § 406, p. 815; R.S.1913, § 9044; C.S.1922, § 10068; C.S.1929, § 29-1414.

29-1415 Disclosure of juror's vote or opinion; prohibited.

No grand juror shall be allowed to state or testify in any court in what manner he or other members of the grand jury voted on any question before them, or what opinion was expressed by any juror in relation to such question.

Source: G.S.1873, c. 58, § 407, p. 815; R.S.1913, § 9045; C.S.1922, § 10069; C.S.1929, § 29-1415.

29-1416 Indictment; how found; endorsement; no true bill; effect.

(1) At least twelve of the grand jurors must concur in the finding of an indictment; when so found the foreman shall endorse on such indictment the words A true bill, and subscribe his or her name thereto as foreman.

(2) Once a grand jury has returned a no true bill based upon a transaction, set of transactions, event, or events, a grand jury inquiry into the same transaction or events shall not be initiated unless the court finds, upon a proper

showing by the prosecuting attorney, that the prosecuting attorney has discovered additional evidence relevant to such inquiry.

Source: G.S.1873, c. 58, § 408, p. 816; R.S.1913, § 9046; C.S.1922, § 10070; C.S.1929, § 29-1416; R.S.1943, § 29-1416; Laws 1979, LB 524, § 9.

Indictment must be endorsed and endorsement subscribed by foreman. Goldsberry v. State, 92 Neb. 211, 137 N.W. 1116 (1912).

29-1417 County jail; examination; report.

The grand jury may at each term of the court at which they may be in attendance, visit the county jail, and examine and report its condition, as required by law.

Source: G.S.1873, c. 58, § 409, p. 816; R.S.1913, § 9047; C.S.1922, § 10071; C.S.1929, § 29-1417; R.S.1943, § 29-1417; Laws 1959, c. 118, § 5, p. 451.

Cross References

Jails, duty of grand juries and county boards to inspect, see section 47-108 et seq.

29-1418 Indictments; presentation; docketing; finding of probable cause; dismissal; motions.

(1) Indictments returned by a grand jury shall be presented by their foreman to the court, and shall be filed with the clerk, who shall endorse thereon the day of their filing, and shall enter each case upon the appearance docket, and also upon the trial docket of the term, as soon as the parties indicted have been arrested.

(2) Any grand jury may indict a person for an offense when the evidence before such grand jury provides probable cause to believe that such person committed such offense.

(3) The district court before which the indicted defendant is to be tried shall dismiss any indictment of the grand jury if such district court finds, upon the filing of a motion by the indicted defendant based upon the grand jury record without argument or further evidence, that the grand jury finding of probable cause is not supported by the record.

(4) Any other motions testing the validity of the indictment may be heard by the court based only on the record and argument of counsel, unless there is cause shown for the need for additional evidence.

Source: G.S.1873, c. 58, § 410, p. 816; R.S.1913, § 9048; C.S.1922, § 10072; C.S.1929, § 29-1418; R.S.1943, § 29-1418; Laws 1979, LB 524, § 10.

29-1419 Trial of indictments; recognizances; undisposed indictments; trial by special prosecutor; when.

The court shall assign such indictments for trial at as early a time in such term as is practicable. And the recognizances of parties and witnesses shall, in all such causes, be taken for their appearance at the time so assigned; and in case of the continuance of any cause to the next term of court, such recognizances shall be for the appearance of the parties and witnesses on such day thereof as the court may direct. At the end of the term the clerk shall deliver the

indictments undisposed of to the prosecuting attorney for safekeeping; *Provided, however*, that where a special prosecutor shall have been appointed by the Governor of the state for the assistance of such grand jury, then the trials of indictments growing out of matters concerning which he has been appointed shall be conducted by such special prosecutor so appointed in all respects as though such special prosecutor were such county attorney; and all provisions relating to the acts of county attorneys shall be deemed to apply to such special prosecutor.

Source: G.S.1873, c. 58, § 411, p. 816; R.S.1913, § 9049; C.S.1922, § 10073; C.S.1929, § 29-1419; Laws 1939, c. 18, § 22, p. 112; C.S.Supp.,1941, § 29-1419.

Trial of all indictments shall be had in district court for county in which same were found, and includes indictments for misdemeanors. Nelson v. State, 115 Neb. 26, 211 N.W. 175 (1926).

29-1420 Report; made public; when; transfer of evidence.

(1) The report of the grand jury shall not be made public except when the report is filed, including indictments, or when required by statute or except that all of the report or a portion thereof may be released if the judge of the district court finds that such a release will exonerate a person or persons who have requested such a release.

(2) A district judge under whose direction a grand jury has been impaneled may, upon good cause shown, transfer to a court of competent jurisdiction in another county or jurisdiction any evidence gathered by the grand jury that offenses have been committed in such other county or jurisdiction.

Source: Laws 1979, LB 524, § 11; Laws 1990, LB 1246, § 11.

Court approval for the release of grand jury proceedings when there has been a ''no true bill'' is limited by statute to witnesses and to other courts. In re Grand Jury of Lancaster Cty., 269 Neb. 436, 693 N.W.2d 285 (2005).

Grand jury's report was not authorized for publication and was ordered expunged from the records of the district court. In re Grand Jury of Douglas Cty., 244 Neb. 798, 509 N.W.2d 212 (1993).

ARTICLE 15

INDICTMENTS

Section

29-1501. Indictment; when sufficient; irregularities.
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29-1504. Offenses other than forgery; instruments; how described.
29-1505. Counterfeiting; instruments or means; how described.
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29-1510. Election cases; allegation of legality; sufficiency.
29-1511. Perjury and subornation; allegations; sufficiency.
29-1512. Manslaughter; allegations; sufficiency.

29-1501 Indictment; when sufficient; irregularities.

No indictment shall be deemed invalid, nor shall the trial, judgment or other proceedings be stayed, arrested or in any manner affected (1) by the omission of the words with force and arms, or any words of similar import; (2) by omitting to charge any offense to have been contrary to a statute or statutes; or (3) for the omission of the words as appears by the record nor for omitting to

state the time at which the offense was committed in any case where time is not of the essence of the offense; nor for stating the time imperfectly; nor for want of a statement of the value or price of any matter or thing, or the amount of damages, or injury in any case where the value or price, or the amount of damages or injury is not of the essence of the offense; nor for the want of an allegation of the time or place of any material fact, when the time and place have once been stated in the indictment; nor that dates and numbers are represented by figures; nor for an omission to allege that the grand jurors were impaneled, sworn or charged; nor for any surplusage or repugnant allegation when there is sufficient matter alleged to indicate the crime or person charged; nor for want of the averment of any matter not necessary to be proved; nor for any other defect or imperfection which does not tend to the prejudice of the substantial rights of the defendant upon the merits.

Source: G.S.1873, c. 58, § 412, p. 816; R.S.1913, § 9050; C.S.1922, § 10074; C.S.1929, § 29-1501.

Cross References

Underlying offense committed because of a person's status or association with a person of a certain status, inclusion of allegations, see section 28-112.

1. Sufficiency of indictment
2. Irregularities
3. Miscellaneous

1. Sufficiency of indictment

Neither the value of the property stolen nor the time at which it was appropriated are essential elements of the crime of theft. State v. Schaaf, 234 Neb. 144, 449 N.W.2d 762 (1989).

An information charging an attempt to commit ''robbery'' is sufficient though it omits ''with intent to steal'', and allowing amendment to add those words during trial is not prejudicial error. State v. Last, 212 Neb. 596, 324 N.W.2d 402 (1982).

Permitting amendment as to date of prior felony alleged in information in habitual criminal charge was not error. State v. Harig, 192 Neb. 49, 218 N.W.2d 884 (1974).

An amendment adding an omitted allegation of a substantive element of the offense sought to be charged does not change the offense and may be permitted before verdict or findings in the discretion of the district judge. State v. Gascoigen, 191 Neb. 15, 213 N.W.2d 452 (1973).

There was no defect or imperfection in indictment which prejudiced the substantial rights of the defendant. State v. Adams, 181 Neb. 75, 147 N.W.2d 144 (1966).

In criminal prosecutions, a variance between an instrument alleged in the information and the evidence offered in proof thereof is not fatal, unless material to the merits of the case or prejudicial to defendant. Balis v. State, 137 Neb. 835, 291 N.W. 477 (1940).

In a criminal prosecution for picketing, failure to allege the essential elements of the statutory crime prejudices the substantial rights of the defendant. Dutiel v. State, 135 Neb. 811, 284 N.W. 321 (1939).

In prosecution for stealing cattle, it is not necessary to allege or prove the value of the property. Buthman v. State, 131 Neb. 385, 268 N.W. 99 (1936).

Immaterial variance between purported maker's name as it appeared in information and in the forged instrument received in evidence is not prejudicial, especially where defendant testified that it was executed in his presence. Flannigan v. State, 127 Neb. 640, 256 N.W. 321 (1934).

Information charging murder in first degree, stating name and authority of qualified informer, setting out elements of offense in simple, concise and direct language following statute and form approved by Supreme Court was sufficient. Hansen v. State, 121 Neb. 169, 236 N.W. 329 (1931).

Inaccurate statement in information of exact date of embezzlement does not affect proceedings. Gorton v. State, 117 Neb. 556, 221 N.W. 689 (1928).

Information must contain distinct allegation of each essential element of crime as defined by law creating it; must be in language of statute or its equivalent. Knothe v. State, 115 Neb. 119, 211 N.W. 619 (1926).

Information alleging all facts or elements necessary to constitute offense described in statute and intended to be punished is sufficient. McKenzie v. State, 113 Neb. 576, 204 N.W. 60 (1925).

In an indictment, causal connection between false pretenses and obtaining of note must be positively and explicitly stated. Anthony v. State, 109 Neb. 608, 192 N.W. 206 (1923).

It is unnecessary to specify portion of body on which wound is inflicted; words ''upon the body'' are sufficient. Morris v. State, 109 Neb. 412, 191 N.W. 717 (1922).

Where crime may be committed by several methods, indictment may charge commission by all, provided they are not inconsistent or repugnant. Brown v. State, 107 Neb. 120, 185 N.W. 344 (1921).

Where statute states elements of crime, it is sufficient to describe such crime in language of statute. Philbrick v. State, 105 Neb. 120, 179 N.W. 398 (1920); Goff v. State, 89 Neb. 287, 131 N.W. 213 (1911).

Information fairly and reasonably charging elements of crime of murder is sufficient. Blazka v. State, 105 Neb. 13, 178 N.W. 832 (1920).

Where time and place are stated in first count, allegations in subsequent counts that offense was then and there committed, were sufficient. Grier v. State, 81 Neb. 129, 115 N.W. 551 (1908).

Indictment must charge explicitly all essentials of the offense. Hase v. State, 74 Neb. 493, 105 N.W. 253 (1905).

Word ''feloniously'' serves no practical purposes where all essential elements of felony are charged. Richards v. State, 65 Neb. 808, 91 N.W. 878 (1902).

In an indictment or information for larceny, description of property should enable court to determine that the property is the subject of larceny, and advise accused with reasonable

certainty of the property meant. Barnes v. State, 40 Neb. 545, 59 N.W. 125 (1894).

Several offenses of same kind for misdemeanor may be joined. Burrell v. State, 25 Neb. 581, 41 N.W. 399 (1889).

Indictment for murder must aver purpose to kill. Schaffer v. State, 22 Neb. 557, 35 N.W. 384 (1887).

It is not necessary that indictment use exact words of statute; words equivalent in meaning are sufficient. Kirk v. Bowling, 20 Neb. 260, 29 N.W. 928 (1886); Whitman v. State, 17 Neb. 224, 22 N.W. 459 (1885).

Indictment was not objectionable for duplicity. Denman v. State, 15 Neb. 138, 17 N.W. 347 (1883).

Indictment may contain count for murder in first degree, with one in second degree, and for manslaughter. Baldwin v. State, 12 Neb. 61, 10 N.W. 463 (1881).

Where information is in two counts, charging shooting with intent to kill and with intent to wound, state will not be compelled to elect. Candy v. State, 8 Neb. 482, 1 N.W. 454 (1879).

Information is not bad by reason of omission of formal conclusion. Smith v. State, 4 Neb. 277 (1876).

2. Irregularities

Irregularity in charge of contempt of court was controlled by this section. Cornett v. State, 155 Neb. 766, 53 N.W.2d 543 (1952).

Information is not invalidated by allegations that defendant had been convicted of chicken stealing in another state and committed to penitentiary in that state. Wiese v. State, 138 Neb. 685, 294 N.W. 482 (1940).

Indictment was not invalidated by unnecessary recitals. Kirchman v. State, 122 Neb. 624, 241 N.W. 100 (1932).

Where use of disjunctive does not result in prosecution for distinct or separate crimes, objection thereto cannot be successfully urged on appeal. Smith v. State, 109 Neb. 579, 191 N.W. 687 (1922).

It is improper to join misdemeanor and felony where former is not included offense. Longsine v. State, 105 Neb. 428, 181 N.W. 175 (1920).

Errors complained of did not tend to prejudice the substantial rights of defendant upon the merits. Bloom v. State, 95 Neb. 710, 146 N.W. 965 (1914).

3. Miscellaneous

This section is equally applicable to any formal charge on which a prosecution is based, including an indictment, information, or complaint. State v. Wehrle, 223 Neb. 928, 395 N.W.2d 142 (1986).

Where crime charged was assault with intent to commit rape by force, allegation in information as to age of complaining witness did not prejudice defendant. Frank v. State, 150 Neb. 745, 35 N.W.2d 816 (1949).

Name of witness to be called on trial need not be endorsed on indictment. Donnelly v. State, 86 Neb. 345, 125 N.W. 618 (1910).

State should be compelled to elect on which count it will proceed where two distinct offenses are charged. State v. Lawrence, 19 Neb. 307, 27 N.W. 126 (1886).

Time of illegal sale of liquor is only material to bring case within statute of limitations. Brown v. State, 16 Neb. 658, 21 N.W. 454 (1884).

Statement of exact time of commission of an offense is not regarded as a substantive element of the charge. Huffman v. Sigler, 352 F.2d 370 (8th Cir. 1965).

29-1502 Variance in name or description; effect.

Whenever on trial of any indictment for any offense there shall appear to be any variance between the statement in such indictment and the evidence offered in proof thereof in the given name or surname, or both given name and surname, or other description whatever of any person whomsoever therein named or described, or in the name or description of any matter or thing whatsoever therein named or described, such variance shall not be deemed ground for an acquittal of the defendant, unless the court before which the trial shall be had shall find that such variance is material to the merits of the case or may be prejudicial to the defendant.

Source: G.S.1873, c. 58, § 413, p. 817; R.S.1913, § 9051; C.S.1922, § 10075; C.S.1929, § 29-1502; R.S.1943, § 29-1502; Laws 1999, LB 72, § 3.

1. Sufficiency of complaint
2. Fatal variance

1. Sufficiency of complaint

Information charged offenses in language of statute; reference to complaining witnesses as three teenage girls, without using their names did not deceive, mislead, nor prejudice defendants in any particular. Nicholson v. Sigler, 183 Neb. 24, 157 N.W.2d 872 (1968).

In prosecution for sodomy amendments to information as to name of complaining witness and as to date of crime, time not being an ingredient, were not prejudicial. Sledge v. State, 142 Neb. 350, 6 N.W.2d 76 (1942).

Immaterial variance between purported maker's name as set out in information charging forgery and as it appeared in note offered in evidence was not ground for reversal. Flannigan v. State, 127 Neb. 640, 256 N.W. 321 (1934).

''Adolph'' and ''Adolf'' are idem sonans, when both are used as Christian names in information. Bunge v. State, 87 Neb. 557, 127 N.W. 899 (1910).

In prosecution for malicious killing of animals, difference between information and proof as to number of animals killed and date of killing was not a fatal variance. Carson v. State, 80 Neb. 619, 114 N.W. 938 (1908).

On charge of forgery of receipt which referred to and incorporated another instrument, both must be set forth correctly. Sutton v. State, 58 Neb. 567, 79 N.W. 154 (1899).

Where time is not an ingredient of the crime, variance in proof is not fatal, if within statute of limitations. Palin v. State, 38 Neb. 862, 57 N.W. 743 (1894).

There was no variance between information charging crime was committed with bludgeon and proof showing club or bolt. Long v. State, 23 Neb. 33, 36 N.W. 310 (1888).

2. Fatal variance

Variance in names to be fatal must be such as to be material to merits of case or prejudicial to defendant. Marshall v. State, 116 Neb. 45, 215 N.W. 564 (1927); Goldsberry v. State, 66 Neb. 312, 92 N.W. 906 (1902).

There was a fatal variance where information charged false entry in an account of an individual with bank, and proof showed account with person as public official. Williams v. State, 51 Neb. 630, 71 N.W. 313 (1897).

In prosecution for perjury, variance between information and proof as to name of witness was fatal. Gandy v. State, 27 Neb. 707, 43 N.W. 747, 44 N.W. 108 (1889).

Where information charged obtaining money by false pretenses through use of draft, there was a fatal variance where instrument offered in evidence was not payable in money. Prehm v. State, 22 Neb. 673, 36 N.W. 295 (1888).

On indictment for forging of note, there was a fatal variance where information charged interest was payable semiannually and note offered in evidence called for interest payable annually. Haslip v. State, 10 Neb. 590, 7 N.W. 331 (1880).

29-1503 Forgery; instruments; how described.

In any indictment for falsely making, altering, forging, printing, photographing, uttering, disposing of or putting off any instrument, it shall be sufficient to set forth the purport and value thereof.

Source: G.S.1873, c. 58, § 414, p. 817; R.S.1913, § 9052; C.S.1922, § 10076; C.S.1929, § 29-1503.

Variance between information charging forgery and note alleged to be forged was not fatal. Flannigan v. State, 127 Neb. 640, 256 N.W. 321 (1934).

Where information charged forgery of checks, it was proper, but not necessary, to set forth a copy of the endorsements on the back of the checks. Cooper v. State, 123 Neb. 605, 243 N.W. 837 (1932).

On information for forgery, variance not prejudicial to rights of defendant was immaterial. Burlingim v. State, 61 Neb. 276, 85 N.W. 76 (1901).

Forgery and fraudulent uttering of one instrument by same person is but one crime. Griffen v. State, 46 Neb. 282, 64 N.W. 966 (1895); In re Walsh, 37 Neb. 454, 55 N.W. 1075 (1893).

29-1504 Offenses other than forgery; instruments; how described.

In all cases other than those mentioned in section 29-1503, whenever it shall be necessary to make any averment in any indictment as to any instrument, whether the same consists wholly or in part of writing, print or figures, it shall be sufficient to describe such instrument by any name or designation by which the same may be usually known, or by the purport thereof.

Source: G.S.1873, c. 58, § 416, p. 817; R.S.1913, § 9053; C.S.1922, § 10077; C.S.1929, § 29-1504.

29-1505 Counterfeiting; instruments or means; how described.

In any indictment for engraving or making the whole or any part of any instrument, matter or thing, or for using or having the unlawful custody or possession of any plate or other material upon which the whole or any part of any instrument, matter or thing shall have been engraved or made, or for having the unlawful custody or possession of any paper upon which the whole or any part of any instrument, matter or thing shall have been made or printed, it shall be sufficient to describe such instruments, matter or thing by any name or designation by which the same may be usually known.

Source: G.S.1873, c. 58, § 415, p. 817; R.S.1913, § 9054; C.S.1922, § 10078; C.S.1929, § 29-1505.

29-1506 Intent to defraud; how alleged; proof.

It shall be sufficient in any indictment where it shall be necessary to allege an intent to defraud, to allege that the party accused did the act with intent to defraud without alleging an intent to defraud any particular person or body corporate, and on the trial of any such indictment, it shall not be necessary to

prove an intent to defraud any particular person, but it shall be sufficient to prove that the party accused did the act charged with intent to defraud.

Source: G.S.1873, c. 58, § 417, p. 818; R.S.1913, § 9055; C.S.1922, § 10079; C.S.1929, § 29-1506.

In prosecution for uttering forged check, it was not necessary to allege intent to defraud any particular person. Benedict v. State, 166 Neb. 295, 89 N.W.2d 82 (1958).

Omission from information of name of party defrauded does not render information insufficient. Bullington v. State, 123 Neb. 432, 243 N.W. 273 (1932).

On indictment for forgery, it is sufficient to allege intent to defraud without specifying any particular person. Davis v. State, 58 Neb. 465, 78 N.W. 930 (1899).

Information is sufficient if it charges intent to defraud in general terms. Morearty v. State, 46 Neb. 652, 65 N.W. 784 (1896).

29-1507 Ownership by more than one person; how alleged.

When any offense is committed upon or in relation to any property belonging to several partners, limited liability company members, or owners, and an indictment for such offense is returned, the allegation of ownership therein shall be sufficient if it alleges that such property belonged to any one or more of such partners, limited liability company members, or owners, without naming all of them.

Source: G.S.1873, c. 58, § 418, p. 818; R.S.1913, § 9056; C.S.1922, § 10080; C.S.1929, § 29-1507; R.S.1943, § 29-1507; Laws 1993, LB 121, § 191; Laws 1994, LB 884, § 55.

Allegation of ownership is not an essential element in charging the crime of burglary. Sedlacek v. State, 147 Neb. 834, 25 N.W.2d 533 (1946).

When property of several partners is stolen, information is sufficient if it alleges property belongs to any one or more of such partners. Brown v. State, 103 Neb. 271, 171 N.W. 906 (1919).

In charging offense upon property of several owners, it is sufficient to allege ownership in one or more. Brinegar v. State, 82 Neb. 558, 118 N.W. 475 (1908).

29-1508 Joinder of offenses with larceny; finding of guilty on any count.

An indictment for larceny may contain also a count for obtaining the same property by false pretenses, or a count for embezzlement thereof, and for receiving or concealing the same property, knowing it to have been stolen; and the jury may convict of either offense, and may find all or any of the persons indicted guilty of either of the offenses charged in the indictment.

Source: G.S.1873, c. 58, § 419, p. 818; R.S.1913, § 9057; C.S.1922, § 10081; C.S.1929, § 29-1508.

Different felonies of same grade, subject to same punishment, may be charged in separate counts. Sheppard v. State, 104 Neb. 709, 178 N.W. 616 (1920).

Prosecution for receiving stolen property may be had in this state although property was stolen in another state. In prosecution for receiving stolen property, it is necessary to allege and prove that defendant knew that property was stolen. Egan v. State, 97 Neb. 731, 151 N.W. 237 (1915).

Information for larceny may contain also a count for receiving the stolen property. Korab v. State, 93 Neb. 66, 139 N.W. 717 (1913); Brown v. State, 88 Neb. 411, 129 N.W. 545 (1911).

Different criminal acts, part of same transaction, may be charged in same indictment. Lawhead v. State, 46 Neb. 607, 65 N.W. 779 (1896).

29-1509 Money; how described; proof.

In every indictment in which it shall be necessary to make any averment as to any money or bank bills or notes, United States treasury notes, postal and fractional currency, or other bills, bonds or notes, issued by lawful authority and intended to pass and circulate as money, it shall be sufficient to describe such money or bills, notes, currency or bonds simply as money, without

specifying any particular coin, note, bill or bond; and such allegation shall be sustained by proof of any amount of coin or of any such note, bill, currency or bond, although the particular species of coin of which such amount was composed, or the particular nature of such note, bill, currency or bond shall not be proved.

Source: G.S.1873, c. 58, § 420, p. 818; R.S.1913, § 9058; C.S.1922, § 10082; C.S.1929, § 29-1509.

This section excuses in indictment particularity in description as to money. Bartley v. State, 55 Neb. 294, 75 N.W. 832 (1898).

Averment as to character of money stolen is surplusage. Tracey v. State, 46 Neb. 361, 64 N.W. 1069 (1895).

29-1510 Election cases; allegation of legality; sufficiency.

When an offense shall be committed in relation to any election and an indictment for such offense is returned, the allegation of the legality and regularity of such election shall be sufficient if it alleges that such election was authorized by law, without stating the names of the officers holding the election, or the persons voted for, or the offices to be filled at such election.

Source: G.S.1873, c. 58, § 421, p. 818; R.S.1913, § 9059; C.S.1922, § 10083; C.S.1929, § 29-1510.

29-1511 Perjury and subornation; allegations; sufficiency.

In every indictment for perjury or subornation of perjury it shall be sufficient to set forth the substance of the offense charged upon the defendant, and before what court the oath or affirmation was taken, averring such court or authority to have full power to administer the same, together with the proper averment or counts to falsify the matter or matters wherein the perjury is assigned, without setting forth any part of any record or proceeding, in law or equity, other than as aforesaid, and without setting forth the commission or authority of the court, or other authority before whom the perjury was committed.

Source: G.S.1873, c. 58, § 422, p. 818; R.S.1913, § 9060; C.S.1922, § 10084; C.S.1929, § 29-1511.

To sustain information charging perjury, alleged false testimony must be in respect to matter material in action in which given. Shevalier v. State, 85 Neb. 366, 123 N.W. 424 (1909).

Applied to all cases where grand juries were required before act took effect. Jones v. State, 18 Neb. 401, 25 N.W. 527 (1885).

29-1512 Manslaughter; allegations; sufficiency.

In any indictment for manslaughter, it shall not be necessary to set forth the manner in which, or the means by which, the death was caused; but it shall be sufficient to charge that the defendant did unlawfully kill and slay the deceased.

Source: G.S.1873, c. 58, § 425, p. 819; R.S.1913, § 9061; C.S.1922, § 10085; C.S.1929, § 29-1512.

Information drawn in language of statute is sufficient to charge manslaughter arising from leaving motor vehicle illegally parked on highway. Vaca v. State, 150 Neb. 516, 34 N.W.2d 873 (1948).

In charging crime of manslaughter, it is not necessary to set forth the manner or means by which death was caused. Anderson v. State, 150 Neb. 116, 33 N.W.2d 362 (1948).

This section is constitutional, and any information drawn in the language of the statute is sufficient to properly charge the crime. Puckett v. State, 144 Neb. 876, 15 N.W.2d 63 (1944); Cowan v. State, 140 Neb. 837, 2 N.W.2d 111 (1942).

ARTICLE 16
PROSECUTION ON INFORMATION

Cross References

Constitutional provisions:
Accused has right to copy of accusation, see Article I, section 11, Constitution of Nebraska.
Right to prosecution by information or indictment, see Article I, section 10, Constitution of Nebraska.
Contempt of court, prosecution, see section 25-2122.

Section
29-1601. Prosecutions on information; authorized.
29-1602. Information; by whom filed and subscribed; names of witnesses; endorsement.
29-1603. Allegations; how made; verification; joinder of offenses; rights of defendant.
29-1604. Information; procedure; law applicable.
29-1605. Commitment and bail; law applicable.
29-1606. Persons committed or held to bail; preliminary hearing; failure of county attorney to file information; written statement required; power of court.
29-1607. Information; preliminary examination; required; when.
29-1608. Indictment, complaint, or information against corporation; summons; service; return day; procedure.

29-1601 Prosecutions on information; authorized.

The several courts of this state shall possess and may exercise the same power and jurisdiction to hear, try and determine prosecutions upon information, for crimes, misdemeanors and offenses, to issue writs and process, and do all other acts therein, as they possess and may exercise in cases of the like prosecutions upon indictments.

Source: Laws 1885, c. 108, § 1, p. 397; R.S.1913, § 9062; C.S.1922, § 10086; C.S.1929, § 29-1601.

1. Prosecution on information
2. Constitutionality
3. Miscellaneous

1. Prosecution on information

Prosecution on information is authorized. Duggan v. Olson, 146 Neb. 248, 19 N.W.2d 353 (1945).

Prosecution upon information verified and filed by acting county attorney is good against attack by habeas corpus. State ex rel. Gossett v. O'Grady, 137 Neb. 824, 291 N.W. 497 (1940).

District court may try misdemeanor charged in information as proper exercise of its original jurisdiction. Nelson v. State, 115 Neb. 26, 211 N.W. 175 (1926).

Prosecution for murder may be by information. Hawkins v. State, 60 Neb. 380, 83 N.W. 198 (1900).

2. Constitutionality

Prosecution on information is not a violation of due process of law clause. Jackson v. Olson, 146 Neb. 885, 22 N.W.2d 124 (1946).

Prosecution of criminal offenses by information does not violate rule of uniformity required by Constitution. Dinsmore v. State, 61 Neb. 418, 85 N.W. 445 (1901).

This section does not conflict with fourteenth amendment. Bolln v. Nebraska, 176 U.S. 83 (1900).

3. Miscellaneous

Indictment by a grand jury is not required in the State of Nebraska. State v. Lehman, 203 Neb. 341, 278 N.W.2d 610 (1979).

Person accused of felony must be charged by information or indictment disclosing nature and cause of accusation. Stowe v. State, 117 Neb. 440, 220 N.W. 826 (1928).

Pendency of former information, for same offense, is no ground for plea in abatement. Roby v. State, 61 Neb. 218, 85 N.W. 61 (1901).

29-1602 Information; by whom filed and subscribed; names of witnesses; endorsement.

All informations shall be filed in the court having jurisdiction of the offense specified therein, by the prosecuting attorney of the proper county as informant. The prosecuting attorney shall subscribe his or her name thereto and endorse thereon the names of the witnesses known to him or her at the time of filing. After the information has been filed, the prosecuting attorney shall endorse on the information the names of such other witnesses as shall then be

known to him or her as the court in its discretion may prescribe, except that if a notice of aggravation is contained in the information as provided in section 29-1603, the prosecuting attorney may endorse additional witnesses at any time up to and including the thirtieth day prior to the trial of guilt.

Source: Laws 1885, c. 108, § 2, p. 397; R.S.1913, § 9063; Laws 1915, c. 164, § 1, p. 335; C.S.1922, § 10087; C.S.1929, § 29-1602; R.S. 1943, § 29-1602; Laws 2002, Third Spec. Sess., LB 1, § 4.

1. Information
2. Endorsement of witnesses before trial
3. Endorsement of witnesses during trial

1. Information

The purpose of this section is to notify the defendant as to witnesses who may testify against him or her and give him or her an opportunity to investigate them. State v. Cebuhar, 252 Neb. 796, 567 N.W.2d 129 (1997).

The purpose of this section is to notify the defendant as to witnesses who may testify against him and give him an opportunity to investigate them. State v. Boppre, 234 Neb. 922, 453 N.W.2d 406 (1990).

To obtain a reversal on the grounds the trial court erred in permitting additional endorsements, the defendant must show he was prejudiced by the additional testimony. State v. Ellis, 223 Neb. 779, 393 N.W.2d 719 (1986).

The purpose of the requirement contained in this section, that the names of witnesses for the prosecution be listed on the information, is to inform the defendant of the names of persons who will testify against him and give him an opportunity to investigate regarding their background and pertinent knowledge. State v. Journey, 201 Neb. 607, 271 N.W.2d 320 (1978).

The failure to endorse on the information the names of witnesses called by the state is not grounds for reversal of conviction in absence of prejudice. State v. Keith, 189 Neb. 536, 203 N.W.2d 500 (1973).

Failure to endorse names of witnesses on an information is error, but not necessarily prejudicial error. State v. Adels, 186 Neb. 849, 186 N.W.2d 908 (1971); Nicholson v. Sigler, 183 Neb. 24, 157 N.W.2d 872 (1968).

Information was properly filed in office of clerk of the district court. Shepperd v. State, 168 Neb. 464, 96 N.W.2d 261 (1959).

Informations must be filed in county where crime was committed. State v. Furstenau, 167 Neb. 439, 93 N.W.2d 384 (1958).

Prosecution on information is not in violation of state or federal Constitution. Duggan v. Olson, 146 Neb. 248, 19 N.W.2d 353 (1945).

While county attorney should file information, defect arising from filing being made by some other person may be waived by failure to move to quash prior to trial. State ex re. Gossett v. O'Grady, 137 Neb. 824, 291 N.W. 497 (1940).

Information may be made, signed, verified, and filed by deputy county attorney. Thompson v. O'Grady, 137 Neb. 641, 290 N.W. 716 (1940).

Assistant attorney general does not have authority to make and sign information in his own name. Carlsen v. State, 127 Neb. 11, 254 N.W. 744 (1934); Lower v. State, 106 Neb. 666, 184 N.W. 174 (1921).

Information may be filed in vacation in court having jurisdiction of offense. Marshall v. State, 116 Neb. 45, 215 N.W. 564 (1927).

Information, signed by proper prosecuting officer, must be filed or indictment by grand jury returned, to give jurisdiction. Langford v. State, 114 Neb. 207, 206 N.W. 756 (1925).

In criminal case, it is not essential to validity of information that it show upon face term of court at which filed or that it was filed during term time. Mares v. State, 112 Neb. 619, 200 N.W. 448 (1924).

As matter of right, accused is not entitled to additional copy of information because, with his knowledge, additional names endorsed or amendment in immaterial respect made. Eigbrett v. State, 111 Neb. 388, 196 N.W. 700 (1923).

Information can be amended provided the amendment does not change the offense charged. Razee v. State, 73 Neb. 732, 103 N.W. 438 (1905).

Court may compel county attorney to elect upon which count he will rely. Blair v. State, 72 Neb. 501, 101 N.W. 17 (1904).

It is unnecessary to obtain leave of court before filing information. Sharp v. State, 61 Neb. 187, 85 N.W. 38 (1901).

Defective indictment may be withdrawn and information filed charging same offense. Alderman v. State, 24 Neb. 97, 38 N.W. 36 (1888).

Witnesses for the state must be listed on the information. Ronzzo v. Sigler, 235 F.Supp. 839 (D. Neb. 1964).

2. Endorsement of witnesses before trial

Pursuant to this section, a trial court may, in the exercise of its discretion, permit the names of additional witnesses to be endorsed upon an information after the information has been filed when doing so does not prejudice the defendant in the preparation of a defense. State v. Boppre, 234 Neb. 922, 453 N.W.2d 406 (1990).

Requirement that names of state's witnesses be endorsed on the information has no application to rebuttal witnesses. State v. Pratt, 197 Neb. 382, 249 N.W.2d 495 (1977).

Failure to have names of known witnesses endorsed on information was error but not prejudicial. Waite v. State, 169 Neb. 113, 98 N.W.2d 688 (1959).

Endorsing names of witnesses is not required on information charging violation of probation. Young v. State, 155 Neb. 261, 51 N.W.2d 326 (1952).

One of purposes of section is to enable defendant's attorney to confer with client and have time to make a good-faith investigation as to facts about witnesses and their connection with case. Dolen v. State, 148 Neb. 317, 27 N.W.2d 264 (1947).

Where name of witness was endorsed on information before trial but omitted from copy served on defendant, it is not error for witness to testify, in absence of showing of prejudice, and where no continuance was requested at the time. Allen v. State, 129 Neb. 722, 262 N.W. 675 (1935).

Trial judge has discretion to permit prosecuting attorney to endorse names of additional witnesses on information before trial and where defendant does not request continuance, his rights are not prejudiced. Wilson v. State, 120 Neb. 468, 233 N.W. 461 (1930).

Trial judge, in his discretion, may permit additional witnesses to be endorsed on information, before trial. Eigbrett v. State, 111 Neb. 388, 196 N.W. 700 (1923); Wilson v. State, 87 Neb. 638, 128 N.W. 38 (1910); Reed v. State, 75 Neb. 509, 106 N.W. 649 (1906); Fager v. State, 49 Neb. 439, 68 N.W. 611 (1896).

Where name of witness is omitted from copy of information served on defendant, it is not error to permit witness to testify where prejudice is not shown or continuance or postponement

of trial is not asked for. Frey v. State, 109 Neb. 483, 191 N.W. 693 (1922).

It is not required that all witnesses whose names are endorsed on information be called. Bloom v. State, 95 Neb. 710, 146 N.W. 965 (1914).

Endorsement of names on information is sufficient, though misspelled in copy. Rownd v. State, 93 Neb. 427, 140 N.W. 790 (1913).

Strictly rebutting testimony may be introduced even though names of witnesses giving it are not endorsed on information. Ossenkop v. State, 86 Neb. 539, 126 N.W. 72 (1910); Clements v. State, 80 Neb. 313, 114 N.W. 271 (1907).

''Mrs. Fred Steinberg'' and ''Mrs. Fred Steenburg'' are idem sonans; endorsement was sufficient. Carrall v. State, 53 Neb. 431, 73 N.W. 939 (1898).

Endorsement of surname of witness, with initials of Christian name, was sufficient compliance. Basye v. State, 45 Neb. 261, 63 N.W. 811 (1895).

Witnesses for the state must be listed on the information. Ronzzo v. Sigler, 235 F.Supp. 839 (D. Neb. 1964).

3. Endorsement of witnesses during trial

Trial court's endorsement of additional witness on first day of trial was not an abuse of discretion, as defendant was unable to show how such action prejudiced his trial preparation. State v. Brandon, 240 Neb. 232, 481 N.W.2d 207 (1992).

A failure to endorse on the information the names of witnesses to be called by the State is not grounds for reversal of a conviction in the absence of a showing of prejudice. State v. Journey, 201 Neb. 607, 271 N.W.2d 320 (1978).

In the exercise of its discretion, trial court may permit endorsement of names of witnesses upon information. Svehla v. State, 168 Neb. 553, 96 N.W.2d 649 (1959).

Trial court may, in its discretion, permit names of additional witnesses to be endorsed upon information after trial has begun, and defendant cannot complain of error where no prejudice is shown and he did not ask for continuance. McCartney v. State, 129 Neb. 716, 262 N.W. 679 (1935).

It is within discretion of court to permit names of additional witnesses to be endorsed on information after trial has commenced. Barnts v. State, 116 Neb. 363, 217 N.W. 591 (1928); Hutter v. State, 105 Neb. 601, 181 N.W. 552 (1921); Samuels v. State, 101 Neb. 383, 163 N.W. 312 (1917).

District court may permit names of additional witnesses to be endorsed on information during progress of trial. Ridings v. State, 108 Neb. 804, 189 N.W. 372 (1922).

Endorsement of additional witnesses after trial has begun is not error unless prejudicial and continuance asked for. Brunke v. State, 105 Neb. 343, 180 N.W. 560 (1920); Sheppard v. State, 104 Neb. 709, 178 N.W. 616 (1920); Kemplin v. State, 90 Neb. 655, 134 N.W. 275 (1912).

Where rule of court required names to be endorsed within twenty-four hours after discovery, names endorsed later, with permission of court, was not error. Barney v. State, 49 Neb. 515, 68 N.W. 636 (1896).

29-1603 Allegations; how made; verification; joinder of offenses; rights of defendant.

(1) All informations shall be verified by the oath of the county attorney, complainant, or some other person, and the offenses charged therein shall be stated with the same fullness and precision in matters of substance as is required in indictments in like cases.

(2)(a) Any information charging a violation of section 28-303 and in which the death penalty is sought shall contain a notice of aggravation which alleges one or more aggravating circumstances, as such aggravating circumstances are provided in section 29-2523. The notice of aggravation shall be filed as provided in section 29-1602. It shall constitute sufficient notice to describe the alleged aggravating circumstances in the language provided in section 29-2523.

(b) The state shall be permitted to add to or amend a notice of aggravation at any time up to and including the thirtieth day prior to the trial of guilt.

(c) The existence or contents of a notice of aggravation shall not be disclosed to the jury until after the verdict is rendered in the trial of guilt.

(3) Different offenses and different degrees of the same offense may be joined in one information, in all cases in which the same might by different counts be joined in one indictment; and in all cases a defendant or defendants shall have the same right, as to proceedings therein, as the defendant or defendants would have if prosecuted for the same offense upon indictment.

Source: Laws 1885, c. 108, § 3, p. 397; R.S.1913, § 9064; C.S.1922, § 10088; C.S.1929, § 29-1603; R.S.1943, § 1603; Laws 2002, Third Spec. Sess., LB 1, § 5.

1. Allegations, generally
2. Allegations, specific offenses
3. Verification

1. Allegations, generally

The requirement that a notice of aggravators be filed prior to trial is not applicable to cases in which the pretrial and trial litigation steps have already been completed. State v. Gales, 265 Neb. 598, 658 N.W.2d 604 (2003).

Separate offenses must be set out in separate counts in an information, but failure is cured by verdict when no objection was made. State v. French, 195 Neb. 88, 236 N.W.2d 832 (1975).

Defense of statute of limitations is equally applicable to prosecution upon information as by indictment. Jacox v. State, 154 Neb. 416, 48 N.W.2d 390 (1951).

Information is defective if it charges commission of offense as subsequent to filing. McKay v. State, 91 Neb. 281, 135 N.W. 1024 (1912).

Averment of matters which are immaterial and unnecessary ingredients of offense is surplusage. Nelson v. State, 86 Neb. 856, 126 N.W. 518 (1910).

Where statute contains an exception, information should negative same, unless affirmative part clearly negatives exception. Holmes v. State, 82 Neb. 406, 118 N.W. 99 (1908).

Race or color of defendant should not be designated unless required by statute. Harris v. State, 80 Neb. 195, 114 N.W. 168 (1907).

Information must charge every essential element of the offense. Herbes v. State, 79 Neb. 832, 113 N.W. 530 (1907); Moline v. State, 67 Neb. 164, 93 N.W. 228 (1903); O'Connor v. State, 46 Neb. 157, 64 N.W. 719 (1895).

Information must be positive and not on belief. Steinkuhler v. State, 77 Neb. 331, 109 N.W. 395 (1906).

Precise words of statute are not necessary in charging offense; words identical in meaning are sufficient. Higbee v. State, 74 Neb. 331, 104 N.W. 748 (1905); Smith v. State, 72 Neb. 345, 100 N.W. 806 (1904).

Word ''feloniously'' is not necessary in information charging all essential elements of felony. Reno v. State, 69 Neb. 391, 95 N.W. 1042 (1903).

Information is vulnerable on demurrer if offense is not charged in positive terms. Sothman v. State, 66 Neb. 302, 92 N.W. 303 (1902).

Information need not negative exceptions of statute which are not descriptive of offense. Sofield v. State, 61 Neb. 600, 85 N.W. 840 (1901).

When there is identity of names in two counts, presumption is that both refer to same person. Dunn v. State, 58 Neb. 807, 79 N.W. 719 (1899).

Information will sustain conviction of lower offense involved in that charged. Mulloy v. State, 58 Neb. 204, 78 N.W. 525 (1899).

Information must charge same offense as complaint or substantially the same. Mills v. State, 53 Neb. 263, 73 N.W. 761 (1898).

It is not necessary to conclude, ''against the peace and dignity of the state.'' Bolln v. State, 51 Neb. 581, 71 N.W. 444 (1897).

Charging offense with unnecessary particularity is not fatally defective. State v. Kendall, 38 Neb. 817, 57 N.W. 525 (1894).

Negative averment of the matter of a proviso is not required unless it enters into and becomes a part of the description of the offense. Gee Wo v. State, 36 Neb. 241, 54 N.W. 513 (1893).

An unnecessary amendment is not prejudicial to defendant. Braithwaite v. State, 28 Neb. 832, 45 N.W. 247 (1890).

Information must allege crime was committed within jurisdiction of court. McCoy v. State, 22 Neb. 418, 35 N.W. 202 (1887).

2. Allegations, specific offenses

An information charging an attempt to commit ''robbery'' is sufficient though it omits ''with intent to steal'', and allowing amendment to add those words during trial is not prejudicial error. State v. Last, 212 Neb. 596, 324 N.W.2d 402 (1982).

Failure to allege the result of the acts complained of in prosecution for picketing renders the information not precise or complete enough to comply with this section. Dutiel v. State, 135 Neb. 811, 284 N.W. 321 (1939).

Charge in language of statute is sufficient. Goff v. State, 89 Neb. 287, 131 N.W. 213 (1911).

Omission of word ''maliciously'' from information for burglary was immaterial error. Johns v. State, 88 Neb. 145, 129 N.W. 247 (1910).

It is sufficient, as to ownership, to allege that money or property embezzled belonged to an estate. Hendee v. State, 80 Neb. 80, 113 N.W. 1050 (1907).

Information charging embezzlement from a city was sufficient. Bode v. State, 80 Neb. 74, 113 N.W. 996 (1907).

In prosecution for illegal fencing of highway, information failing to charge road was in common use will not support a conviction. Gilbert v. State, 78 Neb. 636, 111 N.W. 377 (1907).

In prosecution for attempt to corrupt witness, necessary allegations of information stated. Gandy v. State, 77 Neb. 782, 110 N.W. 862 (1906).

Requirements of information charging rape stated. Hubert v. State, 74 Neb. 220, 104 N.W. 276 (1905), motion for rehearing denied 74 Neb. 226, 106 N.W. 774 (1906).

Information for murder in first degree is set out and held sufficient to sustain conviction. Barker v. State, 73 Neb. 469, 103 N.W. 71 (1905).

Information charging obtaining property by false pretenses was sufficient. West v. State, 63 Neb. 257, 88 N.W. 503 (1901).

In information for burglary, it is proper to allege ownership in person having visible occupancy and control of premises. Hahn v. State, 60 Neb. 487, 83 N.W. 674 (1900).

Charging carrying on of a lottery on divers days is bad for duplicity, offense not being a continuing one. State v. Dennison, 60 Neb. 192, 82 N.W. 628 (1900).

In information charging rape, all unlawful acts within period of limitation may be charged. Bailey v. State, 57 Neb. 706, 78 N.W. 284 (1899).

Information for assault with intent to kill was good. McVey v. State, 57 Neb. 471, 77 N.W. 1111 (1899).

Information for larceny is not fatally defective for failure to state exact time, when time is not essence of offense. Rema v. State, 52 Neb. 375, 72 N.W. 474 (1897).

Charge of malpractice and contempt may be joined if both involve same transaction. Blodgett v. State, 50 Neb. 121, 69 N.W. 751 (1897).

Information charging practice of medicine and surgery without certificate was sufficient. Jones v. State, 49 Neb. 609, 68 N.W. 1034 (1896).

Where information charges assault with intent to commit rape by force, it is not necessary to allege age of person upon whom assault was committed or age of defendant. Hall v. State, 40 Neb. 320, 58 N.W. 929 (1894).

3. Verification

To meet the requirement that an information shall be verified by the oath of the county attorney, it is sufficient if it appears, no matter in what form, that the truth of the charge or charges contained in the information are confirmed and substantiated by the oath of the county attorney. State v. Jones, 254 Neb. 212, 575 N.W.2d 156 (1998).

Information verified by some person other than county attorney is sufficient and renders additional verification by prosecuting official unnecessary. State ex rel. Gossett v. O'Grady, 137 Neb. 824, 291 N.W. 497 (1940).

Verification to information is sufficient if it appears, no matter in what form, that truth of charges contained therein is con-

firmed and substantiated by oath of county attorney. Marshall v. State, 116 Neb. 45, 215 N.W. 564 (1927).

It is sufficient if information is verified by county attorney on information and belief. Watson v. State, 109 Neb. 43, 189 N.W. 620 (1922).

Objection to verification is waived if not made before arraignment and plea. Emery v. State, 78 Neb. 547, 111 N.W. 374 (1907).

Verification must be before magistrate authorized to administer oaths, clerk of court or deputy. Nightingale v. State, 62 Neb. 371, 87 N.W. 158 (1901); Davis v. State, 31 Neb. 247, 47 N.W. 854 (1891).

Terms "prosecuting attorney" and "county attorney" are synonymous. Bush v. State, 62 Neb. 128, 86 N.W. 1062 (1901).

Information may be verified by county attorney. Trimble v. State, 61 Neb. 604, 85 N.W. 844 (1901).

29-1604 Information; procedure; law applicable.

The provisions of the criminal code in relation to indictments, and all other provisions of law, applying to prosecutions upon indictments to writs and process therein, and the issuing and service thereof, to motions, pleadings, trials and punishments or the execution of any sentence, and to all other proceedings in cases of indictments, whether in the court of original or appellate jurisdiction, shall in the same manner and to the same extent, as nearly as may be, apply to informations, and all prosecutions and proceedings thereon.

Source: Laws 1885, c. 108, § 4, p. 398; R.S.1913, § 9065; C.S.1922, § 10089; C.S.1929, § 29-1604.

1. Information
2. Miscellaneous

1. Information

Filing and service of amended information rendered nonprejudicial defects in service of original information. Svehla v. State, 168 Neb. 553, 96 N.W.2d 649 (1959).

Provision of criminal code with respect to indictments applies to informations. Shepperd v. State, 168 Neb. 464, 96 N.W.2d 261 (1959).

Information was sufficient to charge offense of uttering forged check. Benedict v. State, 166 Neb. 295, 89 N.W.2d 82 (1958).

Statutory provisions relating to indictments applies to informations. Jurgenson v. State, 166 Neb. 111, 88 N.W.2d 129 (1958).

This section makes the statutory provision for service of an indictment applicable to an information. Hawk v. State, 151 Neb. 717, 39 N.W.2d 561 (1949).

Information charging assault with intent to commit rape by force was not defective because of allegation of age of complaining witness. Frank v. State, 150 Neb. 745, 35 N.W.2d 816 (1949).

The provisions of the criminal code in relation to indictments apply to prosecution on information for picketing. Dutiel v. State, 135 Neb. 811, 284 N.W. 321 (1939).

2. Miscellaneous

Exact time of commission of alleged prior felony is not essential in charge under Habitual Criminal Act. State v. Harig, 192 Neb. 49, 218 N.W.2d 884 (1974).

There is no specified length of time that must elapse between filing of information and commencement of trial except requirement of one day must elapse after information has been served before arraignment. Darlington v. State, 153 Neb. 274, 44 N.W.2d 468 (1950).

This section makes applicable to prosecutions upon information preliminary pleadings provided for attacking indictments, and same waiver of defects for failure to make attack by motion to quash, plea in abatement or demurrer. State ex rel. Gossett v. O'Grady, 137 Neb. 824, 291 N.W. 497 (1940).

Election is not required between counts charging same offense. Stevens v. State, 84 Neb. 759, 122 N.W. 58 (1909).

Where offenses are distinct and separate, court should require prosecutor to elect. Miller v. State, 78 Neb. 645, 111 N.W. 637 (1907).

Several misdemeanors of same kind may be set forth in separate counts; prosecutor is not required to elect. Little v. State, 60 Neb. 749, 84 N.W. 248 (1900).

The requirement of service of copy of indictment within twenty-four hours after filing applies to information. Hawk v. Olson, 326 U.S. 271 (1945), reversing Hawk v. Olson, 145 Neb. 306, 16 N.W.2d 181 (1944).

29-1605 Commitment and bail; law applicable.

Any person who may, according to law, be committed to jail or become recognized or held to bail with sureties for his appearance in court to answer to any indictment, may in like manner be committed to jail or become recognized and held to bail for his appearance, to answer to any information or indictment, as the case may be.

Source: Laws 1885, c. 108, § 5, p. 398; R.S.1913, § 9066; C.S.1922, § 10090; C.S.1929, § 29-1605.

29-1606 Persons committed or held to bail; preliminary hearing; failure of county attorney to file information; written statement required; power of court.

It shall be the duty of the county attorney of the proper county to inquire into and make full examination of all the facts and circumstances connected with any case on preliminary examination, as provided by law, touching the commission of any offense wherein the offender shall be committed to jail, or become recognized or held to bail. If the prosecuting attorney shall determine in any such case that an information ought not to be filed, he shall make, subscribe, and file with the clerk of the court a statement in writing, containing his reasons, in fact and in law, for not filing an information in such case; and such statement shall be filed at and during the term of court at which the offender shall be held for his appearance; *Provided*, in such case such court may examine the statement, together with the evidence filed in the case, and if, upon such examination, the court shall not be satisfied with the statement, the county attorney shall be directed by the court to file the proper information and bring the case to trial.

Source: Laws 1885, c. 108, § 6, p. 398; R.S.1913, § 9067; C.S.1922, § 10091; C.S.1929, § 29-1606.

After a court approves the dismissal without prejudice of information under this section, the State is free to file new information that includes additional charges. State v. Al-Sayagh, 268 Neb. 913, 689 N.W.2d 587 (2004).

The provisions of this section include the requirement of approval by the trial court before an information may be dismissed. State v. Sanchell, 191 Neb. 505, 216 N.W.2d 504 (1974).

Obiter dictum in In re Interest of Moore, 186 Neb. 67, 180 N.W.2d 917, deleted to avoid possible misconstruction in conflict with this section. In re Interest of Moore, 186 Neb. 158, 180 N.W.2d 919 (1970).

Given gravity of original offense, state judge did not abuse his discretion in requiring that a proper probation revocation information be substituted for information which prosecution sought to dismiss. Kartman v. Parratt, 535 F.2d 450 (8th Cir. 1976).

Habitual criminal statute is not unconstitutional on grounds it gives county attorney selectivity in applying it, nor because it punishes a status rather than an act. Martin v. Parratt, 412 F.Supp. 544 (D. Neb. 1976).

State judge's refusal to dismiss probation violation charge except on condition county attorney file new charges did not deny probationer due process on ground that such judge, at final revocation hearing, was not a neutral and detached decision maker. Kartman v. Parratt, 397 F.Supp. 531 (D. Neb. 1975).

29-1607 Information; preliminary examination; required; when.

No information shall be filed against any person for any offense until such person shall have had a preliminary examination therefor, as provided by law, unless such person shall waive his or her right to such examination, except as otherwise provided in the Uniform Criminal Extradition Act. The preliminary examination shall be conducted as soon as the nature and the circumstances of the case will permit.

Source: Laws 1885, c. 108, § 8, p. 399; R.S.1913, § 9068; C.S.1922, § 10092; C.S.1929, § 29-1607; Laws 1935, c. 66, § 27, p. 231; C.S.Supp.,1941, § 29-1607; R.S.1943, § 29-1607; Laws 1972, LB 1032, § 175; Laws 1980, LB 600, § 1.

Cross References

Uniform Criminal Extradition Act, see section 29-758.

1. Nature and requisites
2. Waiver
3. Miscellaneous

1. Nature and requisites

If an information is filed initially in district court, referred to as a ''direct information'', such filing is treated in the nature of a complaint until a preliminary hearing is held and, in conformity with this section, after the preliminary hearing is concluded, the filing will then be treated as an information for speedy trial act purposes. State v. Boslau, 258 Neb. 39, 601 N.W.2d 769 (1999).

In a prosecution by information, the complaint and information must charge the same offense, but it is sufficient if the charge in the information is substantially the same as that alleged in the complaint. State v. Kelley, 211 Neb. 770, 320 N.W.2d 455 (1982).

Preliminary hearing before a county judge not an attorney not violative of this section. State v. Howard, 184 Neb. 274, 167 N.W.2d 80 (1969).

Preliminary hearing is not required on complaint charging a misdemeanor. Otte v. State, 172 Neb. 110, 108 N.W.2d 737 (1961).

Preliminary hearing is not a criminal trial of person accused. Lingo v. Hann, 161 Neb. 67, 71 N.W.2d 716 (1955).

Omission to hold preliminary hearing of a person charged with crime is not jurisdictional. Swanson v. Jones, 151 Neb. 767, 39 N.W.2d 557 (1949).

Where it appears that charge in complaint is substantially the same as set forth in information, plea of want of preliminary examination because of variance is unavailing. Van Syoc v. State, 69 Neb. 520, 96 N.W. 266 (1903).

Examination made when magistrate is without jurisdiction is not a preliminary examination. White v. State, 28 Neb. 341, 44 N.W. 443 (1889).

A preliminary hearing, unless waived, is a prerequisite to a prosecution by information. Bird v. Sigler, 241 F.Supp. 1007 (D. Neb. 1964).

A defendant cannot be prosecuted by information until a preliminary hearing is held. Ronzzo v. Sigler, 235 F.Supp. 839 (D. Neb. 1964).

2. Waiver

The right to a preliminary hearing is waived by entering a plea of not guilty in the district court. State v. DeJesus, 216 Neb. 907, 347 N.W.2d 111 (1984).

Failure to give preliminary hearing is not a jurisdictional defect and may be waived. Drewes v. State, 156 Neb. 319, 56 N.W.2d 113 (1952).

Preliminary hearing in a criminal case is waived unless defendant raises that question before he enters a plea of not guilty in the district court. Roberts v. State, 145 Neb. 658, 17 N.W.2d 666 (1945).

Right of preliminary hearing may be waived. Meyers v. State, 104 Neb. 356, 177 N.W. 177 (1920).

District court has jurisdiction when transcript shows filing of complaint, arraignment and waiver of preliminary hearing before magistrate. Clawson v. State, 96 Neb. 499, 148 N.W. 524 (1914).

Plea of not guilty waives objection that preliminary examination was not had. Dinsmore v. State, 61 Neb. 418, 85 N.W. 445 (1901).

Transcript showing arraignment of accused and waiver of preliminary examination fulfilled requirements of this section. Korth v. State, 46 Neb. 631, 65 N.W. 792 (1896).

Failure to give prisoner preliminary examination is a mere defect, and is waived if not objected to before going to trial. Coffield v. State, 44 Neb. 417, 62 N.W. 875 (1895).

3. Miscellaneous

A claim that a defendant was not accorded a preliminary hearing and did not waive it, is determinable by a plea in abatement. State v. Forbes, 203 Neb. 349, 278 N.W.2d 615 (1979).

The district court is without jurisdiction to try on information one accused of committing a felony within the state unless the defendant is first accorded the privilege of a preliminary examination or waives the same. State v. Forbes, 203 Neb. 349, 278 N.W.2d 615 (1979).

Effect of dissemination of hearsay and purported statements of counsel considered in review of order restricting pretrial publicity. State v. Simants, 194 Neb. 783, 236 N.W.2d 794 (1975).

Prosecuting attorney cannot delegate authority to file information. Richards v. State, 22 Neb. 145, 34 N.W. 346 (1887).

29-1608 Indictment, complaint, or information against corporation; summons; service; return day; procedure.

Whenever an indictment is presented, or complaint or information filed against a corporation, a summons commanding the sheriff to notify the accused thereof, and returnable on the third day after its date, shall issue on the praecipe of the prosecuting attorney. Such summons, together with a copy of the indictment, information, or complaint, shall be served and returned in the manner provided for service of summons upon such corporation in a civil action. The corporation on or before the return day of a summons duly served may appear by one of its officers, or by counsel, and answer to the indictment, information, or complaint by motion, demurrer, or plea. Upon its failure to make such appearance and answer, the court clerk shall enter a plea of not guilty; and upon such appearance being made, or plea entered, the corporation shall be deemed thenceforth continuously present in the court until the case is finally disposed of.

Source: Laws 1903, c. 140, § 1, p. 646; R.S.1913, § 9069; C.S.1922, § 10093; C.S.1929, § 29-1608; R.S.1943, § 29-1608; Laws 1983, LB 447, § 44.

Cross References

Corporation or company, failure or neglect to pay taxes, see section 77-1726.

ARTICLE 17

ARREST AND ITS INCIDENTS AFTER INDICTMENT

Section
29-1701. Warrant and arrest on indictment or presentment.

Section
29-1702. Accused a nonresident of the county; how arrested.
29-1703. Misdemeanors; recognizance for appearance; authority of sheriff to take.
29-1704. Misdemeanors; recognizance; return.
29-1705. Felonies; recognizance ordered by court; authority.
29-1706. Felonies; recognizance; amount; endorsement on warrant.
29-1707. Felonies; recognizance; conditions; return.
29-1708. Recognizance; signature; certificate.
29-1709. Indicted convicts; custody.

29-1701 Warrant and arrest on indictment or presentment.

A warrant may be issued in term time or in vacation of the court, on an indictment found or presentment made in any county, and when directed to the sheriff of the county where such indictment was found, or presentment made, it shall be lawful for such officer to pursue and arrest the accused named in such warrant, in any county of this state where he may be found, and commit him to jail, or hold him to bail, as provided in this code.

Source: G.S.1873, c. 58, § 426, p. 819; R.S.1913, § 9070; C.S.1922, § 10094; C.S.1929, § 29-1701.

29-1702 Accused a nonresident of the county; how arrested.

When the party accused shall reside out of the county in which such indictment was found, it shall be lawful to issue a warrant thereon, directed to the sheriff of the county where the accused shall reside or may be found. It shall be the duty of such officer to arrest the accused and convey him to the county from which such writ was issued, and there commit him to the jail of such county, or hold him to bail, as provided in section 29-1701.

Source: G.S.1873, c. 58, § 427, p. 819; R.S.1913, § 9071; C.S.1922, § 10095; C.S.1929, § 29-1702.

Fact that accused is out on bail pending trial for felony in one county does not render him immune from arrest on charge of separate felony in another county. State ex rel. Johnson v. Goble, 136 Neb. 242, 285 N.W. 569 (1939).

29-1703 Misdemeanors; recognizance for appearance; authority of sheriff to take.

When any sheriff or other officer shall be charged with the execution of a warrant issued on any indictment for a misdemeanor, he shall, during the vacation of the court from which the writ issued, have authority to take the recognizance of the person so indicted, together with sufficient sureties, resident and freeholders in the county from which such writ issued, in a sum of not less than fifty dollars nor more than five hundred dollars, conditioned for the appearance of such person on the first day of the next term of such court.

Source: G.S.1873, c. 58, § 428, p. 820; R.S.1913, § 9072; C.S.1922, § 10096; C.S.1929, § 29-1703.

This section governs duties of sheriff in case of taking bond. Berrer v. Moorhead, 22 Neb. 687, 36 N.W. 118 (1888).

29-1704 Misdemeanors; recognizance; return.

The sheriff or other officer shall return such writ according to the command thereof, with the name of the surety or sureties, together with the recognizance taken as aforesaid; and the recognizance so taken and returned shall be filed and recorded by the clerk of the court to which the same was returned, and

may be proceeded on in the same way as if such recognizance had been taken in the court during term time.

Source: G.S.1873, c. 58, § 429, p. 820; R.S.1913, § 9073; C.S.1922, § 10097; C.S.1929, § 29-1704.

29-1705 Felonies; recognizance ordered by court; authority.

When any person shall have been indicted for a felony, and the person so indicted shall not have been arrested or recognized to appear before the court, the court may make an entry of the cause on the journal, and may order the amount in which the party indicted may be recognized for his appearance by any officer charged with the duty of arresting him.

Source: G.S.1873, c. 58, § 430, p. 820; R.S.1913, § 9074; C.S.1922, § 10098; C.S.1929, § 29-1705.

Recognizance, taken before unauthorized person, or when taking thereof is unauthorized, is void. Dickenson v. State, 20 Neb. 72, 29 N.W. 184 (1886).

29-1706 Felonies; recognizance; amount; endorsement on warrant.

The clerk issuing a warrant on such an indictment shall endorse thereon the sum in which the recognizance of the accused was ordered as aforesaid to be taken.

Source: G.S.1873, c. 58, § 431, p. 820; R.S.1913, § 9075; C.S.1922, § 10099; C.S.1929, § 29-1706.

29-1707 Felonies; recognizance; conditions; return.

The officer charged with the execution of the warrant aforesaid shall take the recognizance of the party accused in the sum ordered as aforesaid, together with good and sufficient sureties, conditioned for the appearance of the accused at the return of the writ before the court out of which the same issued.

Such officer shall return such recognizance to the court to be recorded and proceeded on as provided in this code.

Source: G.S.1873, c. 58, § 432, p. 820; R.S.1913, § 9076; C.S.1922, § 10100; C.S.1929, § 29-1707.

29-1708 Recognizance; signature; certificate.

All recognizances taken during vacation of any court, by any judge or other officer thereof authorized to take them, shall be signed by the parties and certified to by the officer taking the same.

Source: G.S.1873, c. 58, § 433, p. 820; R.S.1913, § 9077; C.S.1922, § 10101; C.S.1929, § 29-1708.

29-1709 Indicted convicts; custody.

Whenever any convict in a Department of Correctional Services adult correctional facility is indicted for any offense committed while confined therein, such convict shall remain in the custody of the warden of the facility subject to the order of the district court of the county where the facility in which such convict is confined is situated.

Source: G.S.1873, c. 58, § 434, p. 820; R.S.1913, § 9078; C.S.1922, § 10102; C.S.1929, § 29-1709; R.S.1943, § 29-1709; Laws 1993, LB 31, § 8.

ARTICLE 18

MOTIONS AND ISSUES ON INDICTMENT

Section
29-1801. Repealed. Laws 1959, c. 119, § 1.
29-1802. Indictment; recording; service of copy on defendant; arraignment, when had.
29-1803. Repealed. Laws 1965, c. 151, § 5.
29-1803.01. Repealed. Laws 1972, LB 1463, § 13.
29-1803.02. Repealed. Laws 1972, LB 1463, § 13.
29-1803.03. Repealed. Laws 1972, LB 1463, § 13.
29-1804. Transferred to section 23-3401.
29-1804.01. Repealed. Laws 1972, LB 1463, § 13.
29-1804.02. Repealed. Laws 1972, LB 1463, § 13.
29-1804.03. Transferred to section 23-3402.
29-1804.04. Transferred to section 29-3901.
29-1804.05. Transferred to section 29-3902.
29-1804.06. Repealed. Laws 1979, LB 241, § 7.
29-1804.07. Transferred to section 29-3903.
29-1804.08. Transferred to section 29-3904.
29-1804.09. Transferred to section 29-3907.
29-1804.10. Transferred to section 29-3908.
29-1804.11. Transferred to section 23-3403.
29-1804.12. Transferred to section 29-3905.
29-1804.13. Transferred to section 29-3906.
29-1804.14. Repealed. Laws 1990, LB 822, § 40.
29-1805. Repealed. Laws 1972, LB 1463, § 13.
29-1805.01. Transferred to section 29-3909.
29-1805.02. Transferred to section 29-3910.
29-1805.03. Transferred to section 29-3911.
29-1805.04. Transferred to section 29-3912.
29-1805.05. Transferred to section 29-3913.
29-1805.06. Transferred to section 29-3914.
29-1805.07. Transferred to section 29-3915.
29-1805.08. Transferred to section 29-3916.
29-1805.09. Transferred to section 29-3917.
29-1805.10. Transferred to section 29-3918.
29-1805.11. Repealed. Laws 1990, LB 822, § 40.
29-1806. Exceptions to indictment; time allowed.
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Section
29-1822. Mental incompetency of accused after crime commission; effect; capital punishment; stay of execution.
29-1823. Mental incompetency of accused before trial; determination by judge; effect; costs; hearing; commitment proceeding.
29-1824. Transferred to section 23-3404.
29-1825. Transferred to section 23-3405.
29-1826. Transferred to section 23-3406.
29-1827. Transferred to section 23-3407.
29-1828. Transferred to section 23-3408.

29-1801 Repealed. Laws 1959, c. 119, § 1.

29-1802 Indictment; recording; service of copy on defendant; arraignment, when had.

The clerk of the district court shall, upon the filing of any indictment with him, and after the person indicted is in custody or let to bail, cause the same to be entered of record on the journal of the court; and in case of the loss of the original, such record or a certified copy thereof shall be used in place thereof upon the trial of the cause. Within twenty-four hours after the filing of an indictment for felony, and in every other case on request, the clerk shall make and deliver to the sheriff, the defendant or his counsel a copy of the indictment, and the sheriff on receiving such copy shall serve the same upon the defendant. No one shall be, without his assent, arraigned or called on to answer to any indictment until one day shall have elapsed, after receiving in person or by counsel, or having an opportunity to receive a copy of such indictment as aforesaid.

Source: G.S.1873, c. 58, § 436, p. 821; Laws 1877, § 1, p. 4; R.S.1913, § 9080; C.S.1922, § 10104; C.S.1929, § 29-1802.

1. Right to receive copy
2. Service of copy
3. Waiver

1. Right to receive copy

The defendant's right to a copy of information is not violated, where, although copy of amended information was not served on defendant, the case was tried on the original information as to which a copy was served. Hoctor v. State, 141 Neb. 329, 3 N.W.2d 558 (1942).

Accused is not entitled to additional copy merely because, with his knowledge, additional names are properly endorsed on information or because of amendment in immaterial respect. Eigbrett v. State, 111 Neb. 388, 196 N.W. 700 (1923).

Rule applies also to amended information. McKay v. State, 91 Neb. 281, 135 N.W. 1024 (1912).

State is required to furnish defendant with but one copy of information. Bush v. State, 62 Neb. 128, 86 N.W. 1062 (1901).

Right to copy and one day thereafter to prepare for trial is a substantial right; denial thereof is error, but right may be waived. Barker v. State, 54 Neb. 53, 74 N.W. 427 (1898).

This section applies to copy of information as well as indictment. Hawk v. Olson, 326 U.S. 271 (1945), reversing Hawk v. Olson, 145 Neb. 306, 16 N.W.2d 181 (1944).

2. Service of copy

This statute specifically allows counsel to be served. State v. Henn, 223 Neb. 280, 388 N.W.2d 846 (1986).

The requirement that one day shall elapse between service of an information and arraignment relates to the charge which is to be tried and not to a charge that defendant is an habitual criminal. State v. Cole, 192 Neb. 466, 222 N.W.2d 560 (1974).

Purpose of service of copy of information is to insure defendant a reasonable time in which to prepare his defense. Shepperd v. State, 168 Neb. 464, 96 N.W.2d 261 (1959).

Defendant cannot be put on trial until at least one day shall have elapsed after he has received copy of information. Darlington v. State, 153 Neb. 274, 44 N.W.2d 468 (1950).

This section provides for the service of indictment upon the accused. Hawk v. State, 151 Neb. 717, 39 N.W.2d 561 (1949).

3. Waiver

The failure of the record to show that the defendant made any objection to proceed with the trial on the charge raises the presumption that he or she waived the right under this section. State v. High, 225 Neb. 695, 407 N.W.2d 772 (1987).

Where amended information was properly filed and served, prior defects in original information and service thereof were not prejudicial. Svehla v. State, 168 Neb. 553, 96 N.W.2d 649 (1959).

Requirements of this section may be waived. Lingo v. Hann, 161 Neb. 67, 71 N.W.2d 716 (1955).

Right not to be required to plead to indictment or information, until one day shall have elapsed after receiving copy of same, may be waived. Jackson v. Olson, 146 Neb. 885, 22 N.W.2d 124 (1946).

Defendant's right hereunder may be waived; failure of record to show objection raises presumption of waiver. Kopp v. State, 124 Neb. 363, 246 N.W. 718 (1933).

Objection made after trial begins that copy of information had not been served is too late. Foster v. State, 83 Neb. 264, 119 N.W. 475 (1909).

29-1803 Repealed. Laws 1965, c. 151, § 5.

29-1803.01 Repealed. Laws 1972, LB 1463, § 13.

29-1803.02 Repealed. Laws 1972, LB 1463, § 13.

29-1803.03 Repealed. Laws 1972, LB 1463, § 13.

29-1804 Transferred to section 23-3401.

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29-1804.10 Transferred to section 29-3908.

29-1804.11 Transferred to section 23-3403.

29-1804.12 Transferred to section 29-3905.

29-1804.13 Transferred to section 29-3906.

29-1804.14 Repealed. Laws 1990, LB 822, § 40.

29-1805 Repealed. Laws 1972, LB 1463, § 13.

29-1805.01 Transferred to section 29-3909.

29-1805.02 Transferred to section 29-3910.

29-1805.03 Transferred to section 29-3911.

29-1805.04 Transferred to section 29-3912.

29-1805.05 Transferred to section 29-3913.

29-1805.06 Transferred to section 29-3914.

29-1805.07 Transferred to section 29-3915.

29-1805.08 Transferred to section 29-3916.

29-1805.09 Transferred to section 29-3917.

29-1805.10 Transferred to section 29-3918.

29-1805.11 Repealed. Laws 1990, LB 822, § 40.

29-1806 Exceptions to indictment; time allowed.

The court shall allow the accused a reasonable time to examine the indictment and prepare exceptions thereto.

Source: G.S.1873, c. 58, § 438, p. 822; R.S.1913, § 9082; C.S.1922, § 10107; C.S.1929, § 29-1805.

29-1807 Exceptions to indictment; how made.

The accused may except to an indictment by (1) a motion to quash, (2) a plea in abatement, or (3) a demurrer.

Source: G.S.1873, c. 58, § 439, p. 822; R.S.1913, § 9083; C.S.1922, § 10108; C.S.1929, § 29-1806.

The distinction between a motion to quash and a motion to suppress is not mere form over substance. The filing of a motion to quash clearly notifies the State that the defendant's challenge is to the propriety of the entire proceedings. In contrast to a motion to quash, a motion to suppress seeks to exclude certain evidence from being presented at trial. State v. Kanarick, 257 Neb. 358, 598 N.W.2d 430 (1999).

Failure to attack indictment or information prior to trial is a waiver of any defects therein which are not jurisdictional. State ex rel. Gossett v. O'Grady, 137 Neb. 824, 291 N.W. 497 (1940).

Where different counts in information are properly joined, and evidence is offered to sustain each, an election will not be required. Poston v. State, 83 Neb. 240, 119 N.W. 520 (1909).

A plea in abatement is a device whereby indictment or information can be attacked. Ronzzo v. Sigler, 235 F.Supp. 839 (D. Neb. 1964).

29-1808 Motion to quash; when made.

A motion to quash may be made in all cases when there is a defect apparent upon the face of the record, including defects in the form of the indictment or in the manner in which an offense is charged.

Source: G.S.1873, c. 58, § 440, p. 822; R.S.1913, § 9084; C.S.1922, § 10109; C.S.1929, § 29-1807.

1. Defects
2. Waiver
3. Miscellaneous

1. Defects

Objections to the form or content of an information should be raised by a motion to quash. A defendant's failure to file a motion to quash the information waives objections to it, even when the objection is aimed at an amended information superseding the original information filed against the defendant. State v. Meers, 257 Neb. 398, 598 N.W.2d 435 (1999).

A motion to quash is the proper method to attack the requisite certainty and particularity of an information in a criminal case. State v. Bocian, 226 Neb. 613, 413 N.W.2d 893 (1987).

The defendant's motion to quash should have been sustained by the trial court because his testimony given under oath before a special legislative committee was not subject to prosecution as perjury under section 28-915. State v. Douglas, 222 Neb. 833, 388 N.W.2d 801 (1986).

Challenge to certainty and particularity of information which states an offense in the words of the statute may be made by a motion to quash, but not by a motion in arrest of judgment. State v. Abraham, 189 Neb. 728, 205 N.W.2d 342 (1973).

In a criminal prosecution for picketing, failure to allege the essential elements of the offense renders the information subject to a motion to quash. Dutiel v. State, 135 Neb. 811, 284 N.W. 321 (1939).

Defects in indictment which might have been attacked by motion to quash are waived by general demurrer. Buthman v. State, 131 Neb. 385, 268 N.W. 99 (1936).

Defects in verification should be raised by motion to quash before pleading to information. Davis v. State, 31 Neb. 247, 47 N.W. 854 (1891).

2. Waiver

A defendant who pleads not guilty without having raised the question of the lack of or a defective verification waives the defect. State v. Gilman, 181 Neb. 390, 148 N.W.2d 847 (1967).

Failure to file motion to quash is not a waiver where information wholly fails to allege essential element of crime. Nelson v. State, 167 Neb. 575, 94 N.W.2d 1 (1959).

Failure to attack indictment or information prior to trial is a waiver of any defects therein which are not jurisdictional. State ex rel. Gossett v. O'Grady, 137 Neb. 824, 291 N.W. 497 (1940).

Defects in indictment which might have been attacked by motion to quash are waived by general demurrer. Buthman v. State, 131 Neb. 385, 268 N.W. 99 (1936).

Failure to make motion to quash is waiver of any defect on face of information. Matters v. State, 120 Neb. 404, 232 N.W. 781 (1930).

3. Miscellaneous

The distinction between a motion to quash and a motion to suppress is not mere form over substance. The filing of a motion to quash clearly notifies the State that the defendant's challenge is to the propriety of the entire proceedings. In contrast to a motion to quash, a motion to suppress seeks to exclude certain evidence from being presented at trial. State v. Kanarick, 257 Neb. 358, 598 N.W.2d 430 (1999).

Disqualification of members of jury panel to serve cannot be raised by motion to quash. State v. Eggers, 175 Neb. 79, 120 N.W.2d 541 (1963).

Motion to quash was properly overruled in case stated. Blair v. State, 72 Neb. 501, 101 N.W. 17 (1904).

29-1809 Plea in abatement; when made.

A plea in abatement may be made when there is a defect in the record which is shown by facts extrinsic thereto.

Source: G.S.1873, c. 58, § 441, p. 822; R.S.1913, § 9085; C.S.1922, § 10110; C.S.1929, § 29-1808.

1. When made
2. Procedure

1. When made

Hereafter the sufficiency of the evidence at a preliminary hearing may be raised only by a plea in abatement filed in the criminal proceeding in the district court. Kruger v. Brainard, 183 Neb. 455, 161 N.W.2d 520 (1968).

A plea in abatement may be made when there is a defect in the record which is shown by facts extrinsic thereto. Svehla v. State, 168 Neb. 553, 96 N.W.2d 649 (1959).

Plea in abatement presenting questions of law only is properly determined by court. Hardin v. State, 92 Neb. 298, 138 N.W. 146 (1912).

Objections to empaneling of grand jury may be presented by plea in abatement. If plea is made, and no refusal to rule thereon by trial court is shown, objection is waived. Goldsberry v. State, 92 Neb. 211, 137 N.W. 1116 (1912).

Plea in abatement is proper where there is defect in record shown by extrinsic facts. In case stated, plea is not good. Steiner v. State, 78 Neb. 147, 110 N.W. 723 (1907).

Whether preliminary hearing has been had or waived may be determined by interposition of plea in abatement. Jahnke v. State, 68 Neb. 154, 94 N.W. 158 (1903), reversed on rehearing 68 Neb. 181, 104 N.W. 154 (1905).

A plea in abatement based upon the fact that defendant had two preliminary examinations, and that on the first he was held for a lower grade of offense than upon the one which is the basis of the information filed against him is demurrable. Thompson v. State, 61 Neb. 210, 85 N.W. 62 (1901).

Matters triable under plea of not guilty cannot be presented by plea in abatement. State v. Bailey, 57 Neb. 204, 77 N.W. 654 (1898).

Objections on grounds of variance of information from complaint should be made by plea in abatement. Whitner v. State, 46 Neb. 144, 64 N.W. 704 (1895).

2. Procedure

After trial and conviction in the district court, any error in the ruling of the district court on the plea in abatement is cured if the evidence at trial is sufficient to permit the jury to find guilt beyond a reasonable doubt. State v. Franklin, 194 Neb. 630, 234 N.W.2d 610 (1975).

Issue on plea in abatement was properly tried by the court without a jury. Bolln v. State, 51 Neb. 581, 71 N.W. 444 (1897).

Where plea in bar is good, issue raised by it and state's reply must be tried by jury. Arnold v. State, 38 Neb. 752, 57 N.W. 378 (1894).

Ruling on plea in abatement is not a final order. Gartner v. State, 36 Neb. 280, 54 N.W. 516 (1893).

Plea may be signed by prisoner's attorney; if verified by prisoner, it is sufficient. Bohanan v. State, 15 Neb. 209, 18 N.W. 129 (1884).

Plea must point out particular cause of illegality. Baldwin v. State, 12 Neb. 61, 10 N.W. 463 (1881).

Plea in abatement must state facts and not legal conclusions. Priest v. State, 10 Neb. 393, 6 N.W. 468 (1880).

Where allegations of plea in abatement are denied by state, burden of proof is on defendant. Everson v. State, 4 Neb. Unof. 109, 93 N.W. 394 (1903).

29-1810 Demurrer to indictment; when made.

The accused may demur when the facts stated in the indictment do not constitute an offense punishable by the laws of this state, or when the intent is not alleged, when proof of it is necessary to make out the offense charged.

Source: G.S.1873, c. 58, § 442, p. 822; R.S.1913, § 9086; C.S.1922, § 10111; C.S.1929, § 29-1809.

Demurrer to information was not properly sustained as to one count of the information. State v. Buttner, 180 Neb. 529, 143 N.W.2d 907 (1966).

Failure to demur is not a waiver where information wholly fails to allege essential element of crime. Nelson v. State, 167 Neb. 575, 94 N.W.2d 1 (1959).

Demurrer would not lie to indictment because it alleged in detail facts leading up to commission of criminal act charged. Kirchman v. State, 122 Neb. 624, 241 N.W. 100 (1932).

29-1811 Indictment defective; accused committed or held to bail.

When a motion to quash, or a plea in abatement, has been adjudged in favor of the accused, he may be committed or held to bail in such sum as the court may require for his appearance at the first day of the next term of said court.

Source: G.S.1873, c. 58, § 443, p. 822; R.S.1913, § 9087; C.S.1922, § 10112; C.S.1929, § 29-1810.

Order of district court sustaining motion to quash information does not operate to discharge the defendant. Dobrusky v. State, 140 Neb. 360, 299 N.W. 539 (1941).

29-1812 Defects; when considered waived.

The accused shall be taken to have waived all defects which may be excepted to by a motion to quash, or a plea in abatement, by demurring to an indictment or pleading in bar or the general issue.

Source: G.S.1873, c. 58, § 444, p. 822; R.S.1913, § 9088; C.S.1922, § 10113; C.S.1929, § 29-1811.

1. Plea of not guilty
2. Demurrer
3. Miscellaneous

1. Plea of not guilty

Overruling motion to quash information made after defendant had pleaded not guilty was proper. State v. Fiegl, 184 Neb. 704, 171 N.W.2d 643 (1969).

A defendant who pleads not guilty without having raised the question of the lack of or a defective verification waives the defect. State v. Gilman, 181 Neb. 390, 148 N.W.2d 847 (1967).

Plea in abatement was properly overruled when filed after entry of plea of not guilty. Onstott v. State, 156 Neb. 55, 54 N.W.2d 380 (1952).

Objection that a preliminary hearing in a criminal case has not been had is waived by a plea of not guilty in the district court. Roberts v. State, 145 Neb. 658, 17 N.W.2d 666 (1945).

Where defendant enters plea of not guilty to amended information, he waives all defects which might have been excepted to by motion to quash or plea in abatement. Dobrusky v. State, 140 Neb. 360, 299 N.W. 539 (1941).

Plea of not guilty waives all defects which may be excepted to by plea in abatement. Uerling v. State, 125 Neb. 374, 250 N.W. 243 (1933).

Objection that accused has not had preliminary examination is waived unless made before plea of not guilty is entered. Dinsmore v. State, 61 Neb. 418, 85 N.W. 445 (1901).

2. Demurrer

A motion to quash filed simultaneously with a demurrer to the indictment is not barred by this section. State v. Valencia, 205 Neb. 719, 290 N.W.2d 181 (1980).

Where demurrer to information is first filed and overruled, defects which might have been raised by motion to quash are waived. Wiese v. State, 138 Neb. 685, 294 N.W. 482 (1940).

Defects in an information which might have been attacked by motion to quash are waived by general demurrer. Buthman v. State, 131 Neb. 385, 268 N.W. 99 (1936).

Demurrer to information or plea of not guilty waives all defects which may be excepted to by motion to quash or plea in abatement. Green v. State, 116 Neb. 635, 218 N.W. 432 (1928); Olsen v. State, 114 Neb. 112, 206 N.W. 1 (1925); Reinoehl v. State, 62 Neb. 619, 87 N.W. 355 (1901).

3. Miscellaneous

This section applies where a plea is entered for a defendant by the court. State v. Severin, 250 Neb. 841, 553 N.W.2d 452 (1996).

All defects that may be excepted to by a motion to quash are taken as waived by a defendant pleading the general issue. State v. Bocian, 226 Neb. 613, 413 N.W.2d 893 (1987).

This section applies whether plea is by defendant in person or by the court for him if he stands mute. State v. Etchison, 190 Neb. 629, 211 N.W.2d 405 (1973).

Challenge to certainty and particularity of information which states an offense in the words of the statute is waived by pleading the general issue. State v. Abraham, 189 Neb. 728, 205 N.W.2d 342 (1973).

Defendant's assignment of error that court lacked jurisdiction because information failed to contain a distinct allegation of each element of crime waived by guilty plea. State v. Workman, 186 Neb. 467, 183 N.W.2d 911 (1971).

Defendant, by pleading guilty, waived objection that might have been raised by plea in abatement. State v. Ninneman, 179 Neb. 729, 140 N.W.2d 5 (1966).

Waiver applied only to those matters which may be raised by motion to quash. Nelson v. State, 167 Neb. 575, 94 N.W.2d 1 (1959).

Failure to attack indictment or information prior to trial is a waiver of any defects therein which are not jurisdictional. State ex rel Gossett v. O'Grady, 137 Neb. 824, 291 N.W. 497 (1940).

Information was not subject to charge of duplicity, and defects therein were waived. Sudyka v. State, 123 Neb. 431, 243 N.W. 276 (1932).

Defects in information were waived. Matters v. State, 120 Neb. 404, 232 N.W. 781 (1930).

Filing plea in bar constitutes waiver of all matters necessary or proper to be raised by plea in abatement. Melcher v. State, 109 Neb. 865, 192 N.W. 502 (1923).

Objections to empaneling grand jury may be presented by plea in abatement; if there is no ruling or refusal to rule thereon, objection is waived; cannot be taken by motion in arrest of judgment. Goldsberry v. State, 92 Neb. 211, 137 N.W. 1116 (1912).

Defects which might have been attacked by motion to quash or plea in abatement are waived when defendant pleads to general issue or when plea is entered for him by court. Huette v. State, 87 Neb. 798, 128 N.W. 519 (1910); Ingraham v. State, 82 Neb. 553, 118 N.W. 320 (1908).

29-1813 Plea in abatement; misnomer; procedure.

If the accused shall plead in abatement that he is not indicted by his true name, he must plead what his true name is, which shall be entered on the minutes of the court, and after such entry the trial and all other proceedings on the indictment shall be had against him by that name, referring also to the name by which he is indicted, in the same manner in all respects as if he had been indicted by his true name.

Source: G.S.1873, c. 58, § 445, p. 822; R.S.1913, § 9089; C.S.1922, § 10114; C.S.1929, § 29-1812.

29-1814 Demurrer or reply to plea in abatement; when made.

To any plea in abatement the county attorney may demur if it is not sufficient in substance, or he may reply setting forth any facts which may show that there is no defect in the record as charged in the plea.

Source: G.S.1873, c. 58, § 446, p. 822; R.S.1913, § 9090; C.S.1922, § 10115; C.S.1929, § 29-1813.

Joinder of issues on plea in abatement may be waived. Svehla v. State, 168 Neb. 553, 96 N.W.2d 649 (1959).

Demurrer to plea in bar admits all facts well pleaded therein. Smith v. State, 42 Neb. 356, 60 N.W. 585 (1894).

29-1815 Plea after overruling of demurrer to indictment.

After a demurrer to an indictment has been overruled, the accused may plead not guilty, or in bar.

Source: G.S.1873, c. 58, § 447, p. 822; R.S.1913, § 9091; C.S.1922, § 10116; C.S.1929, § 29-1814.

Cross References

Plea of nolo contendere, see section 29-1819 et seq.

When accused appears and goes to trial, arraignment is waived. Maher v. State, 144 Neb. 463, 13 N.W.2d 641 (1944).

Demurrer or plea of guilty waives all defects which might be objected to only by motion to quash or plea in abatement. Goddard v. State, 73 Neb. 739, 103 N.W. 443 (1905).

Trial for misdemeanor, without plea of defendant, is not ground for reversal. Allyn v. State, 21 Neb. 593, 33 N.W. 212 (1887).

Plea of not guilty precludes raising question of former conviction. Marshall v. State, 6 Neb. 120 (1877).

Defendant should plead to charge before he is placed on trial. Burley v. State, 1 Neb. 385 (1871).

29-1816 Arraignment of accused; when considered waived; child less than eighteen years of age; move court to waive jurisdiction to juvenile court; findings for decision; transfer to juvenile court; effect.

The accused shall be arraigned by reading to him or her the indictment or information, unless the reading is waived by the accused when the nature of the charge is made known to him or her. The accused shall then be asked whether he or she is guilty or not guilty of the offense charged. If the accused appears in person and by counsel and goes to trial before a jury regularly impaneled and sworn, he or she shall be deemed to have waived arraignment and a plea of not guilty shall be deemed to have been made.

At the time of the arraignment the court shall advise the defendant, if he or she was less than eighteen years of age at the time of the commitment of the alleged crime, that he or she may move the county or district court at any time not later than thirty days after arraignment, unless otherwise permitted by the court for good cause shown, to waive jurisdiction in such case to the juvenile court for further proceedings under the Nebraska Juvenile Code. The court shall schedule a hearing on such motion within fifteen days. The customary

rules of evidence shall not be followed at such hearing. The county attorney shall present the evidence and reasons why such case should be retained, the defendant shall present the evidence and reasons why the case should be transferred, and both sides shall consider the criteria set forth in section 43-276. After considering all the evidence and reasons presented by both parties, pursuant to section 43-276, the case shall be transferred unless a sound basis exists for retaining the case.

In deciding such motion the court shall consider, among other matters, the matters set forth in section 43-276 for consideration by the county attorney when determining the type of case to file.

The court shall set forth findings for the reason for its decision, which shall not be a final order for the purpose of enabling an appeal. If the court determines that the child should be transferred to the juvenile court, the complete file in the district court shall be transferred to the juvenile court and the indictment or information may be used in place of a petition therein. The court making a transfer shall order the minor to be taken forthwith to the juvenile court and designate where the minor shall be kept pending determination by the juvenile court. The juvenile court shall then proceed as provided in the Nebraska Juvenile Code.

Source: G.S.1873, c. 58, § 448, p. 822; R.S.1913, § 9092; C.S.1922, § 10117; Laws 1925, c. 105, § 1, p. 294; C.S.1929, § 29-1815; R.S.1943, § 29-1816; Laws 1947, c.103, § 1(1), p. 291; Laws 1974, LB 620, § 6; Laws 1975, LB 288, § 2; Laws 1987, LB 34, § 1; Laws 2008, LB1014, § 16.
Operative date July 18, 2008.

Cross References

Nebraska Juvenile Code, see section 43-2,129.

1. Arraignment
2. Jurisdiction to juvenile court
3. Miscellaneous

1. Arraignment

Arraignment complied with statute. Lingo v. Hann, 161 Neb. 67, 71 N.W.2d 716 (1955).

Where accused goes to trial without being arraigned and failed to demand formal arraignment, he waives his rights. Maher v. State, 144 Neb. 463, 13 N.W.2d 641 (1944); Hill v. State, 116 Neb. 73, 215 N.W. 789 (1927).

Issues are not joined until arraignment and plea to information; no jeopardy in absence of plea. Gragg v. State, 112 Neb. 732, 201 N.W. 338 (1924).

Under prior statute, reading of indictment could not be waived in felony case, and failure to arraign was reversible error. Popel v. State, 105 Neb. 348, 180 N.W. 570 (1920).

Formal arraignment is not necessary in misdemeanor. Kruger v. State, 1 Neb. 365 (1871).

2. Jurisdiction to juvenile court

The general rule is that on request by a juvenile, the district court must transfer a juvenile case involving a felony from district court to juvenile court, unless a sound basis for retaining jurisdiction exists. In deciding whether to grant a requested waiver of the district court's jurisdiction and to transfer the case to juvenile court, the district court having jurisdiction over a pending criminal prosecution is required to consider the juvenile's request in light of the criteria set forth in section 43-276. State v. Reynolds, 246 Neb. 802, 523 N.W.2d 377 (1994).

In deciding whether to grant a requested waiver of jurisdiction and transfer proceedings to juvenile court pursuant to this section, the court having jurisdiction over a pending criminal prosecution must carefully consider the juvenile's request in light of the criteria set forth in section 43-276. State v. Nevels, 235 Neb. 39, 453 N.W.2d 579 (1990).

This section and section 43-276 provide a balancing test in which public protection and security are weighed against practical, and not problematical, rehabilitation in determining whether there should be a waiver of jurisdiction over a criminal proceeding to the juvenile court. State v. Trevino, 230 Neb. 494, 432 N.W.2d 503 (1988).

This section and section 43-276 involve a balancing test, namely, public protection and societal security weighed against practical and not problematic rehabilitation, in determining whether there should be a waiver of jurisdiction in criminal proceedings with a transfer to the juvenile court. Where the record supported the trial court's findings that the crime was violent, that the defendant may require treatment beyond the age of majority, that defendant's rehabilitative needs were beyond the scope of the juvenile court, and that more protection of the public was required than would be available in juvenile court, the district court did not abuse its discretion in retaining jurisdiction. State v. Ryan, 226 Neb. 59, 409 N.W.2d 579 (1987).

District court properly refused transfer of minor to juvenile court after a hearing and issuing written findings enumerating the basis for denying transfer. State v. Stewart, 197 Neb. 497, 250 N.W.2d 849 (1977).

A judgment will not be reversed for failure of trial court to set forth findings for its reason to overrule a motion to transfer case to juvenile court where defendant failed to call trial court's attention to the requirement of the statute. State v. Highly, 195 Neb. 498, 238 N.W.2d 909 (1976).

3. Miscellaneous

When a defendant appeared, was represented by counsel, and went to trial, the defendant waived any argument that rearraignment was necessary. State v. Hernandez, 268 Neb. 934, 689 N.W.2d 579 (2004).

In order to retain jurisdiction pursuant to this section, the district court does not need to resolve every factor in section 43-276 against the juvenile. This section represents the policy decision, made by the Legislature, that decisions made at transfer hearings are to be informed by all of the surrounding circumstances, which may or may not include evidence that is inadmissible at a subsequent criminal trial. State v. McCracken, 260 Neb. 234, 615 N.W.2d 902 (2000).

A request to a court to waive jurisdiction to the juvenile court raises a jurisdictional challenge, and a defendant may appeal an unfavorable ruling even after entering a plea of guilty or tendering a plea of no contest. State v. Phinney, 235 Neb. 486, 455 N.W.2d 795 (1990).

Section is not applicable to misdemeanors. Wozniak v. State, 103 Neb. 749, 174 N.W. 298 (1919); Burroughs v. State, 94 Neb. 519, 143 N.W. 450 (1913).

Right to have complaint read to him in filiation proceeding is waived by defendant by proceeding to trial. McNeal v. Hunter, 72 Neb. 579, 101 N.W. 236 (1904).

29-1816.01 Arraignment of accused; report of proceedings; filing; evidence.

On the arraignment in the district court of any person accused of a felony, the court may require the official reporter of said court to make a stenographic report of the proceedings had in such court incident to such arraignment and the disposition of the charge made against the accused including sentence in the event of conviction. The court may further require the court reporter to prepare a transcript of his report of said proceedings, authenticate said transcript with an appropriate certificate to be attached thereto, and cause the same to be filed in the office of the clerk of said court. Such transcript need not be copied in either the journal of said court or the complete record in said office, but shall be kept in a special file and not removed from the office of the clerk of the district court, except on an order of a judge of said court expressly authorizing removal. In the event that the transcript is so made, authenticated and filed, it, or a duly certified copy thereof, shall become and be competent and lawful evidence and admissible as such in any of the courts of this state.

Source: Laws 1947, c. 103, § 1(2), p. 292.

29-1817 Plea in bar; allegations; reply to plea; how issues tried.

The accused may then offer a plea in bar to the indictment that he has before had judgment of acquittal, or been convicted, or been pardoned for the same offense; and to this plea the county attorney may reply that there is no record of such acquittal or conviction, or that there has been no pardon. On the trial of such issue to the court or to a jury, if the court desires to submit such issue to a jury, the accused must produce the record of such conviction or acquittal, or the pardon, and prove that he is the same person charged in the record or mentioned in the pardon; and shall be permitted to adduce such other evidence as may be necessary to establish the identity of the offense.

Source: G.S.1873, c. 58, § 449, p. 822; R.S.1913, § 9093; C.S.1922, § 10118; Laws 1927, c. 61, § 1, p. 222; C.S.1929, § 29-1816.

1. Scope
2. Procedure

1. Scope

Invalidity of law under which defendant is prosecuted cannot be raised by plea in bar. Melcher v. State, 109 Neb. 865, 192 N.W. 502 (1923).

Where amendment of information is made after trial has begun, there being no change in offense charged, accused is not thereby placed in jeopardy second time. McKay v. State, 91 Neb. 281, 135 N.W. 1024 (1912).

Former complaint which failed to allege facts sufficient to constitute crime is not bar. Roberts v. State, 82 Neb. 651, 118 N.W. 574 (1908).

Judgment of court which had no jurisdiction of subject matter is no bar. Peterson v. State, 79 Neb. 132, 112 N.W. 306 (1907).

Prosecution for burglary resulting in mistrial is no bar. Sharp v. State, 61 Neb. 187, 85 N.W. 38 (1901).

Plea in bar is waiver of plea in abatement; truth of averments of plea is tried to jury. Bush v. State, 55 Neb. 195, 75 N.W. 542 (1898).

Discharge of jury without sufficient cause may amount to acquittal. Conklin v. State, 25 Neb. 784, 41 N.W. 788 (1889); State v. Shuchardt, 18 Neb. 454, 25 N.W. 722 (1885).

Conviction in another country is not necessarily a bar. Marshall v. State, 6 Neb. 120 (1877).

2. Procedure

Plea in bar may be disregarded if presented while plea of not guilty remains on record; but if former is considered, latter is treated as withdrawn. George v. State, 59 Neb. 163, 80 N.W. 486 (1899).

Plea of ''former jeopardy'' should be set out in record; is invalid unless sworn to. Davis v. State, 51 Neb. 301, 70 N.W. 984 (1897).

Defense of statute of limitations is availed of under plea of ''not guilty.'' Boughn v. State, 44 Neb. 889, 62 N.W. 1094 (1895).

Plea in bar may be demurred to; under former statute, issue should be joined and tried to jury; former jeopardy is ground for plea. Arnold v. State, 38 Neb. 752, 57 N.W. 378 (1894); Murphy v. State, 25 Neb. 807, 41 N.W. 792 (1889).

29-1818 Plea in bar or abatement; verification by accused required.

No plea in bar or abatement shall be received by the court unless it be in writing, signed by the accused, and sworn to before some competent officer.

Source: G.S.1873, c. 58, § 450, p. 823; R.S.1913, § 9094; C.S.1922, § 10119; C.S.1929, § 29-1817.

Plea in bar must be sworn to by accused as prerequisite to validity. Schrum v. State, 108 Neb. 186, 187 N.W. 801 (1922).

29-1819 Pleas of guilty, not guilty, or nolo contendere; when required; failure to plead; effect.

If the issue on the plea in bar be found against the defendant, or if upon arraignment the accused offers no plea in bar, he shall plead guilty, not guilty, or nolo contendere; but if he pleads evasively or stands mute, he shall be taken to have pleaded not guilty.

Source: G.S.1873, c. 58, § 451, p. 823; R.S.1913, § 9095; C.S.1922, § 10120; C.S.1929, § 29-1818; R.S.1943, § 29-1819; Laws 1953, c. 92, § 1, p. 264.

A plea of nolo contendere entered on advice of counsel when defendant failed to supply counsel with all information that might have been relevant to his defense may not be withdrawn when the record shows that it was entered knowingly, understandingly, and voluntarily. State v. Hurley, 207 Neb. 321, 299 N.W.2d 152 (1980).

The effect of a plea of nolo contendere is the same as a plea of guilty. State v. Neuman, 175 Neb. 832, 125 N.W.2d 5 (1963); State v. Hylton, 175 Neb. 828, 124 N.W.2d 230 (1963).

Judgment of conviction of a felony, rendered upon plea of nolo contendere, is conclusive in disbarment proceeding. State ex rel. Nebraska State Bar Assn. v. Stanosheck, 167 Neb. 192, 92 N.W.2d 194 (1958).

Plea entered by court may be withdrawn by defendant. Huette v. State, 87 Neb. 798, 128 N.W. 519 (1910).

Plea of ''not guilty,'' entered by court under this section, binds defendant. Trimble v. State, 61 Neb. 604, 85 N.W. 844 (1901).

29-1819.01 Plea of nolo contendere; acceptance by court; when.

The accused may, at any time before conviction, enter a plea of nolo contendere with the consent of the court. The court may refuse to accept the plea, and shall not accept the plea without first determining that the plea is made voluntarily with an understanding of the nature of the charge.

Source: Laws 1953, c. 92, § 2, p. 264.

29-1819.02 Plea of guilty or nolo contendere; advisement required; effect.

(1) Prior to acceptance of a plea of guilty or nolo contendere to any offense punishable as a crime under state law, except offenses designated as infractions under state law, the court shall administer the following advisement on the record to the defendant:

IF YOU ARE NOT A UNITED STATES CITIZEN, YOU ARE HEREBY ADVISED THAT CONVICTION OF THE OFFENSE FOR WHICH YOU HAVE BEEN CHARGED MAY HAVE THE CONSEQUENCES OF REMOVAL FROM

THE UNITED STATES, OR DENIAL OF NATURALIZATION PURSUANT TO THE LAWS OF THE UNITED STATES.

(2) Upon request, the court shall allow the defendant additional time to consider the appropriateness of the plea in light of the advisement as described in this section. If, on or after July 20, 2002, the court fails to advise the defendant as required by this section and the defendant shows that conviction of the offense to which the defendant pleaded guilty or nolo contendere may have the consequences for the defendant of removal from the United States, or denial of naturalization pursuant to the laws of the United States, the court, on the defendant's motion, shall vacate the judgment and permit the defendant to withdraw the plea of guilty or nolo contendere and enter a plea of not guilty. Absent a record that the court provided the advisement required by this section, the defendant shall be presumed not to have received the required advisement.

(3) With respect to pleas accepted prior to July 20, 2002, it is not the intent of the Legislature that a court's failure to provide the advisement required by subsection (1) of this section should require the vacation of judgment and withdrawal of the plea or constitute grounds for finding a prior conviction invalid. Nothing in this section, however, shall be deemed to inhibit a court, in the sound exercise of its discretion, from vacating a judgment and permitting a defendant to withdraw a plea.

Source: Laws 2002, LB 82, § 13.

29-1819.03 Plea of guilty or nolo contendere; legislative findings and intent.

The Legislature finds and declares that in many instances involving an individual who is not a citizen of the United States and who is charged with an offense punishable as a crime under state law, a plea of guilty or nolo contendere is entered without the defendant knowing that a conviction of such offense is grounds for removal from the United States, or denial of naturalization pursuant to the laws of the United States. Therefor, it is the intent of the Legislature in enacting this section and section 29-1819.02 to promote fairness to such accused individuals by requiring in such cases that acceptance of a guilty plea or plea of nolo contendere be preceded by an appropriate warning of the special consequences for such a defendant which may result from the plea. It is also the intent of the Legislature that the court in such cases shall grant the defendant a reasonable amount of time to negotiate with the prosecuting agency in the event the defendant or the defendant's counsel was unaware of the possibility of removal from the United States, or denial of naturalization as a result of conviction. It is further the intent of the Legislature that at the time of the plea no defendant shall be required to disclose his or her legal status to the court.

Source: Laws 2002, LB 82, § 14.

29-1820 Plea of guilty; record; accused; custody.

If the accused pleads guilty the plea shall be recorded on the indictment, and the accused may be placed in the custody of the sheriff until sentence.

Source: G.S.1873, c. 58, § 452, p. 823; R.S.1913, § 9096; C.S.1922, § 10121; C.S.1929, § 29-1819; R.S.1943, § 29-1820; Laws 1963, c. 162, § 1, p. 575.

Requirement of entry of plea on back of indictment or information is directory and not mandatory. Jurgenson v. State, 166 Neb. 111, 88 N.W.2d 129 (1958).

Plea of guilty is equivalent to finding of guilty and will sustain such an order. Leiby v. State, 79 Neb. 485, 113 N.W. 125 (1907).

Plea of guilty, entered by defendant, is evidence against him in subsequent action to which he is party involving same subject matter. Wisnieski v. Vanek, 5 Neb. Unof. 512, 99 N.W. 258 (1904).

29-1821 Plea of not guilty; record; day of trial; designation; continuance; when.

If the accused pleads not guilty, the plea shall be entered on the indictment, and the prosecuting attorney shall, under the direction of the court, designate a day for trial, which shall be a day of the term at which the plea is made, unless the court, for good reasons, continues the case to a subsequent term.

Source: G.S.1873, c. 58, § 453, p. 823; R.S.1913, § 9097; C.S.1922, § 10122; C.S.1929, § 29-1820.

Date for trial was properly designated. Kitts v. State, 153 Neb. 784, 46 N.W.2d 158 (1951).

Failure to endorse plea on indictment is not ground for reversal. Preuit v. People, 5 Neb. 377 (1877).

29-1822 Mental incompetency of accused after crime commission; effect; capital punishment; stay of execution.

A person who becomes mentally incompetent after the commission of a crime or misdemeanor shall not be tried for the offense during the continuance of the incompetency. If, after the verdict of guilty and before judgment pronounced, such person becomes mentally incompetent, then no judgment shall be given while such incompetency shall continue; and if, after judgment and before execution of the sentence, such person shall become mentally incompetent, then in case the punishment be capital, the execution thereof shall be stayed until the recovery of such person from the incompetency.

Source: G.S.1873, c. 58, § 454, p. 823; R.S.1913, § 9098; C.S.1922, § 10123; C.S.1929, § 29-1821; R.S.1943, § 29-1822; Laws 1986, LB 1177, § 7.

District court has discretion to hold hearing voluntarily on mental competency of defendant to undergo sentence. State v. Saxon, 187 Neb. 338, 190 N.W.2d 854 (1971).

Insanity as a bar to the imposition of sentence presents a factual issue for the determination of the court. State v. Anderson, 186 Neb. 435, 183 N.W.2d 766 (1971).

Insanity as bar to imposition of sentence cannot be raised by habeas corpus. Sedlacek v. Hann, 156 Neb. 340, 56 N.W.2d 138 (1952).

This section imposes a duty on but does not go to the jurisdiction of the court. Sedlacek v. Greenholtz, 152 Neb. 386, 41 N.W.2d 154 (1950).

One who has become insane after the commission of a crime ought not to be tried for the offense during the continuance of the disability. Carlsen v. State, 129 Neb. 84, 261 N.W. 339 (1935).

Where insanity has not originated after commission of act, there is no requirement of trial of question of insanity. Walker v. State, 46 Neb. 25, 64 N.W. 357 (1895).

29-1823 Mental incompetency of accused before trial; determination by judge; effect; costs; hearing; commitment proceeding.

(1) If at any time prior to trial it appears that the accused has become mentally incompetent to stand trial, such disability may be called to the attention of the district court by the county attorney, by the accused, or by any person for the accused. The judge of the district court of the county where the accused is to be tried shall have the authority to determine whether or not the accused is competent to stand trial. The district judge may also cause such medical, psychiatric, or psychological examination of the accused to be made as he or she deems warranted and hold such hearing as he or she deems necessary. The cost of the examination, when ordered by the court, shall be the expense of the county in which the crime is charged. The district judge may allow any physician, psychiatrist, or psychologist a reasonable fee for his or her

services, which amount, when determined by the district judge, shall be certified to the county board which shall cause payment to be made. Should the district judge determine after a hearing that the accused is mentally incompetent to stand trial and that there is a substantial probability that the accused will become competent within the foreseeable future, the district judge shall order the accused to be committed to a state hospital for the mentally ill or some other appropriate state-owned or state-operated facility for appropriate treatment until such time as the disability may be removed.

(2) Within six months after the commencement of the treatment ordered by the district court, and every six months thereafter until either the disability is removed or other disposition of the accused has been made, the court shall hold a hearing to determine (a) whether the accused is competent to stand trial or (b) whether or not there is a substantial probability that the accused will become competent within the foreseeable future.

(3) If it is determined that there is not a substantial probability that the accused will become competent within the foreseeable future, then the state shall either (a) commence the applicable civil commitment proceeding that would be required to commit any other person for an indefinite period of time or (b) release the accused. If during the period of time between the six-month review hearings set forth in subsection (2) of this section it is the opinion of the Department of Health and Human Services that the accused is competent to stand trial, the department shall file a report outlining its opinion with the court, and within twenty-one days after such report being filed, the court shall hold a hearing to determine whether or not the accused is competent to stand trial. The state shall pay the cost of maintenance and care of the accused during the period of time ordered by the court for treatment to remove the disability.

Source: Laws 1967, c. 174, § 1, p. 489; Laws 1997, LB 485, § 1.

Cross References

Attendance of witnesses, right of accused to compel, see Article I, section 11, Constitution of Nebraska.

If the district court determines that an accused is incompetent to stand trial, then the court must make a determination whether there is a substantial probability that the accused will become competent within the foreseeable future under this section; absent such a factual determination, there is no order to be meaningfully reviewed on appeal. The means to be employed to determine competency or the substantial probability of competency within the foreseeable future are discretionary with the district court, and the court may cause such medical, psychiatric, or psychological examination of the accused to be made as he or she deems necessary in order to make such a determination under this section. State v. Jones, 258 Neb. 695, 605 N.W.2d 434 (2000).

The issue of competency is one of fact, and the means used to resolve it are discretionary with the court. State v. Hittle, 257 Neb. 344, 598 N.W.2d 20 (1999).

Proceeding to determine the competency of the accused to stand trial is a ''special proceeding'' and an order finding the defendant incompetent to stand trial and ordering him confined until such time as he is competent is a ''final order'' from which an appeal may be taken. State v. Guatney, 207 Neb. 501, 299 N.W.2d 538 (1980).

The question of competency to stand trial is to be determined by the court and the means are discretionary. State v. Crenshaw, 189 Neb. 780, 205 N.W.2d 517 (1973).

Determination that accused is mentally incompetent to stand trial does not invalidate prior proceedings nor determine his mental condition at any prior time. State v. Klatt, 187 Neb. 274, 188 N.W.2d 821 (1971).

This section does not change the common law in such cases but leaves it to the discretion of the court to hold such hearing, if any, as it deems necessary. State v. Anderson, 186 Neb. 435, 183 N.W.2d 766 (1971).

Decision whether a competency hearing should be held is within sound discretion of trial court. Crenshaw v. Wolff, 504 F.2d 377 (8th Cir. 1974).

29-1824 Transferred to section 23-3404.

29-1825 Transferred to section 23-3405.

29-1826 Transferred to section 23-3406.

29-1827 Transferred to section 23-3407.

29-1828 Transferred to section 23-3408.

ARTICLE 19

PREPARATION FOR TRIAL

(a) TESTIMONY IN GENERAL

Section
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29-1924. Statement, defined.
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29-1927. Admission of evidence of alibi; notice required; waiver.
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(a) TESTIMONY IN GENERAL

29-1901 Witnesses; subpoenas; service; deputies; witness fees and mileage reimbursement by defendant; when.

(1) In all criminal cases it shall be the duty of the clerk, upon a praecipe being filed, to issue writs of subpoena for all witnesses named in the praecipe,

directed to the sheriff of his or her county or of any county in the state where the witnesses reside or may be found, which shall be served and returned as in other cases. Such sheriff, by writing endorsed on such writs, may depute any disinterested person to serve and return the same. The writs of subpoena and all notices to appear shall include the following or substantially similar language: You may be entitled to compensation for witness fees and mileage for each day actually employed in attendance on the court or grand jury.

(2) A witness in a traffic, criminal, or juvenile case shall be entitled to a witness fee and mileage after appearing in court in response to a subpoena. The clerk of the court shall immediately submit a claim for payment of witness fees and mileage on behalf of all such witnesses to the county clerk in cases involving a violation of state law or to the city clerk in cases in violation of a city ordinance. All witness fees and mileage paid by a defendant as part of the court costs ordered by the court to be paid shall be reimbursed to the county or city treasurer as appropriate.

Source: G.S. 1873, c. 58, § 459, p. 824; R.S.1913, § 9099; C.S.1922, § 10124; C.S.1929, § 29-1901; R.S.1943, § 29-1901; Laws 1990, LB 87, § 3; Laws 1992, LB 435, § 1; Laws 1992, LB 1059, § 23.

Witness in criminal case cannot justify failure to obey subpoena on ground that he had demanded his fees and they were not paid. Huckins v. State, 61 Neb. 871, 86 N.W. 485 (1901).

29-1902 Return of subpoenas.

If the subpoena be served by such special deputy, it shall be his duty, after serving the same, to return thereon the manner in which the same was served; and also to make oath or affirmation to the truth of such return, before some person competent to administer oaths, which shall be endorsed on such writ; and the same shall be returned according to the command thereof by the person serving the same through the post office or otherwise.

Source: G.S.1873, c. 58, § 460, p. 824; R.S.1913, § 9100; C.S.1922, § 10125; C.S.1929, § 29-1902.

29-1903 Witnesses for defense; compulsory process; how obtained; fees to be paid by county; when; affidavit; effect.

Any person accused of crime amounting to felony shall have compulsory process to enforce the attendance of witnesses in his or her behalf, and they shall be paid for their mileage and per diem the same fees as are now or may hereafter be allowed by law to witnesses for the state in the prosecution of such accused person. Mileage shall be computed at the rate provided in section 81-1176 for state employees. In case such accused person is convicted and is unable to pay such mileage and per diem to any witnesses, they shall be paid out of the county treasury of the county wherein such crime was committed; and in case such accused person is acquitted upon his or her trial, the fees of his or her witnesses shall be likewise paid out of such county treasury; *Provided, however*, in no case shall the fees of any such witnesses be so paid, unless before the trial of such accusations such accused person shall make and file an affidavit, stating the names of his or her witnesses, and that he or she has made a statement to his or her counsel of the facts he or she expects to prove by such witnesses, and has been advised by such counsel that their testimony is material on the trial of such accusation, and shall also file an

affidavit of such counsel that he or she deems the testimony of such witnesses necessary and material on behalf of such accused person; whereupon the court or judge shall make an order directing that such witnesses, not exceeding fifteen in number, be paid out of the county treasury of the county in which accusations shall be made.

Source: G.S.1873, c. 58, § 461, p. 825; Laws 1885, c. 106, § 1, p. 394; R.S.1913, § 9101; C.S.1922, § 10126; C.S.1929, § 29-1903; R.S.1943, § 29-1903; Laws 1981, LB 204, § 40.

Defendant may not be arbitrarily deprived of testimony that would have been relevant, material, and vital to the defense. State v. Cain, 223 Neb. 796, 393 N.W.2d 727 (1986).

Court may require showing of what testimony may be expected of prospective witness before entry of order for compulsory process. O'Rourke v. State, 166 Neb. 866, 90 N.W.2d 820 (1958).

Where testimony of witness was incompetent, failure to serve compulsory process was not prejudicial. Garcia v. State, 159 Neb. 571, 68 N.W.2d 151 (1955).

Liability of county arises only by express provisions of statute. Worthen v. Johnson County, 62 Neb. 754, 87 N.W. 909 (1901).

29-1904 Depositions; certain witnesses; application by defendant; when granted; interrogatories; notice to county attorney.

Where any issue of fact is joined on any indictment, and any material witness for the defendant resides out of the state, or, residing within the state, is sick or infirm or is about to leave the state, such defendant may apply in writing to the court in term time, or the judge thereof in vacation, for a commission to examine such witness upon interrogatories thereto annexed, and such court or judge may grant the same, and order what and for how long a time notice shall be given the prosecuting attorney before the witness shall be examined.

Source: G.S.1873, c. 58, § 462, p. 825; R.S.1913, § 9102; C.S.1922, § 10127; C.S.1929, § 29-1904.

Cross References

Uniform Act to Secure the Attendance of Witnesses from Without a State in Criminal Proceedings, see section 29-1911.

It was not necessary to analyze this section to dispose of claim that trial court erred in refusing permission to take deposition of inmates of penal institution. Rains v. State, 173 Neb. 586, 114 N.W.2d 399 (1962).

Taking of depositions at county expense in advance of trial is not authorized. Vore v. State, 158 Neb. 222, 63 N.W.2d 141 (1954).

Defendant was entitled to continuance to take deposition out of the state where timely application was made. Dolen v. State, 148 Neb. 317, 27 N.W.2d 264 (1947).

On admission by state that proposed witness would testify as stated in affidavit, court may refuse continuance. Fanton v. State, 50 Neb. 351, 69 N.W. 953 (1897); Burris v. Court, 48 Neb. 179, 66 N.W. 1131 (1896).

Correctness of ruling in suppressing deposition, not excepted to, cannot be questioned on error. Clough v. State, 7 Neb. 320 (1878).

29-1905 Depositions; how taken.

The proceedings in taking the examination of such witness and returning it to court shall be governed in all respects as the taking of depositions in all civil cases.

Source: G.S.1873, c. 58, § 463, p. 825; R.S.1913, § 9103; C.S.1922, § 10128; C.S.1929, § 29-1905.

It was not necessary to analyze this section to dispose of claim that trial court erred in refusing permission to take deposition of inmates of penal institution. Rains v. State, 173 Neb. 586, 114 N.W.2d 399 (1962).

(b) WITNESSES OUTSIDE STATE

29-1906 Terms, defined.

(1) The word witness as used in sections 29-1906 to 29-1911 shall include a person whose testimony is desired in any proceeding or investigation by a

grand jury or in a criminal action, prosecution or proceeding; (2) the word state shall include any territory of the United States and the District of Columbia; (3) the word summons shall include a subpoena, order or other notice requiring the appearance of a witness.

Source: Laws 1937, c. 71, § 1, p. 257; C.S.Supp.,1941, § 29-1906.

29-1907 Person in this state required as witness in another state; procedure to secure attendance; fees; failure to testify; punishment.

If a judge of a court of record in any state, which by its laws has made provision for commanding persons within that state to attend and testify in this state, certifies under the seal of such court that there is a criminal prosecution pending in such court, or that a grand jury investigation has commenced or is about to commence, that a person being within this state is a material witness in such prosecution, or grand jury investigation, and that his or her presence will be required for a specified number of days, upon presentation of such certificate to any judge of a court of record in the county in which such person is, such judge shall fix a time and place for a hearing, and shall make an order directing the witness to appear at a time and place certain for the hearing. If at a hearing the judge determines that the witness is material and necessary, that it will not cause undue hardship to the witness to be compelled to attend and testify in the prosecution or a grand jury investigation in the other state, and that the laws of the state in which the prosecution is pending, or grand jury investigation has commenced or is about to commence and of any other state through which the witness may be required to pass by ordinary course of travel, will give to him or her protection from arrest and the service of civil and criminal process, he or she shall issue a summons, with a copy of the certificate attached, directing the witness to attend and testify in the court where the prosecution is pending, or where a grand jury investigation has commenced or is about to commence at a time and place specified in the summons. In any such hearing the certificate shall be prima facie evidence of all the facts stated therein. If the certificate recommends that the witness be taken into immediate custody and delivered to an officer of the requesting state to assure his or her attendance in the requesting state, such judge may, in lieu of notification of the hearing, direct that such witness be forthwith brought before him or her for such hearing; and the judge at the hearing being satisfied of the desirability of such custody and delivery, for which determination the certificate shall be prima facie proof of such desirability, may, in lieu of issuing subpoena or summons, order that the witness be forthwith taken into custody and delivered to an officer of the requesting state. If the witness, who is summoned as above provided, after being paid or tendered by some properly authorized person an amount equal to the rate authorized in section 81-1176 for mileage for state employees for each mile by the ordinary traveled route to and from the court where the prosecution is pending and five dollars for each day that he or she is required to travel and attend as a witness, fails without good cause to attend and testify as directed in the summons, he or she shall be punished in the manner provided for the punishment of any witness who disobeys a summons issued from a court of record in this state.

Source: Laws 1937, c. 71, § 2, p. 257; C.S.Supp.,1941, § 29-1907; R.S.1943, § 29-1907; Laws 1981, LB 204, § 41.

29-1908 Person in another state required as witness in this state; procedure to secure attendance; fees; failure to testify; punishment.

If a person in any state, which by its laws has made provision for commanding persons within its borders to attend and testify in criminal prosecutions, or grand jury investigations commenced or about to commence, in this state, is a material witness in a prosecution pending in a court of record in this state, or in a grand jury investigation which has commenced or is about to commence, a judge of such court may issue a certificate under the seal of the court stating these facts and specifying the number of days the witness will be required. Such certificate may include a recommendation that the witness be taken into immediate custody and delivered to an officer of this state to assure his or her attendance in this state. This certificate shall be presented to a judge of a court of record in the county in which the witness is found. If the witness is summoned to attend and testify in this state he or she shall be tendered an amount equal to the rate authorized in section 81-1176 for mileage for state employees for each mile by the ordinary traveled route to and from the court where the prosecution is pending, and five dollars for each day that he or she is required to travel and attend as a witness. A witness who has appeared in accordance with the provisions of the summons shall not be required to remain within this state a longer period of time than the period mentioned in the certificate, unless otherwise ordered by the court. If such witness, after coming into this state, fails without good cause to attend and testify as directed in the summons, he or she shall be punished in the manner provided for the punishment of any witness who disobeys a summons issued from a court of record in this state.

Source: Laws 1937, c. 71, § 3, p. 259; C.S.Supp.,1941, § 29-1908; R.S.1943, § 29-1908; Laws 1981, LB 204, § 42.

Cross References

Witness committed to jail, see section 29-508.02.

Attendance of witness from without state cannot be compelled at expense of county. Vore v. State, 158 Neb. 222, 63 N.W.2d 141 (1954).

29-1909 Witness from another state; not subject to arrest or civil process while in this state.

If a person comes into this state in obedience to a summons directing him to attend and testify in this state, he shall not while in this state pursuant to such summons be subject to arrest for the service of process, civil or criminal, in connection with matters which arose before his entrance into this state under the summons. If a person passes through this state while going to another state in obedience to a summons to attend and testify in that state or while returning therefrom, he shall not while so passing through this state be subject to arrest or the service of process, civil or criminal, in connection with matters which arose before his entrance into this state under the summons.

Source: Laws 1937, c. 71, § 4, p. 259; C.S.Supp.,1941, § 29-1909.

29-1910 Sections, how construed.

Sections 29-1906 to 29-1911 shall be so interpreted and construed as to effectuate their general purpose to make uniform the law of the states which

enact them. They shall be construed as supplemental to and cumulative with section 29-1904.

Source: Laws 1937, c. 71, § 5, p. 260; C.S.Supp.,1941, § 29-1910.

29-1911 Act, how cited.

Sections 29-1906 to 29-1911 may be cited as the Uniform Act to Secure the Attendance of Witnesses from Without a State in Criminal Proceedings.

Source: Laws 1937, c. 71, § 6, p. 260; C.S.Supp.,1941, § 29-1911.

(c) DISCOVERY

29-1912 Request by defendant to inspect and make copies of evidence; granted; when; findings; possibility of harm; effect.

(1) When a defendant is charged with a felony or when a defendant is charged with a misdemeanor or a violation of a city or village ordinance for which imprisonment is a possible penalty, he or she may request the court where the case is to be tried, at any time after the filing of the indictment, information, or complaint to order the prosecuting attorney to permit the defendant to inspect and copy or photograph:

(a) The defendant's statement, if any. For purposes of this subdivision statement shall mean a written statement made by the defendant and signed or otherwise adopted or approved by him or her, or a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement made by the defendant to an agent of the prosecution, state, or political subdivision thereof, and recorded contemporaneously with the making of such oral statement;

(b) The defendant's prior criminal record, if any;

(c) The defendant's recorded testimony before a grand jury;

(d) The names and addresses of witnesses on whose evidence the charge is based;

(e) The results and reports of physical or mental examinations, and of scientific tests, or experiments made in connection with the particular case, or copies thereof; and

(f) Documents, papers, books, accounts, letters, photographs, objects, or other tangible things of whatsoever kind or nature which could be used as evidence by the prosecuting authority.

(2) The court may issue such an order pursuant to the provisions of this section. In the exercise of its judicial discretion the court shall consider among other things whether:

(a) The request is material to the preparation of the defense;

(b) The request is not made primarily for the purpose of harassing the prosecution or its witnesses;

(c) The request, if granted, would not unreasonably delay the trial of the offense and an earlier request by the defendant could not have reasonably been made;

(d) There is no substantial likelihood that the request, if granted, would preclude a just determination of the issues at the trial of the offense; or

(e) The request, if granted, would not result in the possibility of bodily harm to, or coercion of, witnesses.

(3) Whenever the court refuses to grant an order pursuant to the provisions of this section, it shall render its findings in writing together with the facts upon which the findings are based.

(4) Whenever the prosecuting attorney believes that the granting of an order under the provisions of this section will result in the possibility of bodily harm to witnesses or that witnesses will be coerced, the court may permit him or her to make such a showing in the form of a written statement to be inspected by the court alone. The statement shall be sealed and preserved in the records of the court to be made available to the appellate court in the event of an appeal by the defendant.

Source: Laws 1969, c. 235, § 1, p. 867; Laws 1983, LB 110, § 1.

1. Scope
2. Trial court
3. Miscellaneous

1. Scope

The Supreme Court has not established any court rules that would provide the State with a right of discovery in criminal cases. State v. Kinney, 262 Neb. 812, 635 N.W.2d 449 (2001).

Discovery in a criminal case is, in the absence of a constitutional requirement, controlled by either a statute or court rule. State v. Phelps, 241 Neb. 707, 490 N.W.2d 676 (1992).

A motion to produce addressed to the prosecuting attorney under this section is not an appropriate way for a defendant in a criminal case to procure handwriting exemplars of third parties unless it be alleged that such exemplars are in the possession of the prosecutor and are relevant evidence in the prosecution. State v. Davis, 203 Neb. 284, 278 N.W.2d 351 (1979).

Where defendant's counsel had knowledge of a polygraph examination and did not attempt discovery nor to subpoena the examiner before trial, the report was not newly discovered evidence. State v. Seger, 191 Neb. 760, 217 N.W.2d 828 (1974).

Tape recording of conversation between undercover agent and defendant made before he was accused or indicted are admissible when he had taken no steps to discover and has on cross-examination elicited testimony of the conversation from the witness. State v. Myers, 190 Neb. 146, 206 N.W.2d 851 (1973).

This section governs what material a criminal defendant is entitled, as a matter of right, to discover. This section does not include information about prior criminal histories of witnesses, and discovery of that information is within the discretion of the trial court. State v. Dimmitt, 5 Neb. App. 451, 560 N.W.2d 498 (1997).

2. Trial court

Section 29-1916 does not provide a basis for a trial court to order a defendant to produce defense exhibits when the defendant has not requested a discovery order pursuant to this section. State v. Kinney, 262 Neb. 812, 635 N.W.2d 449 (2001).

A trial court's erroneous failure to notify defense counsel of an ex parte, court-ordered examination prior to such examination and the subsequent delay in defense counsel's reception of the expert examiner's report until trial has commenced is harmless when defense counsel receives a copy of the expert examiner's report as soon as the state receives such a copy, and the defense has adequate opportunities to depose the expert examiner; hence, admission of the expert examiner's testimony and the denial of defense counsel's motions for continuance and a new trial are not reversible errors. State v. Larsen, 255 Neb. 532, 586 N.W.2d 641 (1998).

At hearing on motion to produce hereunder, the trial court must determine by inquiry of the prosecuting attorney whether or not he has any item designated in the statute and in the motion to produce, and if the court refuses to order production, it shall render findings in writing with foundation facts. State v. Eskew, 192 Neb. 76, 218 N.W.2d 898 (1974).

Where LSD tablet was used in test and graph was not preserved, but it was stipulated results of laboratory test, investigation, and experiments were produced and copies given to defendant and no specific request for graph was made in discovery motion, refusal of court to suppress evidence was not error. State v. Batchelor, 191 Neb. 148, 214 N.W.2d 276 (1974).

Denial of a request during trial for a recess to examine a statement of accomplice whose name had been endorsed on information as a witness was not an abuse of discretion. State v. McCown, 189 Neb. 495, 203 N.W.2d 445 (1973).

3. Miscellaneous

Whether a prosecutor's failure to disclose evidence results in prejudice to the accused depends on whether the information sought is material to the preparation of the defense, meaning that there is a strong indication that such information will play an important role in uncovering admissible evidence, aiding preparation of witnesses, corroborating testimony, or assisting impeachment or rebuttal. State v. Castor, 257 Neb. 572, 599 N.W.2d 201 (1999).

Materiality is defined more broadly under this section than under the U.S. Constitution, and thus, evidence that is material under the U.S. Constitution is material under this section. State v. Lotter, 255 Neb. 456, 586 N.W.2d 591 (1998).

When a continuance will cure the prejudice caused by belated disclosure, a continuance should be requested by counsel and granted by the trial court. State v. Lotter, 255 Neb. 456, 586 N.W.2d 591 (1998).

Under this section, whether a prosecutor's failure to disclose evidence results in prejudice depends on whether the information sought is material to the preparation of the defense, meaning that there is a strong indication that such information will play an important role in uncovering admissible evidence, aiding preparation of witnesses, corroborating testimony, or assisting impeachment or rebuttal. State v. Kula, 252 Neb. 471, 562 N.W.2d 717 (1997).

The test for whether nondisclosure is prejudicial is whether the information sought is material to the preparation of the defense, meaning that there is a strong indication that such information will play an important role in uncovering admissible evidence, aiding preparation of witnesses, corroborating testimony, or assisting in impeachment or rebuttal. State v. Null, 247 Neb. 192, 526 N.W.2d 220 (1995).

Prosecutor's nondisclosure of pathologist's opinion, given after examination of victim's injuries in photographs, that means used and manner in which victim's wounds were inflicted were not as victim claimed, denied defendant fair trial. State v. Brown, 214 Neb. 665, 335 N.W.2d 542 (1983).

Statutory design for discovery is based upon the Federal Rules of Criminal Procedure. State v. Brown, 214 Neb. 665, 335 N.W.2d 542 (1983).

29-1913 Discovery; evidence of prosecuting authority; test or analysis by defense; when allowed; when inadmissible.

(1) When in any felony prosecution or any prosecution for a misdemeanor or a violation of a city or village ordinance for which imprisonment is a possible penalty, the evidence of the prosecuting authority consists of scientific tests or analyses of ballistics, firearms identification, fingerprints, blood, semen, or other stains, upon motion of the defendant the court where the case is to be tried may order the prosecuting attorney to make available to the defense such evidence necessary to allow the defense to conduct like tests or analyses with its own experts. The order shall specify the time, place, and manner of making such tests or analyses by the defense. Such an order shall not be entered if the tests or analyses by the defense cannot be made because of the natural deterioration of the evidence.

(2) If the evidence necessary to conduct the tests or analyses by the defense is unavailable because of the neglect or intentional alteration by representatives of the prosecuting authority, other than alterations necessary to conduct the initial tests, the tests or analyses by the prosecuting authority shall not be admitted into evidence.

Source: Laws 1969, c. 235, § 2, p. 868; Laws 1983, LB 110, § 2.

It is not an abuse of discretion for the trial court to admit expert testimony regarding the analysis of a substance necessarily consumed in testing, provided that the scientific or technical basis of the expert's opinion and the specific facts of the case on which the expert's opinion are based are before the jury and the opposing party has the opportunity to cross-examine the expert. State v. Peterson, 242 Neb. 286, 494 N.W.2d 551 (1993).

Where evidence necessary to conduct tests or analyses by the defense is unavailable due to the neglect or intentional alteration by the State, suppression of the test results is the exclusive remedy under subsection (2) of this section. State v. Tanner, 233 Neb. 893, 448 N.W.2d 586 (1989).

Where substance necessary for test by defense has been made unavailable by state, evidence of state's tests may be suppressed. State v. Brodrick, 190 Neb. 19, 205 N.W.2d 660 (1973).

29-1914 Discovery order; limitation.

Whenever an order is issued pursuant to the provisions of section 29-1912 or 29-1913, it shall be limited to items or information within the possession, custody, or control of the state or local subdivisions of government, the existence of which is known or by the exercise of due diligence may become known to the prosecution.

Source: Laws 1969, c. 235, § 3, p. 869.

29-1915 Discovery order; specify time, place, and manner of inspections and making copies.

An order issued pursuant to the provisions of sections 29-1912 to 29-1921 shall specify the time, place, and manner of making the inspections and of making copies or photographs and may prescribe such terms and conditions as are just.

Source: Laws 1969, c. 235, § 4, p. 869.

29-1916 Discovery order; reciprocity to prosecution; waiver of privilege of self-incrimination.

(1) Whenever the court issues an order pursuant to the provisions of sections 29-1912 and 29-1913, the court may condition its order by requiring the defendant to grant the prosecution like access to comparable items or information included within the defendant's request which:

(a) Are in the possession, custody, or control of the defendant;

(b) The defendant intends to produce at the trial; and

(c) Are material to the preparation of the prosecution's case.

(2) Whenever a defendant is granted an order under the provisions of sections 29-1912 to 29-1921, he shall be deemed to have waived his privilege of self-incrimination for the purposes of the operation of the provisions of this section.

Source: Laws 1969, c. 235, § 5, p. 869.

This section does not provide a basis for a trial court to order a defendant to produce defense exhibits when the defendant has not requested a discovery order pursuant to section 29-1912. State v. Kinney, 262 Neb. 812, 635 N.W.2d 449 (2001).

Whenever court issues order to produce documents or information on defendant's motion, it may require defendant to reciprocate. State v. Eskew, 192 Neb. 76, 218 N.W.2d 898 (1974).

29-1917 Deposition of witness; when; procedure; use at trial.

(1) Except as provided in section 29-1926, at any time after the filing of an indictment or information in a felony or Class W misdemeanor prosecution, the prosecuting attorney or the defendant may request the court to allow the taking of a deposition of any person other than the defendant who may be a witness in the trial of the offense. The court may order the taking of the deposition when it finds the testimony of the witness:

(a) May be material or relevant to the issue to be determined at the trial of the offense; or

(b) May be of assistance to the parties in the preparation of their respective cases.

(2) An order granting the taking of a deposition shall include the time and place for taking such deposition and such other conditions as the court determines to be just.

(3) The proceedings in taking the deposition of a witness pursuant to this section and returning it to the court shall be governed in all respects as the taking of depositions in civil cases.

(4) A deposition taken pursuant to this section may be used at the trial by any party solely for the purpose of contradicting or impeaching the testimony of the deponent as a witness.

Source: Laws 1969, c. 235, § 6, p. 870; Laws 1988, LB 90, § 2; Laws 1993, LB 178, § 1.

Cross References

Child victim or child witness, use of videotape deposition, see section 29-1926.

This statute governs the appropriate use of discovery depositions in a criminal case when the deponent is available as a testifying witness. State v. Castor, 257 Neb. 572, 599 N.W.2d 201 (1999).

A motion for depositions must be filed by a defendant after the information is filed. State v. Murphy, 255 Neb. 797, 587 N.W.2d 384 (1998).

Subsection (4) of this section governs only the appropriate use of a discovery deposition when the deponent is an available, testifying witness. State v. Allen, 252 Neb. 187, 560 N.W.2d 829 (1997).

Defendant is not entitled, as a matter of right, to a deposition pursuant to subsection (1) of this section. State v. Tuttle, 238 Neb. 827, 472 N.W.2d 712 (1991).

29-1918 Discovery of additional evidence; notify other party and court.

If, subsequent to compliance with an order for discovery under the provisions of sections 29-1912 to 29-1921, and prior to or during trial, a party discovers additional material which he would have been under a duty to disclose or produce at the time of such previous compliance, he shall promptly notify the other party or his attorney and the court of the existence of the additional material.

Source: Laws 1969, c. 235, § 7, p. 870.

29-1919 Discovery; failure to comply; effect.

If, at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with the provisions of sections 29-1912 to 29-1921 or an order issued pursuant to the provisions of sections 29-1912 to 29-1921, the court may:

(1) Order such party to permit the discovery or inspection of materials not previously disclosed;

(2) Grant a continuance;

(3) Prohibit the party from calling a witness not disclosed or introducing in evidence the material not disclosed; or

(4) Enter such other order as it deems just under the circumstances.

Source: Laws 1969, c. 235, § 8, p. 870.

Under this section, on determination that a discovery order has not been complied with, the trial court has broad discretion to enter such other order as it deems just under the circumstances. State v. Surber, 221 Neb. 714, 380 N.W.2d 293 (1986).

Subsection (4) of section 29-1919, R.R.S.1943, allows a court to enter no order at all. State v. Vicars, 207 Neb. 325, 299 N.W.2d 421 (1980).

29-1920 Indigent defendant; costs; how taxed.

Whenever a defendant is adjudged indigent, the reasonable costs incurred in the operation of the provisions of sections 29-1912 to 29-1921 shall be taxed as costs against the prosecuting authority.

Source: Laws 1969, c. 235, § 9, p. 871.

29-1921 Attorney-client privilege protected.

Nothing in sections 29-1912 to 29-1921 shall be construed to authorize any disclosure which would violate the attorney-client privilege.

Source: Laws 1969, c. 235, § 10, p. 871.

29-1922 Motion to produce statement of defendant and names of eyewitnesses; filing; order.

Any defendant may file a motion to produce any statement made by the defendant, or furnish the name of every eyewitness who has identified the defendant at a lineup or showup. The motion shall be filed in the court where the case is to be tried and may be made at any time after the information, indictment, or complaint is filed, and must be filed at least ten days before trial or at the time of arraignment, whichever is the later, unless otherwise permitted by the court for good cause shown. Upon a showing that the items requested by the defendant may be material to the preparation of his or her defense and that the request is reasonable, the court shall entertain such motion and upon sufficient showing may at any time order that the discovery or the inspection be denied, restricted, or deferred or may specify the time, place,

and manner of the making of the examination and the taking of copies of items requested and may prescribe such other terms and conditions as are just.

Source: Laws 1969, c. 230, § 1, p. 857; Laws 1983, LB 110, § 3.

29-1923 Additional statement of defendant or name of eyewitness; prosecutor; notification required; failure to comply; effect.

If, subsequent to compliance with an order issued pursuant to section 29-1922, and prior to or during trial, the prosecuting authority discovers any additional statement made by the defendant or the name of any eyewitness who has identified the defendant at a lineup or showup previously requested or ordered which is subject to discovery or inspection under section 29-1922, he or she shall promptly notify the defendant or his or her attorney or the court of the existence of this additional material. If at any time during the course of the proceedings it is brought to the attention of the court that the prosecuting authority has failed to comply with this section or with an order issued pursuant to section 29-1922, the court may order the prosecuting authority to permit the discovery or inspection of materials or witnesses not previously disclosed, grant a continuance, or prohibit the prosecuting authority from introducing in evidence the material or the testimony of the witness or witnesses not disclosed, or it may enter such other order as it deems just under the circumstances.

Source: Laws 1969, c. 230, § 2, p. 857; Laws 1983, LB 110, § 4.

29-1924 Statement, defined.

The term statement as used in sections 29-1922 and 29-1923 shall mean (1) a written statement made by such defendant and signed or otherwise adopted or approved by him or her; or (2) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement made by such defendant to a peace officer or prosecuting authority and recorded contemporaneously with the making of such oral statement.

Source: Laws 1969, c. 230, § 3, p. 858; Laws 1983, LB 110, § 5.

29-1925 Child victim or child witness; testimony; legislative intent.

The Legislature recognizes that obtaining testimony in a criminal prosecution from a child victim of or a child witness to a felony offense may be a delicate matter and may require some special considerations. It is the intent of the Legislature to promote, facilitate, and preserve the testimony of such child victim or child witness in a criminal prosecution to the fullest extent possible consistent with the constitutional right to confrontation guaranteed by the Sixth Amendment of the Constitution of the United States and Article I, section 11, of the Nebraska Constitution.

Source: Laws 1988, LB 90, § 1.

29-1926 Child victim or child witness; videotape deposition and in camera testimony; conditions; use; findings by court; release; violation; penalty.

(1)(a) Upon request of the prosecuting or defense attorney and upon a showing of compelling need, the court shall order the taking of a videotape deposition of a child victim of or child witness to any offense punishable as a

felony. The deposition ordinarily shall be in lieu of courtroom or in camera testimony by the child. If the court orders a videotape deposition, the court shall:

(i) Designate the time and place for taking the deposition. The deposition may be conducted in the courtroom, the judge's chambers, or any other location suitable for videotaping;

(ii) Assure adequate time for the defense attorney to complete discovery before taking the deposition; and

(iii) Preside over the taking of the videotape deposition in the same manner as if the child were called as a witness for the prosecution during the course of the trial.

(b) Unless otherwise required by the court, the deposition shall be conducted in the presence of the prosecuting attorney, the defense attorney, the defendant, and any other person deemed necessary by the court, including the parent or guardian of the child victim or child witness or a counselor or other person with whom the child is familiar. Such parent, guardian, counselor, or other person shall be allowed to sit with or near the child unless the court determines that such person would be disruptive to the child's testimony.

(c) At any time subsequent to the taking of the original videotape deposition and upon sufficient cause shown, the court shall order the taking of additional videotape depositions to be admitted at the time of the trial.

(d) If the child testifies at trial in person rather than by videotape deposition, the taking of the child's testimony may, upon request of the prosecuting attorney and upon a showing of compelling need, be conducted in camera.

(e) Unless otherwise required by the court, the child shall testify in the presence of the prosecuting attorney, the defense attorney, the defendant, and any other person deemed necessary by the court, including the parent or guardian of the child victim or child witness or a counselor or other person with whom the child is familiar. Such parent, guardian, counselor, or other person shall be allowed to sit with or near the child unless the court determines that such person would be disruptive to the child's testimony. Unless waived by the defendant, all persons in the room shall be visible on camera except the camera operator.

(f) If deemed necessary to preserve the constitutionality of the child's testimony, the court may direct that during the testimony the child shall at all times be in a position to see the defendant live or on camera.

(g) For purposes of this section, child shall mean a person eleven years of age or younger at the time the motion to take the deposition is made or at the time of the taking of in camera testimony at trial.

(h) Nothing in this section shall restrict the court from conducting the pretrial deposition or in camera proceedings in any manner deemed likely to facilitate and preserve a child's testimony to the fullest extent possible, consistent with the right to confrontation guaranteed in the Sixth Amendment of the Constitution of the United States and Article I, section 11, of the Nebraska Constitution. In deciding whether there is a compelling need that child testimony accommodation is required by pretrial videotape deposition, in camera live testimony, in camera videotape testimony, or any other accommodation, the court shall make particularized findings on the record of:

(i) The nature of the offense;

(ii) The significance of the child's testimony to the case;

(iii) The likelihood of obtaining the child's testimony without modification of trial procedure or with a different modification involving less substantial digression from trial procedure than the modification under consideration;

(iv) The child's age;

(v) The child's psychological maturity and understanding; and

(vi) The nature, degree, and duration of potential injury to the child from testifying.

(i) The court may order an independent examination by a psychologist or psychiatrist if the defense attorney requests the opportunity to rebut the showing of compelling need produced by the prosecuting attorney. Such examination shall be conducted in the child's county of residence.

(j) After a finding of compelling need by the court, neither party may call the child witness to testify as a live witness at the trial before the jury unless that party demonstrates that the compelling need no longer exists.

(k) Nothing in this section shall limit the right of access of the media or the public to open court.

(l) Nothing in this section shall preclude discovery by the defendant as set forth in section 29-1912.

(m) The Supreme Court may adopt and promulgate rules of procedure to administer this section, which rules shall not be in conflict with laws governing such matters.

(2)(a) No custodian of a videotape of a child victim or child witness alleging, explaining, denying, or describing an act of sexual assault pursuant to section 28-319, 28-319.01, or 28-320.01 or child abuse pursuant to section 28-707 as part of an investigation or evaluation of the abuse or assault shall release or use a videotape or copies of a videotape or consent, by commission or omission, to the release or use of a videotape or copies of a videotape to or by any other party without a court order, notwithstanding the fact that the child victim or child witness has consented to the release or use of the videotape or that the release or use is authorized under law, except as provided in section 28-730. Any custodian may release or consent to the release or use of a videotape or copies of a videotape to law enforcement agencies or agencies authorized to prosecute such abuse or assault cases on behalf of the state.

(b) The court order may govern the purposes for which the videotape may be used, the reproduction of the videotape, the release of the videotape to other persons, the retention and return of copies of the videotape, and any other requirements reasonably necessary for the protection of the privacy and best interests of the child victim or child witness.

(c) Pursuant to section 29-1912, the defendant described in the videotape may petition the district court in the county where the alleged offense took place or where the custodian of the videotape resides for an order releasing to the defendant a copy of the videotape.

(d) Any person who releases or uses a videotape except as provided in this section shall be guilty of a Class I misdemeanor.

Source: Laws 1988, LB 90, § 3; Laws 1997, LB 643, § 1; Laws 2006, LB 1199, § 12.

29-1927 Admission of evidence of alibi; notice required; waiver.

No evidence offered by a defendant for the purpose of establishing an alibi to an offense shall be admitted in the trial of the case unless notice of intention to rely upon an alibi is given to the county attorney and filed with the court at least thirty days before trial, except that such notice shall be waived by the presiding judge if necessary in the interests of justice.

Source: Laws 1993, LB 430, § 4.

This section does not allow a court to order the disclosure of the identity of a defendant's alibi witnesses prior to trial. State v. Woods, 255 Neb. 755, 587 N.W.2d 122 (1998).

29-1928 Jailhouse informer; legislative findings.

The Legislature finds and declares that the interests of justice may be thwarted by unreliable testimony at trial. There is a compelling state interest in providing safeguards against the admission of testimony the reliability of which may be or has been compromised through improper inducements.

The Legislature further finds and declares that the testimony of a jailhouse informer is sometimes unreliable. A jailhouse informer, due to the receipt or promise of a benefit, is presumed to provide testimony that may be unreliable.

For purposes of sections 29-1928 and 29-1929, a jailhouse informer is a person in custody as: An accused defendant, a convicted defendant awaiting sentencing, a convicted defendant serving a sentence, a criminal suspect, or a person detained for questioning regarding the event for which such person received a deal, promise, inducement, or benefit. A jailhouse informer is deemed to be in custody whether physically in jail or not.

Source: Laws 2002, LB 752, § 1; Laws 2008, LB465, § 1.
Effective date July 18, 2008.

29-1929 Jailhouse informer; admissibility of testimony; requirements.

Before the testimony of a jailhouse informer is admissible in court, the following requirements must be met:

At least ten days before trial, the state shall disclose to the person against whom the jailhouse informer will testify, or to such person's counsel:

(1) The known criminal history of the jailhouse informer;

(2) Any deal, promise, inducement, or benefit that the state or any person acting on behalf of the state has made or may make in the future to the jailhouse informer;

(3) The specific statements allegedly made by the person against whom the jailhouse informer will testify and the time, place, and manner of disclosure;

(4) All cases known to the state in which the jailhouse informer testified or offered statements against a person but was not called as a witness, whether or not the statements were admitted as evidence in the case, and whether the jailhouse informer received any deal, promise, inducement, or benefit in exchange for or subsequent to such testimony or statement, and all investigations in which the jailhouse informer was involved, known to the prosecutor or the law enforcement authority, during the course of which the jailhouse informer was offered or received any deal, promise, inducement, or benefit; and

(5) Whether at any time the jailhouse informer recanted testimony or statements and, if so, a transcript or copy of such recantation.

Source: Laws 2002, LB 752, § 2; Laws 2008, LB465, § 2.
Effective date July 18, 2008.

ARTICLE 20

TRIAL

Cross References

Constitutional provisions:
Appear and defend, right of accused to, see Article I, section 11, Constitution of Nebraska.
Attendance of witnesses, right to compel, see Article I, section 11, Constitution of Nebraska.
Confronted with witnesses against accused, right to be, see Article I, section 11, Constitution of Nebraska.
Impartial jury, right to, see Article I, section 11, Constitution of Nebraska.
Speedy public trial, right to, see Article I, section 11, Constitution of Nebraska.
Trial by jury, right to, see Article I, section 6, Constitution of Nebraska.

Section
29-2001. Trial; presence of accused required; exceptions.
29-2002. Joinder of offenses; joint trial; separate trials; when permitted; procedure.
29-2003. Joint indictment; special venire; when required; how drawn.
29-2004. Jury; how drawn and selected; alternate jurors.
29-2005. Peremptory challenges.
29-2006. Challenges for cause.
29-2007. Challenges for cause; how tried.
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29-2009. Jurors; oath; form.
29-2010. Juror; affirmation; form.
29-2011. Jurors; permitted to take notes; use; destruction.
29-2011.01. Repealed. Laws 1982, LB 525, § 3.
29-2011.02. Witnesses; refusal to testify or provide information; court order for testimony or information; limitation on use.
29-2011.03. Order for testimony or information of witness; request; when.
29-2012. Joint defendants; discharge of one or more; when authorized; effect.
29-2013. Repealed. Laws 1989, LB 443, § 2.
29-2014. Conspiracy; overt acts; allegations required; proof.
29-2015. Repealed. Laws 1978, LB 748, § 61.
29-2016. Trial; order of procedure.
29-2017. Jury; view place of occurrence of material fact; restrictions.
29-2018. Mistake in charging offense; prior to verdict; procedure.
29-2019. Mistake in charging offense; jury; discharge prior to verdict.
29-2020. Bill of exceptions by defendant; request; procedure; exception in capital cases.
29-2021. Repealed. Laws 1959, c. 121, § 4.
29-2022. Jury; conduct after submission.
29-2023. Jury; discharged before verdict; effect; journal entry.
29-2024. Verdict; poll.
29-2025. Lesser included offense; attempt to commit; form of verdict.
29-2026. Repealed. Laws 1963, c. 163, § 1.
29-2026.01. Verdict; finding of value of property; when required.
29-2027. Verdict in trials for murder; conviction by confession; sentencing procedure.
29-2028. Sexual assault; testimony; corroboration not required.

29-2001 Trial; presence of accused required; exceptions.

No person indicted for a felony shall be tried unless personally present during the trial. Persons indicted for a misdemeanor may, at their own request, by leave of the court be put on trial in their absence. The request shall be in writing and entered on the journal of the court.

Source: G.S.1873, c. 58, § 464, p. 825; R.S.1913, § 9104; C.S.1922, § 10129; C.S.1929, § 29-2001.

1. Felony
2. Misdemeanor
3. Miscellaneous

1. Felony

Court may not, without notice to and in absence of defendant and his counsel, orally instruct the jury while it is deliberating on the verdict. Strasheim v. State, 138 Neb. 651, 294 N.W. 433 (1940).

In felony case, not capital, defendant, out on bail, may waive right to be present during some of proceedings. Scott v. State, 113 Neb. 657, 204 N.W. 381 (1925).

Person, convicted of felony, and represented by counsel, cannot, as matter of right, insist on being present either at time of filing, argument or ruling on motion for new trial. Davis v. State, 51 Neb. 301, 70 N.W. 984 (1897).

Prisoner must be present at time verdict is received. Dodge v. People, 4 Neb. 220 (1876); Burley v. State, 1 Neb. 385 (1871).

2. Misdemeanor

A person charged with a misdemeanor may, upon his request, be put on trial in his absence. Koop v. City of Omaha, 173 Neb. 633, 114 N.W.2d 380 (1962).

In a misdemeanor case, presence of defendant when verdict is received may be waived. Hyslop v. State, 159 Neb. 802, 68 N.W.2d 698 (1955).

Defendant, charged with misdemeanor, who voluntarily absents himself from courtroom when jury returns verdict, his counsel being present, waived right to be present. Peterson v. State, 64 Neb. 875, 90 N.W. 964 (1902).

3. Miscellaneous

A defendant may waive his or her rights under this section through his or her knowing and voluntary absence at trial. State v. Zlomke, 268 Neb. 891, 689 N.W.2d 181 (2004).

Defendant has a right to be present at all times when any proceeding is taken during trial, but that right may be waived, and only by the defendant, personally. State v. Red Kettle, 239 Neb. 317, 476 N.W.2d 220 (1991).

Defendant has no right in common law or the Constitution to be present in chambers while jury instructions are formulated by counsel and the trial judge. State v. Bear Runner, 198 Neb. 368, 252 N.W.2d 638 (1977).

Presence of accused at trial being once shown by record is presumed to have continued unless contrary is made to appear. Bolln v. State, 51 Neb. 581, 71 N.W. 444 (1897).

Section does not apply to hearings on motions and demurrers before commencement of trial. Miller v. State, 29 Neb. 437, 45 N.W. 451 (1890).

Voluntary unnoticed absence of prisoner during examination of witness where witness was reexamined upon prisoner's return, was not ground for new trial. Hair v. State, 16 Neb. 601, 21 N.W. 464 (1884).

View of scene of crime should be made in presence of accused. Fillion v. State, 5 Neb. 351 (1877); Carroll v. State, 5 Neb. 31 (1876).

29-2002 Joinder of offenses; joint trial; separate trials; when permitted; procedure.

(1) Two or more offenses may be charged in the same indictment, information, or complaint in a separate count for each offense if the offenses charged, whether felonies or misdemeanors, or both, are of the same or similar character or are based on the same act or transaction or on two or more acts or transactions connected together or constituting parts of a common scheme or plan.

(2) The court may order two or more indictments, informations, or complaints, or any combination thereof, to be tried together if the offenses could have been joined in a single indictment, information, or complaint or if the defendants, if there is more than one, are alleged to have participated in the same act or transaction or in the same series of acts or transactions constituting an offense or offenses. The procedure shall be the same as if the prosecution were under such single indictment, information, or complaint.

(3) If it appears that a defendant or the state would be prejudiced by a joinder of offenses in an indictment, information, or complaint or by such joinder of offenses in separate indictments, informations, or complaints for trial together, the court may order an election for separate trials of counts, indictments, informations, or complaints, grant a severance of defendants, or provide whatever other relief justice requires.

Source: G.S.1873, c. 58, § 462, p. 825; R.S.1913, § 9105; C.S.1922, § 10130; C.S.1929, § 29-2002; R.S.1943, § 29-2002; Laws 1957, c. 105, § 1, p. 366; Laws 1992, LB 434, § 1.

1. Consolidation
2. Right to separate trial
3. Motion for separate trial
4. Miscellaneous

1. Consolidation

The propriety of a joint trial involves two questions: Whether there were appropriate grounds for consolidation and whether such consolidation would prejudice the defendant. State v. Garza, 256 Neb. 752, 592 N.W.2d 485 (1999).

The propriety of a joint trial involves two questions: whether the consolidation is proper because defendants could have been joined in the same indictment or information and whether there was a right to severance because defendants or the State would be prejudiced by an otherwise proper consolidation of the prosecutions for trial. State v. Brunzo, 248 Neb. 176, 532 N.W.2d 296 (1995).

If the offenses charged are of the same or similar character, or are based on the same act or transaction, the offenses may be joined in one trial. State v. Lewis, 241 Neb. 334, 488 N.W.2d 518 (1992).

Joinder or consolidation is not prejudicial error where evidence relating to both offenses would have been admissible in a trial of either offense separately. State v. Evans, 235 Neb. 575, 456 N.W.2d 739 (1990).

If the offenses involved were of the same or similar character, they can be joined in one information, and the trial court can order that they be tried together. State v. Porter, 235 Neb. 476, 455 N.W.2d 787 (1990).

Subsection (3) of this section allows the joinder of criminal defendants for trial if the defendants could have been joined in a single indictment, information, or complaint. State v. Lee, 227 Neb. 277, 417 N.W.2d 26 (1987).

The joinder of criminal defendants in an indictment or information is governed by subsection (2) of this section, which allows joinder if the defendants ''are alleged to have participated in the same act or transaction or in the same series of acts or transactions constituting an offense or offenses.'' State v. Lee, 227 Neb. 277, 417 N.W.2d 26 (1987).

If the offenses charged are of the same or similar character, or are based on the same act or transaction, the offenses may be joined in one trial. State v. Vrtiska, 225 Neb. 454, 406 N.W.2d 114 (1987).

Offenses of the same or similar character may be joined in one information and tried together. State v. McGuire, 218 Neb. 511, 357 N.W.2d 192 (1984).

Joinder is only permissible if the defendants are alleged to have participated in the same act or transaction or in the same series of acts or transactions constituting an offense or offenses, which means that the two charges are so closely linked in time, place, and circumstance that a complete account of one charge cannot be related without relating details of the other charge or where the facts of each charge can be explained adequately only by drawing upon the facts of the other charge. A trial court may not consolidate defendants' cases for trial if this section does not permit joinder of those same defendants in a single indictment and, in those cases where defendants have been improperly consolidated for trial, such action is prejudicial per se and severance is not a matter of discretion but is a matter of right. State v. Brehmer, 211 Neb. 29, 317 N.W.2d 885 (1982).

Where evidence relating to both offenses would have been admissible in a separate trial of either offense, joinder of offenses is permissible, even though offenses occurred ninety days apart. State v. Walker, 200 Neb. 273, 263 N.W.2d 454 (1978).

Where defendants acted together in offense charged, consolidation of their cases for trial is proper in absence of a showing of prejudice. State v. Boyce, 194 Neb. 538, 233 N.W.2d 912 (1975); State v. Saltzman, 194 Neb. 525, 233 N.W.2d 914 (1975).

Cases may be consolidated for trial if the offenses charged are based on the same act or transaction. State v. Shiller, 191 Neb. 291, 214 N.W.2d 616 (1974).

Cases may be consolidated for trial if the offenses charged are based on the same act or transaction. State v. Shimp, 190 Neb. 137, 206 N.W.2d 627 (1973).

Ruling of court upon motion for consolidation of criminal prosecutions properly joinable in a single information will not be disturbed in absence of abuse of discretion. State v. Bazer, 189 Neb. 711, 204 N.W.2d 799 (1973).

When the offenses charged are of the same or similar character or are based on the same act or transaction or on connected acts, they may be joined. If it appears that such joinder would prejudice defendant, the court may order an election for separate trials of the counts. State v. Rodgers, 186 Neb. 633, 185 N.W.2d 448 (1971).

Joint trial of codefendants is authorized. State v. Knecht, 181 Neb. 149, 147 N.W.2d 167 (1966).

Separate informations charging each of defendants with one robbery may be consolidated for trial. State v. Wilson, 174 Neb. 86, 115 N.W.2d 794 (1962).

2. Right to separate trial

Severance is not a matter of right, and a ruling of the trial court with regard thereto will not be disturbed on appeal absent a showing of prejudice to the defendant. State v. Mowell, 267 Neb. 83, 672 N.W.2d 389 (2003).

If the offenses charged are of the same or similar character or are based on the same act or transaction, the offenses may be joined in one trial. The right to separate trials is statutory and depends upon a showing that prejudice will result from a joint trial. The defendant bears the burden of proving that prejudice will result from a joint trial. State v. Evans, 235 Neb. 575, 456 N.W.2d 739 (1990).

Pursuant to subsections (2) and (3) of this section, two or more defendants may be tried together. There is no constitutional right to a separate trial, and a separate trial will only be granted upon a showing of prejudice. State v. Ryan, 233 Neb. 74, 444 N.W.2d 610 (1989).

The trial court's ruling on a motion for consolidation of prosecutions properly joinable will not be disturbed in the absence of an abuse of discretion. The right to separate trials is statutory and depends upon a showing that prejudice will result from a joint trial. The defendant bears the burden of proving that prejudice will result from a joint trial. State v. Andersen, 232 Neb. 187, 440 N.W.2d 203 (1989).

The right to a separate trial is statutory, and depends upon a showing that prejudice will result from a joint trial. The burden is on the party challenging the joint trial to demonstrate how and in what manner he or she was prejudiced. State v. Clark, 228 Neb. 599, 423 N.W.2d 471 (1988).

Joinder of criminal defendants for trial in a manner inconsistent with this section is prejudicial per se, and severance is not a matter of discretion but a matter of right. State v. Lee, 227 Neb. 277, 417 N.W.2d 26 (1987).

Even where prosecutions are otherwise properly consolidated for trial, court may grant separate trials upon showing prejudice will result from joint trial. State v. Pope, 192 Neb. 755, 224 N.W.2d 521 (1974).

Right to separate trial depends upon showing that prejudice will result from joint trial. State v. Clark, 189 Neb. 109, 201 N.W.2d 205 (1972); State v. Adams, 181 Neb. 75, 147 N.W.2d 144 (1966); State v. Erving, 180 Neb. 824, 146 N.W.2d 216 (1966).

There is no constitutional right to a separate trial. State v. Clark, 189 Neb. 109, 201 N.W.2d 205 (1972).

Defendants challenging a joint trial must affirmatively demonstrate that the joint trial has prejudiced their individual rights. State v. Rice, 188 Neb. 728, 199 N.W.2d 480 (1972).

When the offenses charged are of the same or similar character or are based on the same act or transaction or on connected acts, they may be joined. If it appears that such joinder would prejudice defendant, the court may order an election for separate trials of the counts. State v. Rodgers, 186 Neb. 633, 185 N.W.2d 448 (1971).

Severance, under this section, is not a matter of right. State v. Foster, 183 Neb. 247, 159 N.W.2d 561 (1968).

Under 1957 amendment to this section, jointly charged defendants are not entitled to a separate trial as a matter of right. State v. Cook, 182 Neb. 684, 157 N.W.2d 151 (1968).

Right to separate trial is granted only to persons charged with felony and not to those jointly charged with misdemeanor. Nash v. State, 110 Neb. 712, 194 N.W. 869 (1923).

One, jointly indicted with others for a felony, is entitled to separate trial as a matter of right, if request is made in season. Reed v. State, 93 Neb. 163, 139 N.W. 1015 (1913).

Whether separate trials are required depends upon a defendant's showing that prejudice will result from a joint trial. State v. Dandridge, 1 Neb. App. 786, 511 N.W.2d 527 (1993).

3. Motion for separate trial

Severance is not a matter of right and a ruling of the trial court with regard thereto will not be disturbed in absence of showing of prejudice. State v. Nance, 197 Neb. 95, 246 N.W.2d 868 (1976).

A motion for separate trial in a criminal case is addressed to the sound discretion of the trial court. State v. Hall, 176 Neb. 295, 125 N.W.2d 918 (1964).

Motion for separate trial is addressed to sound discretion of trial court, and ruling thereon will not be disturbed in absence of abuse of discretion. State v. Brown, 174 Neb. 387, 118 N.W.2d 328 (1962).

Motion may be made either by prisoner or state and objection to severance is too late after jury is empaneled. Metz v. State, 46 Neb. 547, 65 N.W. 190 (1895).

4. Miscellaneous

When issues of prejudicial joinder and prejudicial failure to sever are not before the trial court, defendant cannot raise these issues on appeal. State v. Vance, 240 Neb. 794, 484 N.W.2d 453 (1992).

Joinder is not prejudicial error where evidence relating to both offenses would be admissible in a trial of either offense separately. State v. Porter, 235 Neb. 476, 455 N.W.2d 787 (1990).

Separate offenses must be set out in separate counts in an information, but failure is cured by verdict when no objection was made. State v. French, 195 Neb. 88, 236 N.W.2d 832 (1975).

Requirement of showing prejudice met where confession of codefendant implicating appellant used in joint trial and both defendants were represented by same counsel. State v. Montgomery, 182 Neb. 737, 157 N.W.2d 196 (1968).

Court may refuse to allow prisoner's codefendant to be present at trial. Evidence is not inadmissible because it also tends to establish guilt of codefendant. Krens v. State, 75 Neb. 294, 106 N.W. 27 (1905).

Admission of extra-judicial confessions of codefendants found to be prejudicial and violative of defendant's right of cross-examination. Davis v. Sigler, 415 F.2d 1159 (8th Cir. 1969).

29-2003 Joint indictment; special venire; when required; how drawn.

When two or more persons shall have been charged together in the same indictment or information with a crime, and one or more shall have demanded a separate trial and had the same, and when the court shall be satisfied by reason of the same evidence being required in the further trial of parties to the same indictment or information, that the regular panel and bystanders are incompetent, because of having heard the evidence, to sit in further causes in the same indictment or information, then it shall be lawful for the court to require the clerk of the court to write the names of sixty electors of the county wherein such cause is being tried, each upon a separate slip of paper, and place the same in a box, and, after the same shall have been thoroughly mixed, to draw therefrom such number as in the opinion of the court will be sufficient from which to select a jury to hear such cause. The electors whose names are so drawn shall be summoned by the sheriff to forthwith appear before the court, and, after having been examined, such as are found competent and shall have no lawful excuse for not serving as jurors shall constitute a special venire from which the court shall proceed to have a jury impaneled for the trial of the cause. The court may repeat the exercise of this power until all the parties charged in the same indictment or information shall have been tried.

Source: Laws 1881, c. 34, § 1, p. 213; R.S.1913, § 9106; C.S.1922, § 10131; C.S.1929, § 29-2003.

If several juries are picked at one time from a single jury panel for a series of trials, examination must be allowed if requested for good reason in subsequent trials in the series to determine if any jurors should be excused for cause. State v. Myers, 190 Neb. 466, 209 N.W.2d 345 (1973).

Where separate trials are held on joint indictment or information for commission of single offense, jurors who sat in trial of one defendant are disqualified to sit in trial of others. Seaton v. State, 106 Neb. 833, 184 N.W. 890 (1921).

Section applies only when two or more persons are charged in the same indictment and one has had a separate trial. Koenigstein v. State, 101 Neb. 229, 162 N.W. 879 (1917).

Provisions of this section are not exclusive. Aabel v. State, 86 Neb. 711, 126 N.W. 316 (1910); Barber v. State, 75 Neb. 543, 106 N.W. 423 (1906); Barney v. State, 49 Neb. 515, 68 N.W. 636 (1896).

29-2004 Jury; how drawn and selected; alternate jurors.

(1) All parties may stipulate that the jury may be selected up to thirty-one days prior to the date of trial. The stipulation must be unanimous among all parties and evidenced by a joint stipulation to the county court.

(2) In all cases, except as may be otherwise expressly provided, the accused shall be tried by a jury drawn, summoned, and impaneled according to provisions of the code of civil procedure, except that whenever in the opinion of the court the trial is likely to be a protracted one, the court may, immediately after the jury is impaneled and sworn, direct the calling of one or two additional jurors, to be known as alternate jurors. Such jurors shall be drawn from the same source and in the same manner, and have the same qualifications as regular jurors, and be subject to examination and challenge as such jurors, except that each party shall be allowed one peremptory challenge to each alternate juror. The alternate jurors shall take the proper oath or affirmation and shall be seated near the regular jurors with equal facilities for seeing and hearing the proceedings in the cause, and shall attend at all times upon the trial of the cause in company with the regular jurors. They shall obey all orders and admonitions of the court, and if the regular jurors are ordered to be kept in the custody of an officer during the trial of the cause, the alternate jurors shall also be kept with the other jurors and, except as hereinafter provided, shall be discharged upon the final submission of the cause to the jury. If an information charging a violation of section 28-303 and in which the death penalty is sought contains a notice of aggravation, the alternate jurors shall be retained as provided in section 29-2520. If, before the final submission of the cause a regular juror dies or is discharged, the court shall order the alternate juror, if there is but one, to take his or her place in the jury box. If there are two alternate jurors the court shall select one by lot, who shall then take his or her place in the jury box. After an alternate juror is in the jury box he or she shall be subject to the same rules as a regular juror.

Source: G.S.1873, c. 58, § 466, p. 825; R.S.1913, § 9107; C.S.1922, § 10132; C.S.1929, § 29-2004; Laws 1933, c. 38, § 1, p. 242; C.S.Supp.,1941, § 29-2004; R.S.1943, § 29-2004; Laws 1996, LB 1249, § 2; Laws 2002, Third Spec. Sess., LB 1, § 6.

Cross References

Change of venue, criminal case pending in county with population of four thousand or less without adequate facilities for jury trials, see section 25-412.01.

For drawing and selecting of jurors, see Chapter 25, article 16.

In a trial for attempted murder, assault, and other crimes, a juror who was mistakenly seated on the jury despite having been stricken by the State was a ''regular juror,'' within the meaning of this section, and thus, the juror could be replaced by an alternate when the mistake was discovered. State v. Aguilar, 268 Neb. 411, 683 N.W.2d 349 (2004).

Verdict of jury will be set aside where evidence is clearly insufficient to sustain it. Pritchard v. State, 135 Neb. 522, 282 N.W. 529 (1938).

Accused cannot waive right to trial by jury. Michaelson v. Beemer, 72 Neb. 761, 101 N.W. 1007 (1904).

Challenge to array or motion to quash panel must be in writing and should point out grounds relied upon. Strong v. State, 63 Neb. 440, 88 N.W. 772 (1902).

Jurors may be summoned for trial of criminal case when no regular panel is present. Carrall v. State, 53 Neb. 431, 73 N.W. 939 (1898).

In criminal trials, jurors are not judges of the law. Parrish v. State, 14 Neb. 60, 15 N.W. 357 (1883).

29-2005 Peremptory challenges.

Every person arraigned for any crime punishable with death, or imprisonment for life, shall be admitted on his or her trial to a peremptory challenge of twelve jurors, and no more; every person arraigned for any offense that may be punishable by imprisonment for a term exceeding eighteen months and less than life, shall be admitted to a peremptory challenge of six jurors; and in all

other criminal trials, the defendant shall be allowed a peremptory challenge of three jurors. The attorney prosecuting on behalf of the state shall be admitted to a peremptory challenge of twelve jurors in all cases when the offense is punishable with death or imprisonment for life, six jurors when the offense is punishable by imprisonment for a term exceeding eighteen months and less than life, and three jurors in all other cases; *Provided*, that in all cases where alternate jurors are called, as provided in section 29-2004, then in that case both the defendant and the attorney prosecuting for the state shall each be allowed one added peremptory challenge to each alternate juror.

Source: G.S.1873, c. 58, § 467, p. 826; R.S.1913, § 9108; Laws 1915, c. 166, § 1, p. 337; C.S.1922, § 10133; C.S.1929, § 29-2005; Laws 1933, c. 38, § 2, p. 243; C.S.Supp.,1941, § 29-2005; R.S.1943, § 29-2005; Laws 1981, LB 213, § 1.

Depriving a defendant in a criminal proceeding of the peremptory challenges to which he or she is statutorily entitled is structural error. State v. Marshall, 269 Neb. 56, 690 N.W.2d 593 (2005).

Where two or more offenses are properly joined, a trial court does not err in limiting the defendant to the number of peremptory challenges statutorily available for the most serious of the offenses, and a defendant is not entitled to additional peremptory challenges because the indictment charges separate offenses in separate counts. State v. Williams, 239 Neb. 985, 480 N.W.2d 390 (1992).

Where imprisonment authorized was for a period of one year, only three peremptory challenges could be demanded. State v. Abboud, 181 Neb. 84, 147 N.W.2d 152 (1966).

Counsel have right to put pertinent questions on voir dire examination of jurors to aid in the exercise of right of peremptory challenge. Oden v. State, 166 Neb. 729, 90 N.W.2d 356 (1958).

Order of exercise of peremptory challenges rested in discretion of trial court. Callies v. State, 157 Neb. 640, 61 N.W.2d 370 (1953); Sherrick v. State, 157 Neb. 623, 61 N.W.2d 358 (1953).

Where both state and defendant waived peremptory challenge, objection to disqualification of juror who had read newspaper article was waived. Sundahl v. State, 154 Neb. 550, 48 N.W.2d 689 (1951).

Peremptory challenges are not to be exercised until jurors have been passed for cause. Fetty v. State, 119 Neb. 619, 230 N.W. 440 (1930); Mathes v. State, 107 Neb. 212, 185 N.W. 425 (1921); Rutherford v. State, 32 Neb. 714, 49 N.W. 701 (1891).

Order in which challenges shall be made is left to sound discretion of trial court. Johnson v. State, 88 Neb. 565, 130 N.W. 282 (1911); Gravely v. State, 45 Neb. 878, 64 N.W. 452 (1895).

Failure to exercise right of peremptory challenge is waiver of any disqualification then known to exist. Morgan v. State, 51 Neb. 672, 71 N.W. 788 (1897); Curran v. Percival, 21 Neb. 434, 32 N.W. 213 (1887).

29-2006 Challenges for cause.

The following shall be good causes for challenge to any person called as a juror or alternate juror, on the trial of any indictment: (1) That he was a member of the grand jury which found the indictment; (2) that he has formed or expressed an opinion as to the guilt or innocence of the accused; *Provided*, if a juror or alternate juror shall state that he has formed or expressed an opinion as to the guilt or innocence of the accused, the court shall thereupon proceed to examine, on oath, such juror or alternate juror as to the ground of such opinion; and if it shall appear to have been founded upon reading newspaper statements, communications, comments or reports, or upon rumor or hearsay, and not upon conversations with witnesses of the transactions or reading reports of their testimony or hearing them testify, and the juror or alternate juror shall say on oath that he feels able, notwithstanding such opinion, to render an impartial verdict upon the law and the evidence, the court, if satisfied that such juror or alternate juror is impartial and will render such verdict, may, in its discretion, admit such juror or alternate juror as competent to serve in such case; (3) in indictments for an offense the punishment whereof is capital, that his opinions are such as to preclude him from finding the accused guilty of an offense punishable with death; (4) that he is a relation within the fifth degree to the person alleged to be injured or attempted to be injured, or to the person on whose complaint the prosecution was instituted, or to the defendant; (5) that he has served on the petit jury which was sworn in the same cause against the same defendant and which jury either rendered a verdict which was

set aside or was discharged, after hearing the evidence; (6) that he has served as a juror in a civil case brought against the defendant for the same act; (7) that he has been in good faith subpoenaed as a witness in the case; (8) that he is a habitual drunkard; (9) the same challenges shall be allowed in criminal prosecutions that are allowed to parties in civil cases.

Source: G.S.1873, c. 58, § 468, p. 826; R.S.1913, § 9109; C.S.1922, § 10134; C.S.1929, § 29-2006; Laws 1933, c. 38, § 3, p. 243; C.S.Supp.,1941, § 29-2006.

1. Capital punishment
2. Opinion of juror
3. Relation to defendant
4. Other grounds
5. Miscellaneous

1. Capital punishment

In a capital case, it is entirely permissible to exclude from jury service venirepersons whose views on capital punishment are such as to prevent or substantially impair their ability to impartially apply the law to the evidence. State v. Bradley, 236 Neb. 371, 461 N.W.2d 524 (1990).

Pursuant to subsection (3) of this section, it is good cause to challenge one called for jury service in a capital case if his or her opinions are such as to prevent ''finding the accused guilty''; thus, the venire may be examined to determine whether any juror has conscientious scruples against capital punishment such as to prevent or substantially impair the performance of his or her duties as a juror. State v. Hankins, 232 Neb. 608, 441 N.W.2d 854 (1989).

A venireperson whose views on capital punishment are such as to prevent or substantially impair the performance of his or her duties as a juror may, under this provision, be constitutionally excused from jury service in a capital case. State v. Bird Head, 225 Neb. 822, 408 N.W.2d 309 (1987).

A juror who opposes the death penalty may still be eligible to serve as a juror in a capital case as long as such juror is able and does swear to decide guilt or innocence on the evidence and law as given in the jury instructions. A juror who has indicated an inability to fairly and impartially determine guilt by refusing to subordinate his or her own personal views and obey the law of the state must be excused for cause. State v. Benzel, 220 Neb. 466, 370 N.W.2d 501 (1985).

If juror has conscientious scruples against inflicting death penalty in murder case, he may be excused on challenge by state. Sharp v. State, 117 Neb. 304, 220 N.W. 292 (1928).

Statement of juror, on trial of defendant charged with murder in first degree, that he would not join in verdict of guilty with death penalty, renders him incompetent. Johnson v. State, 88 Neb. 565, 130 N.W. 282 (1911).

Right of person charged with capital offense to examine jurors on competency should not be unreasonably obstructed. Wilson v. State, 87 Neb. 638, 128 N.W. 38 (1910).

State's attorney may ask juror on examination if he has conscientious scruples against capital punishment. Taylor v. State, 86 Neb. 795, 126 N.W. 752 (1910).

Mere sentimental feelings against death punishment is not sufficient; juror must be so prejudiced against it that opinion would preclude him from finding defendant guilty. Haddix v. State, 76 Neb. 369, 107 N.W. 781 (1906); Rhea v. State, 63 Neb. 461, 88 N.W. 789 (1902).

Provision making conscientious scruples against death penalty a ground of challenge for cause was not repealed by amendment of 1893, conferring on jury discretion to fix punishment for first degree murder at life imprisonment instead of death. Hill v. State, 42 Neb. 503, 60 N.W. 916 (1894).

Statement of juror that his convictions are such as would preclude conviction of guilty on circumstantial evidence, when punishment is death, is ground for challenge. St. Louis v. State, 8 Neb. 405, 1 N.W. 371 (1879).

2. Opinion of juror

Subsection (3) of this section allows a juror to be successfully challenged for cause on the basis of his or her opinions regarding the death penalty only in those cases in which those opinions would prevent the juror from impartially weighing the evidence and reaching a conclusion as to the defendant's guilt or innocence on the basis of the evidence presented. State v. Bjorklund, 258 Neb. 432, 604 N.W.2d 169 (2000).

Opinion of juror based on reading newspapers did not disqualify him. Fugate v. State, 169 Neb. 420, 99 N.W.2d 868 (1959).

Voir dire examination furnishes a defendant ample opportunity to establish whether prospective jurors have been prejudiced by newspaper articles. Kitts v. State, 153 Neb. 784, 46 N.W.2d 158 (1951).

Opinion based upon newspaper reports does not afford cause for challenge, where it is shown that same will not interfere with juror in rendering fair and impartial verdict upon evidence, under instructions of the court. Ringer v. State, 114 Neb. 404, 207 N.W. 928 (1926); King v. State, 108 Neb. 428, 187 N.W. 934 (1922); Bridges v. State, 80 Neb. 91, 113 N.W. 1048 (1907).

Juror, having formed opinion, is not disqualified in view of statement that he would disregard opinion and return fair and impartial verdict. King v. State, 108 Neb. 428, 187 N.W. 934 (1922).

Where juror answers that evidence is necessary to remove opinion, such fact will not disqualify him, if opinion formed, and he is otherwise qualified, in accordance with statute. Whitcomb v. State, 102 Neb. 236, 166 N.W. 553 (1918).

Challenge for cause, where juror has formed opinion founded on reading testimony of witnesses, should be sustained; statute is mandatory. Flege v. State, 93 Neb. 610, 142 N.W. 276 (1913).

Mere fact that juror, otherwise competent, had feeling that white race was superior to colored race, of which defendant was one, did not render him incompetent. Johnson v. State, 88 Neb. 565, 130 N.W. 282 (1911).

Hypothetical opinion, based solely on rumor and newspaper reports, may not disqualify. Barker v. State, 73 Neb. 469, 103 N.W. 71 (1905); Jahnke v. State, 68 Neb. 154, 94 N.W. 158 (1903, reversed on rehearing, 68 Neb. 181, 104 N.W. 154 (1905); Rottman v. State, 63 Neb. 648, 88 N.W. 857 (1902); Ward v. State, 58 Neb. 719, 79 N.W. 725 (1899).

Juror is incompetent when he says it will require some evidence to remove his opinion, though he may also state that he can render impartial verdict under law and evidence. Owens v. State, 32 Neb. 167, 49 N.W. 226 (1891).

Where juror answered he had no bias or prejudice against defendant, it was not error to sustain objections to other questions seeking to elicit remarks made about defendant. Gandy v. State, 27 Neb. 707, 43 N.W. 747, 44 N.W. 108 (1889).

Juror, who admits having opinion, and does not state that he could render fair and impartial verdict, is incompetent. Thurman v. State, 27 Neb. 628, 43 N.W. 404 (1889).

To render a juror incompetent in a criminal case on the ground of an opinion formed or expressed, it must appear that opinion was in reference to guilt or innocence of defendant. Fillion v. State, 5 Neb. 351 (1877).

If venireman has formed opinion from reading testimony of witnesses, he is incompetent, though he swears to be able, notwithstanding, to render an impartial verdict on the law and evidence. Smith v. State, 5 Neb. 181 (1876).

3. Relation to defendant

In prosecution for forging note payable to a bank, challenge to juror on ground that his wife and brother were depositors in bank was properly overruled. Flannigan v. State, 127 Neb. 640, 256 N.W. 321 (1934).

Juror, first cousin to accused, was properly excused as being a relation within fifth degree. Marion v. State, 20 Neb. 233, 29 N.W. 911 (1886).

4. Other grounds

Counsel has right to put pertinent questions to prospective jurors to ascertain if there is ground for challenge for cause. Oden v. State, 166 Neb. 729, 90 N.W.2d 356 (1958).

This section furnishes ample opportunity to establish whether prospective jurors have been prejudiced by reading newspaper article. Sundahl v. State, 154 Neb. 550, 48 N.W.2d 689 (1951).

Where competency of juror is challenged for first time after conviction, on ground that he had been convicted of felony and served term in penitentiary, such objection was waived. Reed v. State, 75 Neb. 509, 106 N.W. 649 (1906); Turley v. State, 74 Neb. 471, 104 N.W. 934 (1905).

Court must be satisfied that juror is impartial; that, notwithstanding his opinion, he will render impartial verdict upon law and evidence. Lucas v. State, 75 Neb. 11, 105 N.W. 976 (1905).

It is good cause for challenge that juror has served as juror in same court within two years. Coil v. State, 62 Neb. 15, 86 N.W. 925 (1901).

Juror should be excused if court discovers least symptom of prejudice, though his formal answers bring him within letter of statutory qualification. Cowan v. State, 22 Neb. 519, 35 N.W. 405 (1887).

5. Miscellaneous

Subsection (3) of this section does not violate either the 6th or the 14th Amendment to the U.S. Constitution. Subsection (3) of this section does not violate Article I, section 3, of the Nebraska Constitution. Subsection (3) of this section fully comports with the state constitutional provisions regarding impartial juries and due process found in Article I, sections 6 and 11. State v. Bjorklund, 258 Neb. 432, 604 N.W.2d 169 (2000).

Failure to insist on a ruling on a challenge for cause waives error in the denial of that challenge. State v. Williams, 239 Neb. 985, 480 N.W.2d 390 (1992).

Subsection (3) of this section held constitutional and serves to ensure that the petit jury is impartial. State v. Burchett, 224 Neb. 444, 399 N.W.2d 258 (1986).

Death-qualified jury held constitutional. State v. Peery, 223 Neb. 556, 391 N.W.2d 566 (1986).

This section does not violate the sixth or fourteenth amendment to the U.S. Constitution. State v. Rust, 223 Neb. 150, 388 N.W.2d 483 (1986).

If several juries are picked at one time from a single jury panel for a series of trials, examination must be allowed if requested for good reason in subsequent trials in the series to determine if any jurors should be excused for cause. State v. Myers, 190 Neb. 466, 209 N.W.2d 345 (1973).

Opportunity for prejudice or disqualification of juror is not sufficient to raise a presumption that they exist. Medley v. State, 156 Neb. 25, 54 N.W.2d 233 (1952); Fisher v. State, 154 Neb. 166, 47 N.W.2d 349 (1951).

Question of competency of veniremen to sit in trial of criminal cannot be raised by motion for continuance. Seaton v. State, 106 Neb. 833, 184 N.W. 890 (1921).

Error cannot be predicated on overruling challenge for cause, complaining party not having exhausted peremptory challenges. Kennison v. State, 83 Neb. 391, 119 N.W. 768 (1909); Brinegar v. State, 82 Neb. 558, 118 N.W. 475 (1908).

Proceedings relative to impaneling jury, to be reviewable, should be preserved by bill of exceptions. Shumway v. State, 82 Neb. 152, 117 N.W. 407 (1908), opinion modified in 82 Neb. 165, 119 N.W. 517 (1909).

If examination considered as whole, does not show incompetency, challenge is properly overruled. Keeler v. State, 73 Neb. 441, 103 N.W. 64 (1905).

Failure to interrogate juror as to residence is waiver of that objection. Hickey v. State, 12 Neb. 490, 11 N.W. 744 (1882).

29-2007 Challenges for cause; how tried.

All challenges for cause shall be tried by the court, on the oath of the person challenged, or on other evidence, and such challenge shall be made before the jury is sworn, and not afterward.

Source: G.S.1873, c. 58, § 469, p. 827; R.S.1913, § 9110; C.S.1922, § 10135; C.S.1929, § 29-2007.

This section does not bar examination and challenge for cause in subsequent trials in series even after jury is sworn if several juries are picked at one time from a single jury panel for a series of trials. State v. Myers, 190 Neb. 466, 209 N.W.2d 345 (1973).

All challenges for cause are decided by court. Rakes v. State, 158 Neb. 55, 62 N.W.2d 273 (1954).

In impaneling a jury, all challenges for cause are tried to the court. Lee v. State, 147 Neb. 333, 23 N.W.2d 316 (1946).

If cause of challenge is denied by juror on voir dire after accused's peremptory challenges are exhausted, accused has right to have issue tried and witnesses examined. Trobough v. State, 119 Neb. 128, 227 N.W. 443 (1929).

Decision of trial judge being based on consideration of all facts developed during examination, including appearance and actions of juror, will not be reversed unless clearly wrong. Bemis v. City of Omaha, 81 Neb. 352, 116 N.W. 31 (1908); Ward v. State, 58 Neb. 719, 79 N.W. 725 (1899).

Evidence relating to challenges to jurors cannot be considered unless settled and allowed by bill of exceptions. West v. State, 63 Neb. 257, 88 N.W. 503 (1901).

29-2008 Defendants tried together; number of peremptory challenges allowed.

If two or more persons be put on trial at the same time, each must be allowed his separate peremptory challenge, and in such cases the attorney prosecuting

on behalf of the state shall be allowed such peremptory challenges for each of such defendants as are allowed by law.

Source: G.S.1873, c. 58, § 470, p. 827; R.S.1913, § 9111; Laws 1915, c. 167, § 1, p. 338; C.S.1922, § 10136; C.S.1929, § 29-2008.

When defendants, being tried together, do not demand full number of challenges allowed, their rights thereto are waived. Nash v. State, 110 Neb. 712, 194 N.W. 869 (1923).

29-2009 Jurors; oath; form.

When all challenges have been made, the following oath shall be administered: You shall well and truly try, and true deliverance make, between the State of Nebraska and the prisoner at the bar (giving his name), so help you God.

Source: G.S.1873, c. 58, § 471, p. 827; R.S.1913, § 9112; C.S.1922, § 10137; C.S.1929, § 29-2009.

Trial court's journal entry reciting jury was sworn imports verity absent contrary proof. State v. Martin, 198 Neb. 811, 255 N.W.2d 844 (1977).

It is the duty of jury to endeavor to agree upon verdict; agreement by them to evade such duty is violation of oath. Green v. State, 10 Neb. 102, 4 N.W. 422 (1880).

Where record states that jury was sworn "to well and truly try and true deliverance make upon the issue joined between the parties," it is presumed that oath was administered in statutory form. Smith v. State, 4 Neb. 277 (1876).

29-2010 Juror; affirmation; form.

Any juror shall be allowed to make affirmation, and the words this you do as you shall answer under the pains and penalties of perjury shall be substituted instead of the words so help you God.

Source: G.S.1873, c. 58, § 472, p. 827; R.S.1913, § 9113; C.S.1922, § 10138; C.S.1929, § 29-2010.

29-2011 Jurors; permitted to take notes; use; destruction.

Jurors shall be permitted, but not required, to take notes. The notes may be used during the jury's deliberations, but not preserved for review on appeal. The notes shall be treated as confidential between the juror making them and the other jurors. The trial judge shall ensure the confidentiality of the notes during the course of the trial and the jury's deliberations and shall cause the notes to be destroyed immediately upon return of the verdict.

Source: Laws 2008, LB1014, § 72.
Operative date April 17, 2008.

29-2011.01 Repealed. Laws 1982, LB 525, § 3.

29-2011.02 Witnesses; refusal to testify or provide information; court order for testimony or information; limitation on use.

Whenever a witness refuses, on the basis of the privilege against self-incrimination, to testify or to provide other information in a criminal proceeding or investigation before a court, grand jury, or special committee of the Legislature authorized pursuant to section 50-404, the court, on motion of the county attorney, other prosecuting attorney, or chairperson of a special committee of the Legislature, may order the witness to testify or to provide other information. The witness may not refuse to comply with such an order of the court on the basis of the privilege against self-incrimination, but no testimony or other information compelled under the court's order or any information

directly or indirectly derived from such testimony or other information may be used against the witness in any criminal case except in a prosecution for perjury, giving a false statement, or failing to comply with the order of the court.

Source: Laws 1982, LB 525, § 1; Laws 1990, LB 1246, § 12.

Cross References

Legislative Council, committee investigations, see sections 50-404 to 50-409.

This section does not authorize a grant of immunity to any witness except upon the motion of the prosecuting attorney. State v. Starks, 229 Neb. 482, 427 N.W.2d 297 (1988).

Where a defendant has testified in a previous criminal case under a lawful grant of immunity, the sentencing court in a subsequent criminal case cannot consider such testimony or any information directly or indirectly derived from it in determining whether a death sentence should be imposed under the provisions of § 29-2523 and related statutes. State v. Jones, 213 Neb. 1, 328 N.W.2d 166 (1982).

Absent a motion from the prosecuting attorney, a trial court does not have the authority to grant immunity to a witness under this section. State v. Sanchez-Lahora, 9 Neb. App. 621, 616 N.W.2d 810 (2000).

29-2011.03 Order for testimony or information of witness; request; when.

A county attorney, other prosecuting attorney, or chairperson of a special committee of the Legislature authorized pursuant to section 50-404 upon an affirmative vote of a majority of the committee may request an order pursuant to section 29-2011.02 when in his or her judgment:

(1) The testimony or other information from such individual may be necessary to the public interest; and

(2) Such individual has refused or is likely to refuse to testify or provide other information on the basis of the privilege against self-incrimination.

Source: Laws 1982, LB 525, § 2; Laws 1990, LB 1246, § 13.

29-2012 Joint defendants; discharge of one or more; when authorized; effect.

When two or more persons shall be indicted together, the court may, at any time before the defendant has gone into his defense, direct any one of the defendants to be discharged that he may be a witness for the state. An accused may, also, when there is not sufficient evidence to put him upon his defense, be discharged by the court; or, if not discharged by the court, shall be entitled to the immediate verdict of the jury, for the purpose of giving evidence for others accused with him. Such order of discharge in either case shall be a bar to another prosecution for the same offense.

Source: G.S.1873, c. 58, § 474, p. 827; R.S.1913, § 9115; C.S.1922, § 10140; C.S.1929, § 29-2012.

When separate trials are awarded to parties jointly indicted, each is a competent witness for the state upon the trial of other, without being first acquitted, and without entry of nolle prosequi. Carroll v. State, 5 Neb. 31 (1876).

29-2013 Repealed. Laws 1989, LB 443, § 2.

29-2014 Conspiracy; overt acts; allegations required; proof.

In trials for conspiracy, in cases where an overt act is required by law to consummate the offense, no conviction shall be had unless one or more overt acts be expressly alleged in the indictment, nor unless one or more of the acts so alleged be proved on trial; but other overt acts not alleged in the indictment may be given in evidence on the part of the prosecution.

Source: G.S.1873, c. 58, § 476, p. 828; R.S.1913, § 9117; C.S.1922, § 10142; C.S.1929, § 29-2014.

In trials for conspiracy where an overt act is required by law to consummate the offense, a specific overt act must be alleged. An allegation that a person committed an overt act is not adequate. State v. Marco, 230 Neb. 355, 432 N.W.2d 1 (1988).

Doing of overt act by one or more of the conspirators is essential to conviction on charge of conspiracy. Beyl v. State, 165 Neb. 260, 85 N.W.2d 653 (1957).

An overt act effecting the object of a conspiracy is a necessary element of conspiracy. Platt v. State, 143 Neb. 131, 8 N.W.2d 849 (1943).

Mere tacit understanding to work to common unlawful purpose is all that is essential to guilty combination. Deupree v. Thornton, 97 Neb. 812, 151 N.W. 305 (1915), reversed on rehearing, 98 Neb. 804, 154 N.W. 557 (1915).

Conspiracy cannot be established by admissions alone of coconspirator who is not a party to record. State v. Merchants Bank, 81 Neb. 704, 116 N.W. 667 (1908); O'Brien v. State, 69 Neb. 691, 96 N.W. 649 (1903).

For rules as to proof of conspiracy in civil cases see Harvey v. Harvey, 75 Neb. 557, 106 N.W. 660 (1906); Farley v. Peebles, 50 Neb. 723, 70 N.W. 231 (1897).

29-2015 Repealed. Laws 1978, LB 748, § 61.

29-2016 Trial; order of procedure.

After the jury has been impaneled and sworn, the trial shall proceed in the following order: (1) The counsel for the state must state the case of the prosecution and may briefly state the evidence by which he expects to sustain it; (2) the defendant or his counsel must then state his defense and may briefly state the evidence he expects to offer in support of it; (3) the state must first produce its evidence; the defendant will then produce his evidence; (4) the state will then be confined to rebutting evidence, unless the court for good reason in furtherance of justice, shall permit it to offer evidence in chief; (5) when the evidence is concluded, either party may request instructions to the jury on the points of law, which shall be given or refused by the court, which instructions shall be reduced to writing if either require it; (6) when the evidence is concluded, unless the case is submitted without argument, the counsel for the state shall commence, the defendant or his counsel follow, and the counsel for the state conclude the argument to the jury; (7) the court after the argument is concluded shall immediately and before proceeding with other business charge the jury, which charge or any charge given after the conclusion of the argument shall be reduced to writing by the court, if either party requests it before the argument to the jury is commenced; and such charge or charges or any other charge or instruction provided for in this section, when so written and given, shall in no case be orally qualified, modified or in any manner explained to the jury by the court; and all written charges and instructions shall be taken by the jury in their retirement and returned with their verdict into court, and shall remain on file with the papers of the case.

Source: G.S.1873, c. 58, § 478, p. 828; R.S.1913, § 9119; C.S.1922, § 10144; C.S.1929, § 29-2016.

1. Instructions
2. Opening statement
3. Misconduct
4. Admissibility of evidence
5. Procedure

1. Instructions

Defendant may not predicate error on an instruction that is more favorable to him than is required by law. Stump v. State, 132 Neb. 49, 271 N.W. 163 (1937).

Proper time to submit requested instructions is as early in trial as possible, but not later than close of evidence. Whitehall v. Commonwealth Casualty Co., 125 Neb. 16, 248 N.W. 692 (1933).

It is the court's duty, on own motion, to instruct as to general rules of law; instruction desired should be submitted in writing. Osborne v. State, 115 Neb. 65, 211 N.W. 179 (1926).

Examples of instructions on ''reasonable doubt'' given. Stehr v. State, 92 Neb. 755, 139 N.W. 676 (1913); Brown v. State, 88 Neb. 411, 129 N.W. 545 (1911); Clements v. State, 80 Neb. 313, 114 N.W. 271 (1907); Atkinson v. State, 58 Neb. 356, 78 N.W. 621 (1899); Maxfield v. State, 54 Neb. 44, 74 N.W. 401 (1898); Whitney v. State, 53 Neb. 287, 73 N.W. 696 (1898); Ferguson v. State, 52 Neb. 432, 72 N.W. 590 (1897).

It is not error to refuse requested instruction when substance of it has been given. Graham v. State, 90 Neb. 658, 134 N.W. 249 (1912); Lillie v. State, 72 Neb. 228, 100 N.W. 316 (1904).

Instruction should be applicable to precise question being tried. Flege v. State, 90 Neb. 390, 133 N.W. 431 (1911).

Instructions on burden of proof where defense is insanity discussed. Davis v. State, 90 Neb. 361, 133 N.W. 406 (1911); Knights v. State, 58 Neb. 225, 78 N.W. 508 (1899); Snider v. State, 56 Neb. 309, 76 N.W. 574 (1898).

Where circumstances surrounding homicide are proved, it is error to instruct that malice will be implied from killing. Davis v. State, 90 Neb. 361, 133 N.W. 406 (1911).

Instruction on credibility of informers will not ordinarily apply to a county attorney, sheriff, or his deputy. Keezer v. State, 90 Neb. 238, 133 N.W. 204 (1911).

Erroneous instruction, legal effect of which is practically same as one given on request of defendant, is generally not ground for reversal, unless clearly prejudicial to defendant. Coffman v. State, 89 Neb. 313, 131 N.W. 616 (1911).

Trial court in giving instruction may describe offense in language of statute. Jones v. State, 87 Neb. 390, 127 N.W. 158 (1910).

If court in its instructions purports to copy a section of criminal code, quotation should be correct. Boyer v. State, 84 Neb. 407, 121 N.W. 445 (1909).

If an instruction is given when no testimony sustains it, and prejudice results, new trial will be granted. Parker v. State, 76 Neb. 765, 108 N.W. 121 (1906).

It is duty of court to instruct as to rules of law governing disposition of criminal case whether requested or not. Young v. State, 74 Neb. 346, 104 N.W. 867 (1905); Martin v. State, 67 Neb. 36, 93 N.W. 161 (1903).

Instructions must not conflict, must be construed together, and correctly state law. Higbee v. State, 74 Neb. 331, 104 N.W. 748 (1905); Bartley v. State, 53 Neb. 310, 73 N.W. 744 (1898).

Where jury is not required to fix punishment, court's refusal to instruct as to penalty prescribed, or to permit that question to be argued to jury, is proper. Edwards v. State, 69 Neb. 386, 95 N.W. 1038 (1903).

Instruction on circumstantial evidence approved. Lamb v. State, 69 Neb. 212, 95 N.W. 1050 (1903); Cunningham v. State, 56 Neb. 691, 77 N.W. 60 (1898).

Instructions should be construed as a whole; one having no foundation in evidence is properly refused. Rhea v. State, 63 Neb. 461, 88 N.W. 789 (1902).

Instructions, purporting to cover whole case, which fail to include all elements involved in issue, are erroneous. Dobson v. State, 61 Neb. 584, 85 N.W. 843 (1901); Bergeron v. State, 53 Neb. 752, 74 N.W. 253 (1898).

Instruction which casts burden on defendant to prove defense is erroneous. Howell v. State, 61 Neb. 391, 85 N.W. 289 (1901).

Instruction to jury that oath imposes no obligation to doubt where no doubt would have existed if no oath had been administered, and that they are not at liberty to disbelieve as jurors, if from the evidence they believe as men, was proper. Leisenberg v. State, 60 Neb. 628, 84 N.W. 6 (1900).

Failure to number instructions is not reversible error if not excepted to when charge is given. Kastner v. State, 58 Neb. 767, 79 N.W. 713 (1899).

Instruction as to credibility of witnesses, and refusal to give instruction which would have effect of withdrawing consideration of material evidence, discussed and sustained. Chezem v. State, 56 Neb. 496, 76 N.W. 1056 (1898).

Assumption of facts stipulated as true by defendant, and instruction as to legal effect, was proper. Pisar v. State, 56 Neb. 455, 76 N.W. 869 (1898).

Instruction on drunkenness as defense discussed. Latimer v. State, 55 Neb. 609, 76 N.W. 207 (1898).

Quotation of main portion of section under which prosecution was instituted was not misleading. Instruction as to consideration of circumstances was proper. Mills v. State, 53 Neb. 263, 73 N.W. 761 (1898).

Objection to instruction, because it contains two or more propositions, will not be considered, when made for first time in Supreme Court. Morgan v. State, 51 Neb. 672, 71 N.W. 788 (1897).

Instruction, that burden is on accused to establish an alibi, is erroneous. Beck v. State, 51 Neb. 106, 70 N.W. 498 (1897).

Error in refusal to give proffered instruction must affirmatively appear from inspection of entire record. Lauder v. State, 50 Neb. 140, 69 N.W. 776 (1897).

Instructions must be applicable to facts, as well as a correct statement of law; to make failure to give instruction prejudicial, proper one must be submitted. Wells v. State, 47 Neb. 74, 66 N.W. 29 (1896).

Instruction is erroneous if it infringes on province of jury or tends to shift burden of proof to accused. Haskins v. State, 46 Neb. 888, 65 N.W. 894 (1896).

Instruction reciting material evidence which is not before jury is error. Williams v. State, 46 Neb. 704, 65 N.W. 783 (1896).

Instruction, submitting question of fact material to issue, when there is no evidence to support finding of its existence, is error. Morearty v. State, 46 Neb. 652, 65 N.W. 784 (1896).

Instructions on larceny, and reasonable doubt, discussed. Lawhead v. State, 46 Neb. 607, 65 N.W. 779 (1896).

It is error to give instruction which assumes a material fact, evidence thereon being conflicting. Metz v. State, 46 Neb. 547, 65 N.W. 190 (1895).

Repetition of proposition of law, not of such character as to prejudice rights of accused, was not reversible error. Dixon v. State, 46 Neb. 298, 64 N.W. 961 (1895).

2. Opening statement

A prosecutor states a case as contemplated by this section when he or she outlines the nature of the proceeding against the defendant. State v. Hunt, 220 Neb. 707, 371 N.W.2d 708 (1985).

Opening statement of county attorney was a sufficient compliance with statute. Morris v. State, 109 Neb. 412, 191 N.W. 717 (1922).

Defendant may waive opening statement to jury. Pumphrey v. State, 84 Neb. 636, 122 N.W. 19 (1909).

It is competent for county attorney, before introduction of evidence, to outline evidence which state expects to produce. Russell v. State, 62 Neb. 512, 87 N.W. 344 (1901).

3. Misconduct

Alleged misconduct of officers in giving statements to newspaper reporters during trial is not ground for new trial unless prejudice is shown. Rogers v. State, 93 Neb. 554, 141 N.W. 139 (1913).

Objection that prosecuting attorney is guilty of misconduct at the trial, prejudicial to defendant, must be taken at the time. It is primarily a question for trial court. Goldsberry v. State, 92 Neb. 211, 137 N.W. 1116 (1912).

Arguments and insinuations not based upon competent evidence are improper. Kanert v. State, 92 Neb. 14, 137 N.W. 975 (1912).

To review ruling on alleged misconduct of counsel, it must be excepted to at time. Hanks v. State, 88 Neb. 464, 129 N.W. 1011 (1911).

In reviewing alleged misconduct of county attorney, decision by trial judge on conflicting evidence will not be disturbed unless clearly wrong. Holmes v. State, 82 Neb. 406, 118 N.W. 99 (1908); Harris v. State, 80 Neb. 195, 114 N.W. 168 (1907).

Adverse ruling and exception thereto must be shown to review ruling on misconduct of attorney in arguing case. Hamblin v. State, 81 Neb. 148, 115 N.W. 850 (1908).

Misconduct of counsel, so flagrant that neither retraction nor rebuke from court can entirely destroy its influence, is cause for new trial. Parker v. State, 67 Neb. 555, 93 N.W. 1037 (1903).

Prosecuting attorney should not state to jury his belief in guilt of accused, unless based on evidence. Reed v. State, 66 Neb. 184, 92 N.W. 321 (1902).

4. Admissibility of evidence

The trial court may in its discretion permit evidence in rebuttal which is not strictly rebuttal evidence. State v. Pratt, 197

Neb. 382, 249 N.W.2d 495 (1977); State v. Keith, 189 Neb. 536, 203 N.W.2d 500 (1973).

It is within discretion of trial court to permit introducing of evidence in rebuttal that is not strictly rebutting and may permit state to offer further evidence-in-chief for good reason and in furtherance of justice. State v. Howard, 184 Neb. 461, 168 N.W.2d 370 (1969).

On rebuttal, court may permit evidence of confession. Drewes v. State, 156 Neb. 319, 56 N.W.2d 113 (1952).

It is within the discretion of the trial court to permit in rebuttal the introduction of evidence not strictly rebutting. Hampton v. State, 148 Neb. 574, 28 N.W.2d 322 (1947).

Trial judge, in ruling upon objections to evidence, should refrain from expressing opinion concerning weight of evidence or credibility of witness. Johns v. State, 88 Neb. 145, 129 N.W. 247 (1910).

Plea of guilty entered at preliminary upon advice of officer cannot be received in evidence over objections of defendant. Heddendorf v. State, 85 Neb. 747, 124 N.W. 150 (1910).

Sufficiency of evidence, identifying defendant as perpetrator of crime, discussed. Buckley v. State, 79 Neb. 86, 112 N.W. 283 (1907).

Court may permit a party to reopen case and introduce other evidence before close of trial. Blair v. State, 72 Neb. 501, 101 N.W. 17 (1904).

Evidence admitted without objection, not necessarily injurious to defendant, is without prejudice. Lillie v. State, 72 Neb. 228, 100 N.W. 316 (1904).

Test of admissibility of confession stated. State v. Force, 69 Neb. 162, 95 N.W. 42 (1903); Strong v. State, 63 Neb. 440, 88 N.W. 772 (1902).

Confession, voluntarily made, is admissible when not prompted by any inducement. McNutt v. State, 68 Neb. 207, 94 N.W. 143 (1903); Reinoehl v. State, 62 Neb. 619, 87 N.W. 355 (1901); Coil v. State, 62 Neb. 15, 86 N.W. 925 (1901); Hills v. State, 61 Neb. 589, 85 N.W. 836 (1901).

Prior statements of accused, as to how crime might be committed, were properly admitted. Keating v. State, 67 Neb. 560, 93 N.W. 980 (1903).

Witness may be asked if he has known of defendant being arrested, defendant having offered evidence of good character. McCormick v. State, 66 Neb. 337, 92 N.W. 606 (1902).

Where expert witnesses testify to manner and cause of death, and refer to and use exhibits, it is proper to admit exhibits. Savary v. State, 62 Neb. 166, 87 N.W. 34 (1901).

Every fact which implies defendant's guilt is pertinent evidence to sustain such hypothesis. Jerome v. State, 61 Neb. 459, 85 N.W. 394 (1901).

It is error to exclude evidence, tendency of which is to put an innocent look upon inculpatory circumstances. Burlingim v. State, 61 Neb. 276, 85 N.W. 76 (1901).

Prior inconsistent statements of witness may be shown in rebuttal, to affect credibility. Tatum v. State, 61 Neb. 229, 85 N.W. 40 (1901).

Submission to jury of theory which has no basis in evidence is error. Thompson v. State, 61 Neb. 210, 85 N.W. 62 (1901).

Testimony of similar acts by defendant may be received to establish intent only. Knights v. State, 58 Neb. 225, 78 N.W. 508 (1899); Morgan v. State, 56 Neb. 696, 77 N.W. 64 (1898).

Order of introducing testimony will not prevent defendant from introducing evidence to impeach witness used on rebuttal by state. Argabright v. State, 56 Neb. 363, 76 N.W. 876 (1898).

Error cannot be predicated on admission of facts subsequently admitted. Whitney v. State, 53 Neb. 287, 73 N.W. 696 (1898).

Objections to admission of testimony must be made at trial, and ruling had thereon. Dutcher v. State, 16 Neb. 30, 19 N.W. 612 (1884).

5. Procedure

The appropriate procedure for closing arguments in criminal cases is provided by subsection (6) of this section. The trial court did not err in refusing to grant surrebuttal argument to the defendant, who had the burden of proof on the issue of insanity. State v. Hankins, 232 Neb. 608, 441 N.W.2d 854 (1989).

Order of proof is discretionary with the trial court. Small v. State, 165 Neb. 381, 85 N.W.2d 712 (1957).

Cautionary direction need not be in writing. Schriner v. State, 155 Neb. 894, 54 N.W.2d 224 (1952).

Order in which a party shall introduce his proof is, to great extent, discretionary with trial judge, and court's action will not be reversed unless abuse of discretion is shown. Hukill v. State, 109 Neb. 279, 190 N.W. 867 (1922); Joyce v. State, 88 Neb. 599, 130 N.W. 291 (1911); Baer v. State, 59 Neb. 655, 81 N.W. 856 (1900).

In larceny case, it is discretionary to permit state to withdraw announcement of rest, and prove ownership. Kurpgeweit v. State, 97 Neb. 713, 151 N.W. 172 (1915).

County attorney under direction of court may procure the assistance of counsel to prosecute person charged with felony. McKay v. State, 90 Neb. 63, 132 N.W. 741 (1911); Johns v. State, 88 Neb. 145, 129 N.W. 247 (1910).

Permission to put leading questions to witnesses of a party, where they appear hostile or unwilling, is in discretion of trial court. Ainlay v. State, 89 Neb. 721, 132 N.W. 120 (1911).

In trial for felony, prosecution should examine in first instance witnesses who have knowledge of res gestae. Johnson v. State, 88 Neb. 328, 129 N.W. 281 (1911).

Order permitting separation of jury in murder case for period of twenty-one days on account of quarantine of defendant's witnesses was not prejudicial error. Ossenkop v. State, 86 Neb. 539, 126 N.W. 72 (1910).

Credibility of defendant as witness is tested by same rule as applied to other witnesses. Holmes v. State, 85 Neb. 506, 123 N.W. 1043 (1909).

Answer, responsive to question asked, should not be stricken from record. Fouse v. State, 83 Neb. 258, 119 N.W. 478 (1909).

Right to cross-examine is confined to matters brought out in direct examination. Poston v. State, 83 Neb. 240, 119 N.W. 520 (1909).

On trial for felony, court may, in his discretion, exclude from courtroom all witnesses for state who are not being examined. Maynard v. State, 81 Neb. 301, 116 N.W. 53 (1908).

Court may, in exercise of reasonable discretion, limit number of witnesses testifying to a fact, where a number have already testified thereto, and fact is not in dispute. Cate v. State, 80 Neb. 611, 114 N.W. 942 (1908).

Dying declaration, in prosecution for homicide by procuring an abortion, admitted. Edwards v. State, 79 Neb. 251, 112 N.W. 611 (1907).

Where it appears to court that a juror has failed to hear part of the evidence, witness should be required to repeat that part which juror failed to hear. Haddix v. State, 76 Neb. 369, 107 N.W. 781 (1906).

It is error for judge to absent himself from courtroom, out of sight and hearing of parties, during the argument of counsel. Powers v. State, 75 Neb. 226, 106 N.W. 332 (1905); Palin v. State, 38 Neb. 862, 57 N.W. 743 (1894).

Trial court has large though not unlimited discretion in granting or refusing permission to ask leading questions. Woodruff v. State, 72 Neb. 815, 101 N.W. 1114 (1904); Dinsmore v. State, 61 Neb. 418, 85 N.W. 445 (1901).

Where party is cross-examined on a collateral matter, he cannot be subsequently contradicted as to his answer. Ferguson v. State, 72 Neb. 350, 100 N.W. 800 (1904).

Moral insanity as a defense is not recognized in this state. Bothwell v. State, 71 Neb. 747, 99 N.W. 669 (1904).

Length of time jury should be kept together rests in discretion of trial court. Jahnke v. State, 68 Neb. 154, 94 N.W. 158 (1903), reversed on rehearing 68 Neb. 181, 104 N.W. 154 (1905).

Nonexpert may give opinion in regard to a matter, which men in general are capable of comprehending, when it is impossible to lay before jury all pertinent facts as witness saw it. Russell v. State, 66 Neb. 497, 92 N.W. 751 (1902).

Trial court may limit number of witnesses to prove facts collateral to main issue. Biester v. State, 65 Neb. 276, 91 N.W. 416 (1902).

Right of trial judge to cross-examine accused should be exercised sparingly. Leo v. State, 63 Neb. 723, 89 N.W. 303 (1902); Nightingale v. State, 62 Neb. 371, 87 N.W. 158 (1901).

Court in charging jury is only required to state the law applicable to the facts proven. Strong v. State, 63 Neb. 440, 88 N.W. 772 (1902).

As a general rule, reexamination should be limited to points arising out of cross-examination. George v. State, 61 Neb. 669, 85 N.W. 840 (1901).

To justify conviction on circumstantial evidence, circumstances must be consistent with each other and inconsistent with any hypothesis of innocence. Smith v. State, 61 Neb. 296, 85 N.W. 49 (1901).

Burden of proof in criminal case does not shift to accused. Williams v. State, 60 Neb. 526, 83 N.W. 681 (1900).

Objection to question calling for incompetent testimony cannot be reserved until answer is received. Dunn v. State, 58 Neb. 807, 79 N.W. 719 (1899).

Rule of res gestae applied to statements in murder case. Sullivan v. State, 58 Neb. 796, 79 N.W. 721 (1899).

Preliminary to impeachment of a witness because of inconsistent statements at previous time, the attention of the witness should be called to the time and place where such alleged statements were made. McVey v. State, 55 Neb. 777, 76 N.W. 438 (1898).

Nondirection will not work reversal, proper instruction not being requested. Maxfield v. State, 54 Neb. 44, 74 N.W. 401 (1898); Johnson v. State, 53 Neb. 103, 73 N.W. 463 (1897).

Order in which a party shall introduce his proof is discretionary with trial court. Davis v. State, 51 Neb. 301, 70 N.W. 984 (1897).

It is competent for witness on redirect examination to make clear matters left incomplete or obscure on cross-examination. Collins v. State, 46 Neb. 37, 64 N.W. 432 (1895).

If information contains two counts, there being no evidence to sustain one, it is error to submit question to jury on that count. Botsch v. State, 43 Neb. 501, 61 N.W. 730 (1895).

Limit to cross-examination respecting past life of witness, other than defendant, for purpose of affecting his credibility, rests with court. Hill v. State, 42 Neb. 503, 60 N.W. 916 (1894).

It is only when there is total failure of proof, or where testimony is so weak or doubtful in character that a conviction could not be sustained, that trial court is justified in directing a verdict of not guilty. Wanzer v. State, 41 Neb. 238, 59 N.W. 909 (1894).

29-2017 Jury; view place of occurrence of material fact; restrictions.

Whenever in the opinion of the court it is proper for the jury to have a view of the place in which any material fact occurred, it may order them to be conducted in a body, under charge of the sheriff, to the place which shall be shown to them by some person appointed by the court. While the jury are thus absent, no person other than the sheriff having them in charge and the person appointed to show them the place shall speak to them on any subject connected with the trial.

Source: G.S.1873, c. 58, § 479, p. 829; R.S.1913, § 9120; C.S.1922, § 10145; C.S.1929, § 29-2017.

The court did not abuse discretion in rejecting defendant's motion to have jury visit jail from which he had escaped. State v. Glenn, 193 Neb. 230, 226 N.W.2d 137 (1975).

In absence of abuse of discretion, court may order, or refuse to permit, jury to inspect scene of alleged crime. State v. Craig, 189 Neb. 461, 203 N.W.2d 158 (1973).

No presumption that prisoner was not present at view, if record shows him to have been present in court when order was made, though record is silent as to presence at view. Fillion v. State, 5 Neb. 351 (1877).

View should be in presence of prisoner, unless he waives privilege. Carroll v. State, 5 Neb. 31 (1876).

29-2018 Mistake in charging offense; prior to verdict; procedure.

When it shall appear at any time before the verdict that a mistake has been made in charging the proper offense, the accused shall not be discharged if there appears to be good cause to detain him in custody; but the court must recognize him to answer to the offense on the first day of the next term of such court, and shall, if necessary, likewise recognize the witnesses to appear and testify.

Source: G.S.1873, c. 58, § 480, p. 829; R.S.1913, § 9121; C.S.1922, § 10146; C.S.1929, § 29-2018.

In recognizing defendant to appear at next term, judge acts as examining magistrate, and, if he discharges defendant without so recognizing him such discharge will not be bar to arrest and examination before another magistrate. Sieck v. State, 96 Neb. 782, 148 N.W. 928 (1914).

Though information is defective, court may hold accused if probable cause exists. State v. Kendall, 38 Neb. 817, 57 N.W. 525 (1894).

29-2019 Mistake in charging offense; jury; discharge prior to verdict.

When a jury has been impaneled in a case contemplated by section 29-2018, such jury may be discharged without prejudice to the prosecution.

Source: G.S.1873, c. 58, § 481, p. 829; R.S.1913, § 9122; C.S.1922, § 10147; C.S.1929, § 29-2019.

29-2020 Bill of exceptions by defendant; request; procedure; exception in capital cases.

Except as provided in section 29-2525 for cases when the punishment is capital, in all criminal cases when a defendant feels aggrieved by any opinion or decision of the court, he or she may order a bill of exceptions. The ordering, preparing, signing, filing, correcting, and amending of the bill of exceptions shall be governed by the rules established in such matters in civil cases.

Source: G.S.1873, c. 58, § 482, p. 829; R.S.1913, § 9123; C.S.1922, § 10148; C.S.1929, § 29-2020; R.S.1943, § 29-2020; Laws 1959, c. 120, § 1, p. 452; Laws 1961, c. 135, § 2, p. 390; Laws 1990, LB 829, § 1.

Cross References

Error proceedings by county attorney, decision on appeal, see section 29-2316.

Preparation of bill of exceptions in criminal case is governed by rules governing a civil case. Benedict v. State, 166 Neb. 295, 89 N.W.2d 82 (1958).

Sufficient exceptions were taken by convicted defendant to warrant consideration of alleged errors committed at trial. Scott v. State, 121 Neb. 232, 236 N.W. 608 (1931).

Affidavits for continuance will not be considered by appellate court unless embodied in bill of exceptions. Hans v. State, 50 Neb. 150, 69 N.W. 838 (1897).

Facts of which there is no evidence or recitation in bill of exceptions, will be disregarded in Supreme Court. McCall v. State, 47 Neb. 660, 66 N.W. 635 (1896).

In capital case, want of exception will not necessarily deprive prisoner of right to new trial for prejudicial errors of court. Schlencker v. State, 9 Neb. 300, 2 N.W. 710 (1879).

Arguments of counsel on questions raised during trial and remarks of court in deciding them serve no useful place in bill of exceptions and should be omitted. Clough v. State, 7 Neb. 320 (1878).

Prisoner tried for felony is entitled to new trial on ground of prejudicial erroneous instruction, even though no objection was taken thereto. Thompson v. People, 4 Neb. 524 (1876).

29-2021 Repealed. Laws 1959, c. 121, § 4.

29-2022 Jury; conduct after submission.

When a case is finally submitted to the jury, they must be kept together in some convenient place, under the charge of an officer, until they agree upon a verdict or are discharged by the court. The officer having them in charge shall not suffer any communication to be made to them, or make any himself, except to ask them whether they have agreed upon a verdict, unless by order of the court; nor shall he communicate to anyone, before the verdict is delivered, any matter in relation to the state of their deliberations. If the jury are permitted to separate during the trial, they shall be admonished by the court that it is their duty not to converse with or suffer themselves to be addressed by any other person on the subject of the trial, nor to listen to any conversation on the subject; and it is their duty not to form or express an opinion thereon until the cause is finally submitted to them.

Source: G.S.1873, c. 58, § 484, p. 830; R.S.1913, § 9125; C.S.1922, § 10150; C.S.1929, § 29-2022.

1. Reversible error
2. Not reversible error

1. Reversible error

Under this section, after submission of a criminal case to the jury, the defendant has the right to have the jury kept together until the jury agrees on a verdict or is discharged by the court, and this right may be waived only by specific agreement or consent of counsel for the parties. In the absence of express agreement or consent by the defendant, a failure to comply with this section by permitting the jurors to separate after submission of the case is erroneous, creates a rebuttable presumption of prejudice, and places the burden upon the prosecution to show that no injury resulted. State v. Bao, 263 Neb. 439, 640 N.W.2d 405 (2002).

The defendant has a right to have the jury kept together from the submission to it of a criminal case until they agree on a verdict or are discharged by the court. State v. Robbins, 205 Neb. 226, 287 N.W.2d 55 (1980).

Communication by county attorney to juror was reversible error. Olsen v. State, 113 Neb. 69, 201 N.W. 969 (1925).

On trial for felony after case has been submitted to jury, it is error to permit court reporter to read testimony of witnesses for prosecution to jury in absence of defendant's counsel. Bartell v. State, 40 Neb. 232, 58 N.W. 716 (1894).

Use of statute in jury room during deliberation vitiates verdict. Harris v. State, 24 Neb. 803, 40 N.W. 317 (1888).

Bailiff, by remaining in jury room during time of considering verdict, vitiates verdict. Gandy v. State, 24 Neb. 716, 40 N.W. 302 (1888).

2. Not reversible error

The determination of whether or not a jury should be sequestered during the trial of a criminal case is left to the discretion of the trial court and, absent an abuse of that discretion or evidence of jury tampering or misconduct, that decision will not be reversed on appeal. State v. Ryan, 233 Neb. 74, 444 N.W.2d 610 (1989).

The obtaining of affidavits from jurors was an acceptable means of obtaining the necessary facts for a hearing to determine whether there had been improper juror conduct or communication in a criminal trial. State v. Robbins, 207 Neb. 439, 299 N.W.2d 437 (1980).

The determination of whether or not a jury should be sequestered during recess of a criminal trial rests with the discretion of the trial court and, absent an abuse of that discretion or evidence of jury tampering or misconduct, that decision will not be reversed on appeal. State v. Myers, 205 Neb. 867, 290 N.W.2d 660 (1980).

Whether or not a jury should be sequestered during the trial of a criminal case is left to the sound discretion of the court. State v. Bautista, 193 Neb. 476, 227 N.W.2d 835 (1975).

An admonition is not required each time the jury is permitted to separate. Sundahl v. State, 154 Neb. 550, 48 N.W.2d 689 (1951).

Right to have jury kept together after submission of case may be waived. Sedlacek v. State, 147 Neb. 834, 25 N.W.2d 533 (1946).

Where prosecution adjourned for illness of juror, order overruling defendant's objections after twenty-six day adjournment was not reversible error. Penn v. State, 119 Neb. 95, 227 N.W. 314 (1929).

Separation of jury during recesses of court while trial is in progress and before final submission and permitting jurors to go home at close of day's service in court is within discretion of court. Wesley v. State, 112 Neb. 360, 199 N.W. 719 (1924).

Postponement for twenty-one days, after state had made case in chief, permitting jury to separate, was not error where no misconduct of juror is shown. Ossenkop v. State, 86 Neb. 539, 126 N.W. 72 (1910).

Fact that deputy sheriff was called as witness does not disqualify him from having charge of jury. Van Syoc v. State, 69 Neb. 520, 96 N.W. 266 (1903).

Objection based on mere inference that jury was allowed to separate, raised for first time in Supreme Court, is unavailing. Coil v. State, 62 Neb. 15, 86 N.W. 925 (1901).

Where one juror separated from others after submission but no one communicated with him during separation, it was not ground for new trial. Spaulding v. State, 61 Neb. 289, 85 N.W. 80 (1901).

Assignment of error on ground of separation of jury is not sufficient unless it alleges they were not admonished, or failed to comply with their duty. Langford v. State, 32 Neb. 782, 49 N.W. 766 (1891).

Separation of jury before submission, known to prisoner and counsel, but not disclosed to judge until after verdict, is not ground for new trial. Polin v. State, 14 Neb. 540, 16 N.W. 898 (1883).

29-2023 Jury; discharged before verdict; effect; journal entry.

In case a jury shall be discharged on account of sickness of a juror, or other accident or calamity requiring their discharge, or after they have been kept so long together that there is no probability of agreeing, the court shall, upon directing the discharge, order that the reasons for such discharge shall be entered upon the journal; and such discharge shall be without prejudice to the prosecution.

Source: G.S.1873, c. 58, § 485, p. 830; R.S.1913, § 9126; C.S.1922, § 10151; C.S.1929, § 29-2023.

1. Discharge without prejudice
2. Basis for discharge
3. Journal entry
4. Miscellaneous

1. Discharge without prejudice

A mistrial because of disagreement of the jury is without prejudice to the right of the state to retry the defendant. State v. Fromkin, 174 Neb. 849, 120 N.W.2d 25 (1963).

In a criminal trial where the jury is discharged in accordance with this section, such discharge is without prejudice to the prosecution. State v. Hutter, 145 Neb. 798, 18 N.W.2d 203 (1945).

2. Basis for discharge

Drunkenness of juror is an accident or calamity requiring discharge of jury. Fetty v. State, 119 Neb. 619, 230 N.W. 440 (1930).

Serious illness of juror's wife and death of his child was sufficient to warrant discharge of jury. Salistean v. State, 115 Neb. 838, 215 N.W. 107 (1927).

Where biased juror is discovered during progress of trial, court may discharge jury. Quinton v. State, 112 Neb. 684, 200 N.W. 881 (1924).

Insanity of juror authorizes discharge, being an ''accident or calamity.'' Davis v. State, 51 Neb. 301, 70 N.W. 984 (1897).

3. Journal entry

Entry of reasons on journal should be ordered; ''sickness'' must be of a sudden and calamitous nature. Conklin v. State, 25 Neb. 784, 41 N.W. 788 (1889).

Record must show necessity for discharge. State v. Schuchardt, 18 Neb. 454, 25 N.W. 722 (1885).

4. Miscellaneous

Holding accused for trial after discharge of jury because of the jury's inability to agree is not former jeopardy. Sutter v. State, 105 Neb. 144, 179 N.W. 414 (1920).

Court has large discretion as to length of time jury shall be kept together in consultation. Russell v. State, 66 Neb. 497, 92 N.W. 751 (1902).

29-2024 Verdict; poll.

When the jury have agreed upon their verdict they must be conducted into court by the officer having them in charge. Before the verdict is accepted the jury may be polled at the request of either the prosecuting attorney or the defendant.

Source: G.S.1873, c. 58, § 486, p. 830; R.S.1913, § 9127; C.S.1922, § 10152; C.S.1929, § 29-2024.

1. Reception of verdict
2. Polling of jury
3. Miscellaneous

1. Reception of verdict

Irregularity in receiving verdict in absence of counsel may be waived. Hyslop v. State, 159 Neb. 802, 68 N.W.2d 698 (1955).

Verdict received in vacation time is not a ''privy verdict.'' Manion v. State, 104 Neb. 130, 175 N.W. 1013 (1920).

Reception of verdict in criminal case is governed by this section. Evers v. State, 84 Neb. 708, 121 N.W. 1005 (1909).

Verdict must be given in open court. Longfellow v. State, 10 Neb. 105, 4 N.W. 420 (1880).

Jury may not return instead of verdict a statement that they have agreed to disagree. Green v. State, 10 Neb. 102, 4 N.W. 422 (1880).

Verdict signed by all jurors is good. Clough v. State, 7 Neb. 320 (1878).

Verdict finding defendant guilty, without adding ''in manner and form,'' etc., is good. Preuit v. State, 5 Neb. 377 (1877).

2. Polling of jury

A defendant may waive his right to have the jury polled. When upon inquiry by the court he replies in the negative, the right is waived. State v. Hiatt, 190 Neb. 315, 207 N.W.2d 678 (1973).

Jury need not be polled unless requested by defendant or prosecuting attorney. Feddern v. State, 79 Neb. 651, 113 N.W. 127 (1907).

3. Miscellaneous

Verdict should be certain, not ambiguous; sufficient if in light of record meaning is clear beyond reasonable doubt. Keeler v. State, 73 Neb. 441, 103 N.W. 64 (1905).

Verdict is void which omits name of guilty party. Williams v. State, 6 Neb. 334 (1877).

29-2025 Lesser included offense; attempt to commit; form of verdict.

Upon an indictment for an offense consisting of different degrees the jury may find the defendant not guilty of the degree charged, and guilty of any degree inferior thereto; and upon an indictment for any offense the jury may find the defendant not guilty of the offense but guilty of an attempt to commit the same, where such an attempt is an offense.

Source: G.S.1873, c. 58, § 487, p. 830; R.S.1913, § 9128; C.S.1922, § 10153; C.S.1929, § 29-2025.

Where under statute attempt to commit defined offense is punishable, instruction on attempt is not erroneous even though defendant is not formally charged with attempt. State v. Ambrose, 192 Neb. 285, 220 N.W.2d 18 (1974).

The unlawful operation of a motor vehicle is not necessarily an included offense in prosecution for motor vehicle homicide. Olney v. State, 169 Neb. 717, 100 N.W.2d 838 (1960).

Charge of shooting with intent to wound may include lesser offense of assault or assault and battery. Moore v. State, 147 Neb. 390, 23 N.W.2d 552 (1946).

It is not error to fail to submit question of accused's guilt of lesser offense where evidence is not such as to warrant such verdict. Davis v. State, 116 Neb. 90, 215 N.W. 785 (1927).

Jury may find accused not guilty of offense charged but guilty of attempt to commit same where such attempt is an offense. In re Resler, 115 Neb. 335, 212 N.W. 765 (1927).

Provisions of section extend to subsequently created offenses. Mulloy v. State, 58 Neb. 204, 78 N.W. 525 (1890).

Verdict of guilty of manslaughter on charge of murder in first degree is valid, though it fails to specifically negative fact that crime was of higher grade. Williams v. State, 6 Neb. 334 (1877).

29-2026 Repealed. Laws 1963, c. 163, § 1.

29-2026.01 Verdict; finding of value of property; when required.

When the indictment charges an offense against the property of another by larceny, embezzlement or obtaining under false pretenses, the jury, on conviction, shall ascertain and declare in its verdict the value of the property stolen, embezzled, or falsely obtained.

Source: Laws 1965, c. 146, § 1, p. 488.

In a theft case where a jury trial has been waived, the value of the property is one of the facts and elements of the crime to be determined by the trial judge, and this section is not applicable. State v. Reed, 228 Neb. 645, 423 N.W.2d 777 (1988).

Restitution, in a larceny case, can be ordered only if the jury determines by verdict the value of property stolen. State v. Frandsen, 199 Neb. 546, 260 N.W.2d 206 (1977).

This section not applicable where crime charged is that of receiving stolen property at a value of more than one hundred dollars. State v. McKee, 183 Neb. 754, 163 N.W.2d 434 (1969).

Verdict of jury in larceny case must determine value of property stolen. State v. Houp, 182 Neb. 298, 154 N.W.2d 465 (1967).

Requirement that jury fix the amount obtained by false pretense in its verdict was not in effect at time of commission of offense or at time of trial. State v. Swanson, 179 Neb. 693, 140 N.W.2d 618 (1966).

In a theft case, the trial court erred in limiting the jury's consideration of value and in submitting a form of verdict which precluded a jury from making a specific finding of value and conveying that fact to the judge in its verdict. State v. Long, 2 Neb. App. 847, 516 N.W.2d 273 (1994).

Double jeopardy protection not violated where court at first trial failed to notify jury of need to ascertain value of property stolen and set aside guilty verdict ordering defendant retried although court knew of error while jury was out. Houp v. State, 427 F.2d 254 (8th Cir. 1970).

29-2027 Verdict in trials for murder; conviction by confession; sentencing procedure.

In all trials for murder the jury before whom such trial is had, if they find the prisoner guilty thereof, shall ascertain in their verdict whether it is murder in the first or second degree or manslaughter; and if such person is convicted by confession in open court, the court shall proceed by examination of witnesses in open court, to determine the degree of the crime, and shall pronounce sentence accordingly or as provided in sections 29-2519 to 29-2524 for murder in the first degree.

Source: G.S.1873, c. 58, § 489, p. 830; R.S.1913, § 9130; C.S.1922, § 10155; C.S.1929, § 29-2027; R.S.1943, § 29-2027; Laws 2002, Third Spec. Sess., LB 1, § 7.

1. Degree of offense
2. Plea of guilty
3. Habeas corpus

1. Degree of offense

In a murder trial, the district court was required to instruct the jury as to the lesser-included offenses of second degree murder and manslaughter where there were no eyewitnesses to the deceased's death and the evidence adduced at trial was largely circumstantial. State v. Weaver, 267 Neb. 826, 677 N.W.2d 502 (2004).

When a proper, factual basis is present, a court must instruct a jury on the degrees of criminal homicide, that is, the provisions of this section are mandatory. State v. McCracken, 260 Neb. 234, 615 N.W.2d 902 (2000).

When there is a proper, factual basis, a court is required to instruct on the degrees of criminal homicide even in the absence of a requested instruction regarding the lesser degrees of criminal homicide. State v. Archbold, 217 Neb. 345, 350 N.W.2d 500 (1984).

This section requires an instruction be given on such lesser degrees of homicide as find support in the evidence. State v. Drew, 216 Neb. 685, 344 N.W.2d 923 (1984).

The trial court is required, without request, to instruct the jury on such lesser degrees of homicide as to which the evidence is properly applicable. State v. Rowe, 210 Neb. 419, 315 N.W.2d 250 (1982).

When a defendant is charged with murder in the first degree, it is reversible error for the court to fail to instruct the jury on such lesser degrees of homicide as the evidence could support, even if no request is made for such an instruction. State v. Payne, 205 Neb. 522, 289 N.W.2d 173 (1980).

Guilty plea following deliberate killing of unarmed victim clearly justified finding of second degree murder. State v. Thompson, 199 Neb. 67, 255 N.W.2d 880 (1977).

Where different inferences may be drawn, court must submit different degrees to jury. Vanderheiden v. State, 156 Neb. 735, 57 N.W.2d 761 (1953).

This section prescribes the duty of court and jury in ascertaining the degree of offense and imposition of sentence. Moore v. State, 148 Neb. 747, 29 N.W.2d 366 (1947).

Degree of murder is ordinarily for jury; different degrees of murder must be submitted to jury under evidence and circumstances authorizing different inferences as to degree. Denison v. State, 117 Neb. 601, 221 N.W. 683 (1928).

In all trials for murder, the provisions of this section are mandatory. Bourne v. State, 116 Neb. 141, 216 N.W. 173 (1927).

Jury is required, if it find accused guilty, to find whether guilty of murder in first or second degree or manslaughter; jury may acquit accused of degree charged and convict of lesser degree. Russell v. State, 66 Neb. 497, 92 N.W. 751 (1902).

Verdict of guilty which does not ascertain whether it be murder or manslaughter confers no power on court to pass sentence. Parrish v. State, 18 Neb. 405, 25 N.W. 573 (1885).

Failure to negative fact that crime was of higher degree than that found is no ground for reversal. Williams v. State, 6 Neb. 334 (1877).

Instruction given by trial court constituted a determination of degree of guilt on plea of guilty. Cole v. State, 105 Neb. 371, 180 N.W. 564 (1920).

2. Plea of guilty

Where the defendant pleads to a specific degree of murder, this section does not apply. State v. Belmarez, 254 Neb. 467, 577 N.W.2d 264 (1998).

Proceedings in error carried on within statutory term after final judgment are required to review alleged error of trial court in failing to examine witnesses in open court to determine degree of guilt. Newcomb v. State, 129 Neb. 69, 261 N.W. 348 (1935).

3. Habeas corpus

One charged with murder in first degree and convicted of second degree cannot obtain release on habeas corpus on ground he was convicted of a separate and distinct offense from that charged. Jackson v. Olson, 146 Neb. 885, 22 N.W.2d 124 (1946).

Regularity of proceedings leading up to sentence cannot be inquired into by habeas corpus. Fuller v. Fenton, 104 Neb. 358, 177 N.W. 154 (1920).

29-2028 Sexual assault; testimony; corroboration not required.

The testimony of a person who is a victim of a sexual assault as defined in sections 28-319 to 28-320.01 shall not require corroboration.

Source: Laws 1989, LB 443, § 1; Laws 2006, LB 1199, § 13.

Testimony concerning corroboration in sexual offense cases is not rendered inadmissible under this section, but is no longer required. State v. Williamson, 235 Neb. 960, 458 N.W.2d 236 (1990).

ARTICLE 21

MOTIONS FOR NEW TRIAL AND ARREST OF JUDGMENT

Section

29-2101. New trial; grounds.
29-2102. New trial; affidavits; when required.
29-2103. New trial; motion; how and when made.
29-2104. Arrest of judgment; grounds.
29-2105. Arrest of judgment; defect of form insufficient.
29-2106. Arrest of judgment; effect.

29-2101 New trial; grounds.

A new trial, after a verdict of conviction, may be granted, on the application of the defendant, for any of the following grounds affecting materially his or her substantial rights: (1) Irregularity in the proceedings of the court, of the prosecuting attorney, or of the witnesses for the state or in any order of the court or abuse of discretion by which the defendant was prevented from having a fair trial; (2) misconduct of the jury, of the prosecuting attorney, or of the witnesses for the state; (3) accident or surprise which ordinary prudence could not have guarded against; (4) the verdict is not sustained by sufficient evidence or is contrary to law; (5) newly discovered evidence material for the defendant which he or she could not with reasonable diligence have discovered and produced at the trial; (6) newly discovered exculpatory DNA or similar forensic testing evidence obtained under the DNA Testing Act; or (7) error of law occurring at the trial.

Source: G.S.1873, c. 58, § 490, p. 831; R.S.1913, § 9131; C.S.1922, § 10156; C.S.1929, § 29-2101; R.S.1943, § 29-2101; Laws 2001, LB 659, § 11.

Cross References

DNA Testing Act, see section 29-4116.

1. Newly discovered evidence
2. Misconduct of attorney
3. Misconduct of jury
4. Irregularity in proceedings
5. Other grounds

6. Miscellaneous

1. Newly discovered evidence

A new trial can be granted on grounds materially affecting the substantial rights of the defendant, including ''newly discovered evidence material for the defendant which he or she could not with reasonable diligence have discovered and produced at trial.'' State v. Dunster, 270 Neb. 773, 707 N.W.2d 412 (2005).

In considering a motion for new trial based upon newly discovered evidence pursuant to either subsection (5) or (6) of this section, the Nebraska Supreme Court applies a higher standard in order to promote the finality of the judgment based upon the presumption that the defendant received a fair trial and no fundamental rights were violated. State v. El-Tabech, 269 Neb. 810, 696 N.W.2d 445 (2005).

The proper standard for reviewing motions for new trial pursuant to subsection (6) of this section is the same standard for reviewing a motion for new trial based upon newly discovered evidence pursuant to subsection (5) of this section. State v. El-Tabech, 269 Neb. 810, 696 N.W.2d 445 (2005).

To warrant a new trial pursuant to subsection (6) of this section, the district court must determine that newly discovered exculpatory evidence obtained pursuant to the DNA Testing Act is of such a nature that if it had been offered and admitted at the trial, it probably would have produced a substantially different result. State v. El-Tabech, 269 Neb. 810, 696 N.W.2d 445 (2005).

To warrant a new trial, the court must determine that newly discovered exculpatory evidence obtained pursuant to the DNA Testing Act must be of such a nature that if it had been offered and admitted at the former trial, it probably would have produced a substantially different result. State v. Buckman, 267 Neb. 505, 675 N.W.2d 372 (2004); State v. Bronson, 267 Neb. 103, 672 N.W.2d 244 (2003).

A motion for new trial filed under subsection (6) of this section based on newly discovered exculpatory evidence obtained pursuant to the DNA Testing Act is addressed to the discretion of the trial court, and unless an abuse of discretion is shown, the trial court's determination will not be disturbed. State v. Bronson, 267 Neb. 103, 672 N.W.2d 244 (2003).

The appeal of a ruling denying a motion to vacate and set aside the judgment under subsection (2) of section 29-4123 of the DNA Testing Act does not deprive a trial court of jurisdiction to consider a motion for new trial filed under subsection (6) of this section based on newly discovered evidence obtained under the DNA Testing Act. State v. Bronson, 267 Neb. 103, 672 N.W.2d 244 (2003).

When a codefendant who has chosen not to testify subsequently comes forward to offer testimony exculpating a defendant, the evidence is not newly discovered within the meaning of this section; the substance of the codefendant's testimony is not, in fact, new evidence if it was known by the defendant at the time of the initial trial. State v. Jackson, 264 Neb. 420, 648 N.W.2d 282 (2002).

A motion for new trial based on newly discovered evidence is to be presented to the county court as the fact finder, not to the district court which sat as an appellate court. State v. Ferris, 216 Neb. 606, 344 N.W.2d 668 (1984).

Where a motion for new trial is based on newly discovered evidence, the rule is well-established that the newly discovered evidence must be of such a nature that if offered and admitted at the former trial, it probably would have produced a substantial difference in the result. State v. Ferris, 216 Neb. 606, 344 N.W.2d 668 (1984).

In order to justify a new trial, newly discovered evidence must involve something other than the credibility of a witness who testified at trial. State v. Pierce and Wells, 215 Neb. 512, 340 N.W.2d 122 (1983).

Newly discovered evidence concerning the credibility of a witness is not sufficient to support a motion for new trial. State v. Hortman, 207 Neb. 393, 299 N.W.2d 187 (1980).

Newly discovered evidence must be of such a nature that, if offered and admitted at the former trial, it probably would have produced a difference in the result. State v. Smith, 202 Neb. 501, 276 N.W.2d 104 (1979).

Newly discovered evidence must be relevant and credible, and not merely cumulative. It must involve something other than the credibility of witnesses who testified at the former trial. State v. Smith, 202 Neb. 501, 276 N.W.2d 104 (1979).

Unless the newly discovered evidence is so substantial that it would have probably changed the result, the discretion of the trial court in denying a motion for new trial will not be disturbed. State v. French, 200 Neb. 137, 262 N.W.2d 711 (1978).

In a criminal prosecution, a new trial will be granted on timely application of defendant for newly discovered evidence material for defendant, provided his substantial rights are affected and he could not with reasonable diligence have discovered and produced the evidence at trial. State v. Atkinson, 191 Neb. 9, 213 N.W.2d 351 (1973).

A new trial will not ordinarily be granted for newly discovered evidence which, when produced, will merely impeach or discredit a witness. State v. Wycoff, 180 Neb. 799, 146 N.W.2d 69 (1966).

District court is not deprived of jurisdiction to hear and determine motion for new trial on newly discovered evidence by pendency in Supreme Court of error proceeding. Smith v. State, 167 Neb. 492, 93 N.W.2d 499 (1958).

To warrant granting of new trial, newly discovered evidence must be competent, material, and credible. Gates v. State, 160 Neb. 722, 71 N.W.2d 460 (1955).

Newly discovered evidence, to justify granting of new trial, must be of so controlling a nature as to probably change the result of the former trial. Penn Mutual Life Ins. Co. v. Lindquist, 132 Neb. 220, 271 N.W. 429 (1937).

New trial may be granted on ground of newly discovered evidence which is competent, material and credible, which might have changed result, and which could not be discovered by exercise of due diligence. Duffey v. State, 124 Neb. 23, 245 N.W. 1 (1932).

To be entitled to new trial on ground of newly discovered evidence, party must show that it is material and could not have been produced at trial by reasonable diligence. Mauer v. State, 113 Neb. 418, 203 N.W. 554 (1925); Cunningham v. State, 56 Neb. 691, 77 N.W. 60 (1898).

When it is conceded by state that facts exist which could not have been known at trial, and which render it improbable that defendant is guilty, a new trial after term in which judgment was rendered may be granted. Franco v. State, 98 Neb. 746, 154 N.W. 236 (1915).

Newly discovered evidence which merely tends to impeach state's witnesses with respect to collateral facts is not ground for new trial. Hanks v. State, 88 Neb. 464, 129 N.W. 1011 (1911).

Court of equity will not interfere to grant new trial in criminal case on ground of newly discovered evidence. Hubbard v. State, 72 Neb. 62, 100 N.W. 153 (1904).

Motion for new trial on ground of newly discovered evidence was properly overruled when affidavit of proposed witness was contradicted by his sworn testimony. Housh v. State, 43 Neb. 163, 61 N.W. 571 (1895).

Newly discovered evidence which merely tends to discredit some of state's witnesses is not ground for new trial. Ogden v. State, 13 Neb. 436, 14 N.W. 165 (1882).

The trial court properly overruled the defendant's motion for new trial because the defendant filed the motion more than 10 days after the verdict and because the defendant's newly discovered evidence was cumulative and only went to the credibility of a witness. State v. Egger, 8 Neb. App. 740, 601 N.W.2d 785 (1999).

If a motion for new trial raises valid grounds for reexamination on the basis of newly discovered evidence to ascertain

whether or not a person has been wrongfully convicted, then the steps provided for such reexamination should be taken timely and without undue delay, even though a prior motion for new trial is pending on appeal. State v. Owen, 2 Neb. App. 195, 508 N.W.2d 299 (1993).

2. Misconduct of attorney

Misconduct of prosecuting attorney in argument to jury is ground for new trial. Scott v. State, 121 Neb. 232, 236 N.W. 608 (1931).

Misconduct of prosecuting attorney in argument must have been sufficient to unduly influence the jury and prejudice the rights of defendant. Argabright v. State, 62 Neb. 402, 87 N.W. 146 (1901).

Misconduct of attorney must have been excepted to. Bullis v. Drake, 20 Neb. 167, 29 N.W. 292 (1886).

3. Misconduct of jury

Pretrial bet by juror that defendant would receive the death penalty was not prejudicial to defendant where verdict of jury called for life imprisonment. Fugate v. State, 169 Neb. 420, 99 N.W.2d 868 (1959).

Affidavits of jurors, relating to arguments or statements made in jury room, will not be received to impeach verdict. Lambert v. State, 91 Neb. 520, 136 N.W. 720 (1912); Welsh v. State, 60 Neb. 101, 82 N.W. 368 (1900).

Discussion by jury of irrelevant matters is not misconduct; keeping jury together a long time, without opportunity for sleep, does not vitiate verdict if same is deliberate and voluntary. Lambert v. State, 91 Neb. 520, 136 N.W. 720 (1912); Russell v. State, 66 Neb. 497, 92 N.W. 751 (1902).

Misconduct of jury in deliberations cannot be shown by statements of jurors. Savary v. State, 62 Neb. 166, 87 N.W. 34 (1901).

Verdict cannot be impeached by juror on ground that he misunderstood evidence of witness, or verdict when same was assented to in open court. Coil v. State, 62 Neb. 15, 86 N.W. 925 (1901).

Where it is attempted to show misconduct of jury by affidavit of jurors, trial court can take into consideration presumption that jurors obeyed their oaths. Tracey v. State, 46 Neb. 361, 64 N.W. 1069 (1895).

Finding of trial court will not be disturbed where evidence of alleged misconduct of jurors is conflicting. McMahon v. State, 46 Neb. 166, 64 N.W. 694 (1895).

Affidavit after verdict, contradicting answer of juror on voir dire examination, should be received with caution. Hill v. State, 42 Neb. 503, 60 N.W. 916 (1894).

Motion on ground of previous expression of opinion by juror will not be granted unless both accused and his counsel did not have knowledge thereof. Clough v. State, 7 Neb. 320 (1878).

Drinking of liquor by juror is not fatal to verdict. Ankeny v. Rawhouser, 2 Neb. Unof. 32, 95 N.W. 1053 (1901).

4. Irregularity in proceedings

In criminal case, alleged errors of the trial court not referred to in a motion for a new trial will not be considered on appeal. State v. Svoboda, 194 Neb. 663, 234 N.W.2d 901 (1975).

Ruling on motion submitted on conflicting affidavits, will not be disturbed unless clearly wrong. Lukehart v. State, 91 Neb. 219, 136 N.W. 40 (1912).

Alleged error in instructions will not be considered in Supreme Court unless challenged by motion for new trial. Lackey v. State, 56 Neb. 298, 76 N.W. 561 (1898).

Admission of immaterial evidence, not prejudicial to accused, is not ground for reversal. Carrall v. State, 53 Neb. 431, 73 N.W. 939 (1898).

To warrant conviction it is not essential that evidence exclude every possible hypothesis except guilt of accused. Johnson v. State, 53 Neb. 103, 73 N.W. 463 (1897).

New trial will not be allowed because of absence of witness who testifies on subsequent day of trial. Morgan v. State, 51 Neb. 672, 71 N.W. 788 (1897).

Exclusion of merely cumulative testimony is not prejudicial. Kelly v. State, 51 Neb. 572, 71 N.W. 299 (1897).

Erroneous instruction is not cured by merely giving another contradicting it. Henry v. State, 51 Neb. 149, 70 N.W. 924 (1897).

Denial of motion to require election by state is reviewable, though not assigned as error in motion for new trial. Hans v. State, 50 Neb. 150, 69 N.W. 838 (1897).

Alleged errors in overruling challenges to jurors for cause are not reviewable unless assigned in motion for new trial. Ford v. State, 46 Neb. 390, 64 N.W. 1082 (1895).

Verdict will not be disturbed merely because evidence is conflicting. Palmer v. People, 4 Neb. 68 (1875).

5. Other grounds

Unless alleged errors are pointed out in motion for new trial and ruling obtained thereon, appeal must be dismissed. State v. Fauth, 192 Neb. 502, 222 N.W.2d 561 (1974).

In criminal cases, alleged errors of the trial court not referred to in the motion for a new trial will not be considered on appeal. State v. Seger, 191 Neb. 760, 217 N.W.2d 828 (1974).

Motion for new trial set out some of the reasons contained in this section. Kennedy v. State, 170 Neb. 193, 101 N.W.2d 853 (1960).

Common law writ of error coram nobis is not abolished. Carlsen v. State, 129 Neb. 84, 261 N.W. 339 (1935).

Allowance of new trial, where crime consists of several degrees charged in different counts, goes to whole case; but when separate crimes are charged, goes only to count on which defendant was convicted. George v. State, 59 Neb. 163, 80 N.W. 486 (1899).

Defect in verdict, though not assigned as ground for new trial, may be examined by Supreme Court in error proceeding. Holmes v. State, 58 Neb. 297, 78 N.W. 641 (1899).

Misconduct of spectator, who is immediately suppressed and rebuked by court, is not reversible error. Lindsay v. State, 46 Neb. 177, 64 N.W. 716 (1895).

Alleged errors, to be reviewable, must have been set out in motion for new trial. Madsen v. State, 44 Neb. 631, 62 N.W. 1081 (1895).

Absence of accused from courtroom, where upon his return testimony was again repeated, was not ground for new trial. Hair v. State, 16 Neb. 601, 21 N.W. 464 (1884).

Ruling on plea in abatement was not ground for motion. Bohanan v. State, 15 Neb. 209, 18 N.W. 129 (1884).

In capital case, want of exception will not necessarily deprive accused of right of new trial. Schlencker v. State, 9 Neb. 300, 2 N.W. 710 (1879); Thompson v. People, 4 Neb. 524 (1876).

6. Miscellaneous

At trial, the jury was presented with evidence that a hair of unknown origin had originated, but later fallen, from the belt used to strangle the victim. DNA testing revealed that this hair actually belonged to the defendant and that a hair of unknown origin was located in a knot in the belt. The Nebraska Supreme Court cannot say that had the jury known of this new evidence, it probably would have produced a substantially different result. State v. El-Tabech, 269 Neb. 810, 696 N.W.2d 445 (2005).

A motion could not be brought under this section to compel state-funded DNA testing when the 3-year time period required by section 29-2103 had passed. State v. El-Tabech, 259 Neb. 509, 610 N.W.2d 737 (2000).

The filing of a motion for new trial in a criminal case does not terminate the running of the 30-day period in which a criminal defendant must file a notice of appeal. State v. McCormick and Hall, 246 Neb. 271, 518 N.W.2d 133 (1994).

A motion for new trial made under this section because of (1) irregularity in the proceedings of the court, or the prosecuting attorney, or the witness for the state, or any order of the court, or abuse of discretion by which the defendant was prevented from having a fair trial; (2) misconduct of the jury or prosecuting attorney, or the witnesses for the State; or (3) newly discovered evidence material for the defendant which he could not with reasonable diligence have discovered and produced at the trial is addressed to the discretion of the trial court, and unless an abuse of discretion is shown, the trial court's determination will not be disturbed on appeal. State v. Boppre, 243 Neb. 908, 503 N.W.2d 526 (1993).

The asserted ground for a new trial must affect adversely the substantial rights of the defendant, and it must be shown that he was prejudiced thereby. State v. Tainter, 218 Neb. 855, 359 N.W.2d 795 (1984).

Motion for new trial on ground of accident or surprise properly overruled where no request for continuance made at trial. State v. Mills, 199 Neb. 295, 258 N.W.2d 628 (1977).

Evidence confirming defendant's guilt and not likely to produce different verdict will not support motion for new trial. State v. Costello, 199 Neb. 43, 256 N.W.2d 97 (1977).

Plea of guilty or nolo contendere, made with full knowledge of the charge and the consequences of the plea, cannot be withdrawn in the absence of fraud, mistake, or improper means used in its procurement. State v. Kluge, 198 Neb. 115, 251 N.W.2d 737 (1977).

An order granting probation is a sentence under section 29-2260(4), and for review a motion for new trial must be filed within ten days, but no motion for new trial is required for review of order revoking probation. State v. Mosley, 194 Neb. 740, 235 N.W.2d 402 (1975).

29-2102 New trial; affidavits; when required.

The grounds set forth in subdivisions (2), (3), and (6) of section 29-2101 shall be supported by affidavits showing the truth of such grounds, and the grounds may be controverted by affidavits. The ground set forth in subdivision (5) of section 29-2101 shall be supported by evidence of the truth of the ground in the form of affidavits, depositions, or oral testimony.

Source: G.S.1873, c. 58, § 492, p. 831; R.S.1913, § 9132; C.S.1922, § 10157; C.S.1929, § 29-2102; R.S.1943, § 29-2102; Laws 2001, LB 659, § 12.

Misconduct of county attorney may be sustained by affidavits. Mulder v. State, 152 Neb. 795, 42 N.W.2d 858 (1950).

This section does not apply to newly discovered evidence discovered after adjournment of term. Carlsen v. State, 129 Neb. 84, 261 N.W. 339 (1935).

Facts may be such as to require entire record to be limited to affidavits. Scott v. State, 121 Neb. 232, 236 N.W. 608 (1931).

Affidavits must be preserved in form of bill of exceptions to be available to complaining party on appeal. Wright v. State, 45 Neb. 44, 63 N.W. 147 (1895).

29-2103 New trial; motion; how and when made.

(1) A motion for new trial shall be made by written application and may be filed either during or after the term of the court at which the verdict was rendered.

(2) A motion for a new trial shall state the grounds under section 29-2101 which are the basis for the motion and shall be supported by evidence as provided in section 29-2102.

(3) A motion for new trial based on the grounds set forth in subdivision (1), (2), (3), (4), or (7) of section 29-2101 shall be filed within ten days after the verdict was rendered unless such filing is unavoidably prevented, and the grounds for such motion may be stated by directly incorporating the appropriate language of section 29-2101 without further particularity.

(4) A motion for new trial based on the grounds set forth in subdivision (5) of section 29-2101 shall be filed within a reasonable time after the discovery of the new evidence and cannot be filed more than three years after the date of the verdict.

(5) A motion for new trial based on the grounds set forth in subdivision (6) of section 29-2101 shall be filed within ninety days after a final order is issued under section 29-4123 or within ninety days after the hearing if no final order is entered, whichever occurs first.

Source: G.S.1873, c. 58, § 491, p. 831; Laws 1881, c. 33, § 1, p. 212; R.S.1913, § 9133; C.S.1922, § 10158; C.S.1929, § 29-2103;

Laws 1935, c. 65, § 1, p. 223; C.S.Supp.,1941, § 29-2103; R.S. 1943, § 29-2103; Laws 1947, c. 104, § 1, p. 293; Laws 2001, LB 659, § 13.

1. Time to be filed
2. Newly discovered evidence
3. Other grounds
4. Miscellaneous

1. Time to be filed

A motion could not be brought to compel state-funded DNA testing when the 3-year time period required by this section had passed. State v. El-Tabech, 259 Neb. 509, 610 N.W.2d 737 (2000).

This section, by its terms, is mandatory. A motion for new trial not filed in conformity with the statutory requirements as to time may not be considered by an appellate court on review. State v. Thompson, 244 Neb. 375, 507 N.W.2d 253 (1993).

Motion for new trial not filed within ten days after verdict rendered, where no showing made that defendant was unavoidably prevented from doing so, is a nullity. State v. Hawkman, 198 Neb. 578, 254 N.W.2d 90 (1977).

Motion for new trial hereunder must be filed within ten days after verdict, not sentencing. State v. Applegarth, 196 Neb. 773, 246 N.W.2d 216 (1976).

A motion for new trial under this section must be filed within ten days after the verdict is rendered, not from sentencing unless the verdict and sentencing occur on the same day. State v. Betts, 196 Neb. 572, 244 N.W.2d 195 (1976).

A motion for new trial under this section must be filed within ten days after the verdict is rendered, not from date of sentencing. State v. Wood, 195 Neb. 353, 238 N.W.2d 226 (1976).

A motion for new trial hereunder must be filed within ten days after the verdict is rendered not after sentencing. State v. Lacy, 195 Neb. 299, 237 N.W.2d 650 (1976).

An order granting probation is a sentence under section 29-2260(4), and for review a motion for new trial must be filed within ten days, but no motion for new trial is required for review of order revoking probation. State v. Mosley, 194 Neb. 740, 235 N.W.2d 402 (1975).

A motion for new trial in a criminal case must be filed within ten days after rendition of verdict. State v. Losieau, 179 Neb. 54, 136 N.W.2d 168 (1965).

Motion for new trial was timely filed. Kennedy v. State, 170 Neb. 193, 101 N.W.2d 853 (1960).

Defendant was not unavoidably prevented from filing motion for new trial in time prescribed. Stanosheck v. State, 168 Neb. 43, 95 N.W.2d 197 (1959).

In criminal case, motion for new trial must be filed within ten days and amendment thereto cannot thereafter be made. Parker v. State, 164 Neb. 614, 83 N.W.2d 347 (1957).

An objection to a juror raised for first time in second motion for new trial filed fourteen days after filing of first motion for new trial, and containing no showing of newly discovered evidence, is out of time and not ground for new trial. Young v. State, 133 Neb. 644, 276 N.W. 387 (1951).

Provisions limiting time are mandatory. McCoy v. State, 110 Neb. 360, 193 N.W. 716 (1923); Davis v. State, 31 Neb. 240, 47 N.W. 851 (1891).

Motion filed two years after judgment on ground of newly discovered evidence was properly dismissed. Bradshaw v. State, 19 Neb. 644, 28 N.W. 323 (1886).

2. Newly discovered evidence

New evidence tendered in support of a motion for a new trial on the grounds of newly discovered evidence must be so potent that by strengthening evidence already offered, a new trial would probably result in a different verdict. State v. Seger, 191 Neb. 760, 217 N.W.2d 828 (1974).

Motion for new trial upon ground of newly discovered evidence in criminal case may be made within three years of the date of the verdict. Smith v. State, 167 Neb. 492, 93 N.W.2d 499 (1958).

To require granting of new trial, newly discovered evidence must be of such nature as to probably change the verdict. Ysac v. State, 167 Neb. 24, 91 N.W.2d 49 (1958).

Granting or refusal of new trial upon the ground of newly discovered evidence depends upon the facts and circumstances of each case. Severin v. State, 148 Neb. 617, 28 N.W.2d 326 (1947).

In criminal case, new trial will be granted for newly discovered evidence which is competent, material and credible, which might have changed result of trial, and which exercise of due diligence could not have discovered and produced at trial. Duffey v. State, 124 Neb. 23, 245 N.W. 1 (1932).

Newly discovered evidence offered in support of a motion for new trial must be such that, by strengthening the evidence already offered, a new trial would probably result in a different verdict. State v. Edwards, 2 Neb. App. 149, 507 N.W.2d 506 (1993).

3. Other grounds

This court will not consider any error not presented below by motion for new trial where trial court had power to correct. State v. Beans, 199 Neb. 807, 261 N.W.2d 749 (1978).

This and other sections provide for redress by trial court, and review by Supreme Court, of trial errors challenged by motion for new trial. Scott v. State, 121 Neb. 232, 236 N.W. 608 (1931).

Evidence adduced on hearing, to be available on review, must be incorporated in bill of exceptions. Holt v. State, 62 Neb. 134, 86 N.W. 1073 (1901).

Misconduct of juror, to be available on review, must be presented by record and assigned as error in motion. Bush v. State, 62 Neb. 128, 86 N.W. 1062 (1901).

Assignments for failure to give group of instructions is considered no further when it is ascertained that refusal to give any one was proper. Thompson v. State, 44 Neb. 366, 62 N.W. 1060 (1895).

Errors occurring during trial, to be reviewable, must be assigned in motion and ruling obtained thereon. Wilson v. State, 43 Neb. 745, 62 N.W. 209 (1895).

Assignment in language of statute is sufficient. McNamee v. State, 34 Neb. 288, 51 N.W. 821 (1892).

Motion is indivisible and where made jointly by several parties, if it cannot be allowed as to all, must be overruled as to all. Dutcher v. State, 16 Neb. 30, 19 N.W. 612 (1884).

4. Miscellaneous

''Unavoidably prevented'' as used in this section refers to circumstances beyond the control of the party filing the motion for new trial. State v. Thompson, 246 Neb. 752, 523 N.W.2d 246 (1994).

This section is constitutional and does not violate the concepts of due process. State v. Kelley, 198 Neb. 805, 255 N.W.2d 840 (1977).

Where presiding judge is unavoidably prevented from ruling on motion for new trial, another judge may perform that duty. Hauser v. State, 101 Neb. 834, 166 N.W. 245 (1917).

Decision of trial judge permitted to stand if evidence on which it rests is fairly conflicting. Russell v. State, 66 Neb. 497, 92 N.W. 751 (1902).

Motion properly dealt with as entirety; it is not error to overrule if it cannot be sustained in form presented. Reed v. State, 66 Neb. 184, 92 N.W. 321 (1902).

Failure to file motion is not sufficient cause for dismissing petition in error. Rhea v. State, 61 Neb. 15, 84 N.W. 414 (1900).

District judge may hear motion in case wherein judge of another district presided. Lauder v. State, 50 Neb. 140, 69 N.W. 776 (1897).

Supreme Court, as court of equity, cannot grant new trial in criminal cases instituted before it. Paulson v. State, 25 Neb. 344, 41 N.W. 249 (1889).

The trial court properly overruled the defendant's motion for new trial because the defendant filed the motion more than 10 days after the verdict and because the defendant's newly discovered evidence was cumulative and only went to the credibility of a witness. State v. Egger, 8 Neb. App. 740, 601 N.W.2d 785 (1999).

This section does not abolish the writ of error coram nobis. Hawk v. Jones, 160 F.2d 807 (8th Cir. 1947).

29-2104 Arrest of judgment; grounds.

A motion in arrest of judgment may be granted by the court for either of the following causes: (1) That the grand jury which found the indictment had no legal authority to inquire into the offense charged, by reason of it not being within the jurisdiction of the court; or (2) that the facts stated in the indictment do not constitute an offense.

Source: G.S.1873, c. 58, § 493, p. 831; R.S.1913, § 9134; C.S.1922, § 10159; C.S.1929, § 29-2104.

Challenge to certainty and particularity of information which states an offense in the words of the statute may be made by a motion to quash, but not by a motion in arrest of judgment. State v. Abraham, 189 Neb. 728, 205 N.W.2d 342 (1973).

A defendant who pleads not guilty without having raised the question of the lack of or a defective verification waives the defect. State v. Gilman, 181 Neb. 390, 148 N.W.2d 847 (1967).

Striking motion in arrest of judgment from files instead of overruling it was not prejudicial error. Kopp v. State, 124 Neb. 363, 246 N.W. 718 (1933).

Motion in arrest of judgment should be sustained when information is insufficient to charge offense under statute. Korab v. State, 93 Neb. 66, 139 N.W. 717 (1913).

Selection of jury from old list prepared during preceding year was not a ground for motion in arrest of judgment, where plea in abatement was filed raising question but ruling thereon was not obtained. Goldsberry v. State, 92 Neb. 211, 137 N.W. 1116 (1912).

Sufficiency of information which charges no offense may be challenged, though plea of guilty was entered. Smith v. State, 68 Neb. 204, 94 N.W. 106 (1903).

Motion applies only to jurisdiction of court and sufficiency of indictment. Dodge v. People, 4 Neb. 220 (1876).

29-2105 Arrest of judgment; defect of form insufficient.

No judgment can be arrested for a defect of form.

Source: G.S.1873, c. 58, § 494, p. 832; R.S.1913, § 9135; C.S.1922, § 10160; C.S.1929, § 29-2105.

A defendant who pleads not guilty without having raised the question of the lack of or a defective verification waives the defect. State v. Gilman, 181 Neb. 390, 148 N.W.2d 847 (1967).

29-2106 Arrest of judgment; effect.

The effect of allowing a motion in arrest of judgment shall be to place the defendant in the same position with respect to the prosecution as before the indictment was found. If, from the evidence on the trial, there shall be sufficient reason to believe him guilty of an offense, the court shall order him to enter into a recognizance with sufficient security, conditioned for his appearance at the first day of the next term of the same court; otherwise the defendant shall be discharged.

Source: G.S.1873, c. 58, § 494, p. 832; R.S.1913, § 9135; C.S.1922, § 10160; C.S.1929, § 29-2105.

ARTICLE 22
JUDGMENT ON CONVICTION

(a) JUDGMENT ON CONVICTION

Section
29-2201. Verdict of guilty; accused to be notified before sentence.
29-2202. Verdict of guilty; judgment; when pronounced; suspension of sentence; when; bail.
29-2203. Defense of not responsible by reason of insanity; how pleaded; burden of proof; notice before trial; examination of defendant; acquittal; further proceedings.
29-2204. Indeterminate sentence; court; duties; study of offender; when; costs; defendant under eighteen years of age; disposition.
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29-2211. Repealed. Laws 1957, c. 106, § 22.
29-2212. Repealed. Laws 1961, c. 113, § 3.
29-2213. Repealed. Laws 1957, c. 106, § 22.
29-2214. Repealed. Laws 1957, c. 106, § 22.
29-2215. Repealed. Laws 1984, LB 13, § 90.
29-2216. Repealed. Laws 1984, LB 13, § 90.
29-2217. Repealed. Laws 1971, LB 680, § 32.
29-2218. Repealed. Laws 1971, LB 680, § 32.
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(b) HABITUAL CRIMINALS

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(c) PROBATION

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29-2226. Repealed. Laws 1971, LB 680, § 32.
29-2227. Repealed. Laws 1971, LB 680, § 32.
29-2228. Repealed. Laws 1971, LB 680, § 32.
29-2229. Repealed. Laws 1971, LB 680, § 32.
29-2230. Repealed. Laws 1971, LB 680, § 32.
29-2231. Repealed. Laws 1971, LB 680, § 32.
29-2232. Repealed. Laws 1971, LB 680, § 32.
29-2233. Repealed. Laws 1971, LB 680, § 32.
29-2234. Repealed. Laws 1971, LB 680, § 32.
29-2235. Repealed. Laws 1971, LB 680, § 32.
29-2236. Repealed. Laws 1971, LB 680, § 32.
29-2237. Repealed. Laws 1971, LB 680, § 32.
29-2238. Repealed. Laws 1971, LB 680, § 32.
29-2239. Repealed. Laws 1971, LB 680, § 32.
29-2240. Repealed. Laws 1971, LB 680, § 32.
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Section

(d) COMMUNITY SERVICE

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(g) DOMESTIC VIOLENCE CONVICTION

29-2291. Misdemeanor domestic violence conviction; notification to defendant; State Court Administrator's Office; duty.

(a) JUDGMENT ON CONVICTION

29-2201 Verdict of guilty; accused to be notified before sentence.

Before the sentence is pronounced, the defendant must be informed by the court of the verdict of the jury, and asked whether he has anything to say why judgment should not be passed against him.

Source: G.S.1873, c. 58, § 495, p. 832; R.S.1913, § 9136; C.S.1922, § 10161; C.S.1929, § 29-2201.

A sentencing court is not required to use the specific words set out in the statute in conducting an allocution as long as defendant is afforded an opportunity to offer comments as to why judgment should not be passed against him. State v. Dethlefs, 239 Neb. 943, 479 N.W.2d 780 (1992).

Sentence vacated because defendant not present at sentencing even though his absence was by choice. State v. Ernest, 200 Neb. 615, 264 N.W.2d 677 (1978).

Error held not prejudicial. State v. Brockman, 184 Neb. 435, 168 N.W.2d 367 (1969).

Court is not required to delay imposition of sentence until statutory time for filing motion for new trial has expired. Young v. State, 155 Neb. 261, 51 N.W.2d 326 (1952).

Where record fails to show affirmatively that court, before pronouncing sentence, informed defendant that he had been found guilty, and record shows nothing to contrary, presumption is such information was given. Kopp v. State, 124 Neb. 363, 246 N.W. 718 (1933); Taylor v. State, 86 Neb. 795, 126 N.W. 752 (1910).

Section is mandatory; if not complied with, cause will be remanded. Evers v. State, 84 Neb. 708, 121 N.W. 1005 (1909); McCormick v. State, 66 Neb. 337, 92 N.W. 606 (1902).

Confinement of prisoner under sentence of death, from date of sentence to day of execution, is no part of sentence. McGinn v. State, 46 Neb. 427, 65 N.W. 46 (1895).

Judge is not limited to this one question; cannot coerce answer. Tracey v. State, 46 Neb. 361, 64 N.W. 1069 (1895).

29-2202 Verdict of guilty; judgment; when pronounced; suspension of sentence; when; bail.

If the defendant has nothing to say, or if he shows no good and sufficient cause why judgment should not be pronounced, the court shall proceed to pronounce judgment as provided by law. The court, in its discretion, may for any cause deemed by it good and sufficient, suspend execution of sentence for a period not to exceed ninety days from the date judgment is pronounced. If the

defendant is not at liberty under bail, he may be admitted to bail during the period of suspension of sentence as provided in section 29-901.

Source: G.S.1873, c. 58, § 496, p. 832; R.S.1913, § 9137; C.S.1922, § 10162; C.S.1929, § 29-2202; R.S.1943, § 29-2202; Laws 1951, c. 87, § 2, p. 251.

Cross References

Bail, conditions, see sections 29-901 to 29-910.

1. Sentence of defendant
2. Suspension of execution of sentence
3. Power of court
4. Miscellaneous

1. Sentence of defendant

Sentence vacated because defendant not present at sentencing even though his absence was by choice. State v. Ernest, 200 Neb. 615, 264 N.W.2d 677 (1978).

In absence of showing of prejudice, it is not error to sentence defendant before time for filing motion for new trial has expired. Young v. State, 155 Neb. 261, 51 N.W.2d 326 (1952).

Where conviction is had on each of separate counts charging same offense, single sentence is rendered upon all counts for one entire offense. Yeoman v. State, 81 Neb. 244, 115 N.W. 784 (1908).

Judgment imposing sentence will not be interfered with as being excessive in absence of clear abuse of discretion. Wright v. State, 45 Neb. 44, 63 N.W. 147 (1895); Morrison v. State, 13 Neb. 527, 14 N.W. 475 (1882).

Separate sentence should be passed on each count of indictment charging separate misdemeanors of same kind upon which defendant is found guilty. Burrell v. State, 25 Neb. 581, 41 N.W. 399 (1889).

2. Suspension of execution of sentence

Question raised but not decided as to authority of justice of peace to suspend execution of sentence beyond ninety days. Stuckey v. Rohnert, 179 Neb. 727, 140 N.W.2d 9 (1966).

3. Power of court

Ineffectual attempt of district court to pass judgment according to provision of law does not deprive that court of power to pass valid judgment. McCormick v. State, 71 Neb. 505, 99 N.W. 237 (1904).

Within limits fixed by statute, term of imprisonment rests with trial court. Geiger v. State, 6 Neb. 545 (1877).

4. Miscellaneous

A sentence validly imposed takes effect from the time it is pronounced, and a subsequent, different sentence is a nullity. State v. Kinney, 217 Neb. 701, 350 N.W.2d 552 (1984).

Failure to comply with this section does not affect the jurisdiction of the court, and is not ground for release on habeas corpus. Dunham v. O'Grady, 137 Neb. 649, 290 N.W. 723 (1940).

In recording judgment, clerk should follow substantially formal language of court. Preuit v. The People, 5 Neb. 377 (1877).

29-2203 Defense of not responsible by reason of insanity; how pleaded; burden of proof; notice before trial; examination of defendant; acquittal; further proceedings.

Any person prosecuted for an offense may plead that he or she is not responsible by reason of insanity at the time of the offense and in such case the burden shall be upon the defendant to prove the defense of not responsible by reason of insanity by a preponderance of the evidence. No evidence offered by the defendant for the purpose of establishing his or her insanity shall be admitted in the trial of the case unless notice of intention to rely upon the insanity defense is given to the county attorney and filed with the court not later than sixty days before trial.

Upon the filing of the notice the court, on motion of the state, may order the defendant to be examined at a time and place designated in the order, by one or more qualified experts, appointed by the court, to inquire into the sanity or insanity of the defendant at the time of the commission of the alleged offense. The court may order that the examination be conducted at one of the regional centers or at any appropriate facility. The presence of counsel at the examination shall be within the discretion of the court. The results of such examination shall be sent to the court and to the prosecuting attorney. In misdemeanor or felony cases, the defendant may request the court to order the prosecuting attorney to permit the defendant to inspect and copy the results of such examination pursuant to the procedures set forth in sections 29-1912 to

29-1921. In the interest of justice and good cause shown the court may waive the requirements provided in this section.

If the trier of fact acquits the defendant on the grounds of insanity, the verdict shall reflect whether the trier acquits him or her on that ground alone or on other grounds as well. When the defendant is acquitted solely on the ground of insanity, the court shall have exclusive jurisdiction over the defendant for disposition consistent with the terms of this section and sections 29-3701 to 29-3704.

Source: Laws 1909, c. 74, § 1, p. 333; R.S.1913, § 9139; C.S.1922, § 10164; C.S.1929, § 29-2204; R.S.1943, § 29-2203; Laws 1973, LB 501, § 1; Laws 1976, LB 806, § 17; Laws 1981, LB 213, § 2; Laws 1984, LB 183, § 1.

Cross References

Constitutional provision:
Due process, see Article I, section 3, Constitution of Nebraska.
Acquittal on grounds of insanity, special procedures, see sections 29-3701 to 29-3706.
Escape from mental health treatment facility or program, effect, see section 71-939.
Mental Health Commitment Act, Nebraska, see section 71-901.

A defendant who pleads that he or she is not responsible by reason of insanity has the burden to prove the defense by a preponderance of the evidence. The fact that a defendant has some form of mental illness or defect does not by itself establish insanity. State v. Harms, 263 Neb. 814, 643 N.W.2d 359 (2002).

When a defendant pleads the defense of insanity and offers evidence on that issue, the plea is an implicit, although not legally operative, admission of the State's charges. The defense of temporarily diminished mental capacity exists separately and in addition to the defense of insanity. A trial court need not specially instruct the jury regarding the defense of diminished capacity if the court has otherwise properly instructed the jury regarding the intent which is an element of the crime charged. State v. Urbano, 256 Neb. 194, 589 N.W.2d 144 (1999).

Because this statute grants trial courts the discretion to allow or deny counsel's presence at court-ordered psychiatric or psychological examinations of criminal defendants, it implicitly requires that defense counsel be notified of such an order issued ex parte prior to its taking effect so that defense counsel can present arguments to the court regarding counsel's presence at the examination; otherwise, the court's exercise of discretion in allowing or denying the presence of counsel at the examination would be unguided. A trial court's erroneous failure to notify defense counsel of an ex parte, court-ordered examination prior to such examination is harmless when defense counsel receives a copy of the expert examiner's report as soon as the state receives such a copy, and the defense has adequate opportunities to depose the expert examiner; hence, admission of the expert examiner's testimony and the denial of defense counsel's motions for continuance and a new trial are not reversible errors. State v. Larsen, 255 Neb. 532, 586 N.W.2d 641 (1998).

Insanity is a jury question. State v. Ryan, 233 Neb. 74, 444 N.W.2d 610 (1989).

This section does not violate either the U.S. or Nebraska Constitution. State v. Ryan, 233 Neb. 74, 444 N.W.2d 610 (1989).

The portion of this section which places the burden upon the defendant to prove insanity by a preponderance of the evidence does not violate the due process clause of the 14th amendment to the U.S. Constitution or Nebraska's due process clause, Neb. Const. art. I, sec. 3. State v. Hankins, 232 Neb. 608, 441 N.W.2d 854 (1989).

Mental examination by state of defendant not authorized by this section unless defendant has pleaded not guilty by reason of insanity. State v. Vosler, 216 Neb. 461, 345 N.W.2d 806 (1984).

29-2204 Indeterminate sentence; court; duties; study of offender; when; costs; defendant under eighteen years of age; disposition.

(1) Except when a term of life imprisonment without parole is required by law, in imposing an indeterminate sentence upon an offender the court shall:

(a)(i) Until July 1, 1998, fix the minimum and maximum limits of the sentence to be served within the limits provided by law, except that when a maximum limit of life is imposed by the court for a Class IB felony, the minimum limit may be any term of years not less than the statutory mandatory minimum; and

(ii) Beginning July 1, 1998:

(A) Fix the minimum and maximum limits of the sentence to be served within the limits provided by law for any class of felony other than a Class IV felony, except that when a maximum limit of life is imposed by the court for a Class IB felony, the minimum limit may be any term of years not less than the statutory mandatory minimum. If the criminal offense is a Class IV felony, the court shall

fix the minimum and maximum limits of the sentence, but the minimum limit fixed by the court shall not be less than the minimum provided by law nor more than one-third of the maximum term and the maximum limit shall not be greater than the maximum provided by law; or

(B) Impose a definite term of years, in which event the maximum term of the sentence shall be the term imposed by the court and the minimum term shall be the minimum sentence provided by law;

(b) Advise the offender on the record the time the offender will serve on his or her minimum term before attaining parole eligibility assuming that no good time for which the offender will be eligible is lost; and

(c) Advise the offender on the record the time the offender will serve on his or her maximum term before attaining mandatory release assuming that no good time for which the offender will be eligible is lost.

If any discrepancy exists between the statement of the minimum limit of the sentence and the statement of parole eligibility or between the statement of the maximum limit of the sentence and the statement of mandatory release, the statements of the minimum limit and the maximum limit shall control the calculation of the offender's term. If the court imposes more than one sentence upon an offender or imposes a sentence upon an offender who is at that time serving another sentence, the court shall state whether the sentences are to be concurrent or consecutive.

(2)(a) When the court is of the opinion that imprisonment may be appropriate but desires more detailed information as a basis for determining the sentence to be imposed than has been provided by the presentence report required by section 29-2261, the court shall commit an offender to the Department of Correctional Services for a period not exceeding ninety days. The department shall conduct a complete study of the offender during that time, inquiring into such matters as his or her previous delinquency or criminal experience, social background, capabilities, and mental, emotional, and physical health and the rehabilitative resources or programs which may be available to suit his or her needs. By the expiration of the period of commitment or by the expiration of such additional time as the court shall grant, not exceeding a further period of ninety days, the offender shall be returned to the court for sentencing and the court shall be provided with a written report of the results of the study, including whatever recommendations the department believes will be helpful to a proper resolution of the case. After receiving the report and the recommendations, the court shall proceed to sentence the offender in accordance with subsection (1) of this section. The term of the sentence shall run from the date of original commitment under this subsection.

(b) In order to encourage the use of this procedure in appropriate cases, all costs incurred during the period the defendant is held in a state institution under this subsection shall be a responsibility of the state and the county shall be liable only for the cost of delivering the defendant to the institution and the cost of returning him or her to the appropriate court for sentencing or such other disposition as the court may then deem appropriate.

(3) Except when a term of life is required by law, whenever the defendant was under eighteen years of age at the time he or she committed the crime for which he or she was convicted, the court may, in its discretion, instead of imposing the penalty provided for the crime, make such disposition of the defendant as the court deems proper under the Nebraska Juvenile Code. Prior

to making a disposition which commits the juvenile to the Office of Juvenile Services, the court shall order the juvenile to be evaluated by the office if the juvenile has not had an evaluation within the past twelve months.

Source: G.S.1873, c. 58, § 498, p. 832; R.S.1913, § 9140; C.S.1922, § 10165; C.S.1929, § 29-2205; R.S.1943, § 29-2204; Laws 1974, LB 620, § 7; Laws 1988, LB 790, § 3; Laws 1993, LB 31, § 9; Laws 1993, LB 529, § 1; Laws 1993, LB 627, § 1; Laws 1994, LB 988, § 8; Laws 1995, LB 371, § 12; Laws 1997, LB 364, § 14; Laws 1998, LB 1073, § 10; Laws 2002, Third Spec. Sess., LB 1, § 8.

Cross References

Nebraska Juvenile Code, see section 43-2,129.

1. Minimum sentence
2. Indeterminate sentence
3. Cumulative sentence
4. Solitary confinement
5. Miscellaneous

1. Minimum sentence

Under this section, specifically subsection (1)(a)(ii)(A), the minimum limit on a sentence for a Class IV felony cannot exceed one-third of the maximum statutory sentence; since the maximum statutory sentence for a Class IV felony is 5 years' imprisonment, a minimum sentence of more than 20 months' imprisonment cannot lawfully be imposed. State v. Bartholomew, 258 Neb. 174, 602 N.W.2d 510 (1999).

When there is no statutorily mandated minimum punishment for a Class IV felony, the minimum term of a determinate sentence is the minimum provided by law, 0 years. State v. Hurst, 8 Neb. App. 280, 594 N.W.2d 303 (1999).

The statement of minimum sentence controls calculation of offender's term and a misstatement of parole eligibility cannot be used to ''bootstrap'' a reduced term of sentence. State v. Glover, 3 Neb. App. 932, 535 N.W.2d 724 (1995).

2. Indeterminate sentence

When a flat sentence of ''life imprisonment'' is imposed and no minimum sentence is stated, by operation of law, the minimum sentence is the minimum imposed by law. While this section does not require that a minimum term be different from a maximum term, it does require that a minimum term be affirmatively stated if it is to be imposed, and if a minimum term is not set forth, an indeterminate sentence will be imposed by operation of law. State v. Schnabel, 260 Neb. 618, 618 N.W.2d 699 (2000).

This section and section 83-1,105.01 govern indeterminate sentences, and they are inapplicable to a criminal defendant's determinate sentence. State v. White, 256 Neb. 536, 590 N.W.2d 863 (1999).

Under this section, an indeterminate sentence may be imposed for a misdemeanor if a court sentences an offender to serve time under the jurisdiction of the Department of Correctional Services. State v. Kess, 9 Neb. App. 353, 613 N.W.2d 20 (2000).

Operative July 1, 1998, trial courts sentencing defendants convicted of Class IV felony offenses may not impose an indeterminate sentence such that the minimum portion of the sentence exceeds one-third of the maximum term. State v. Harris, 7 Neb. App. 520, 583 N.W.2d 366 (1998).

This section does not require that the sentence imposed be indeterminate. State v. DuBray, 5 Neb. App. 496, 560 N.W.2d 189 (1997).

Pursuant to subsection (1)(a) of this section, in setting an indeterminate sentence, there must be a difference between the periods, and a sentence fixing identical minimum and maximum terms of imprisonment is not an indeterminate sentence. There is nothing in subsection (1)(a) of this section mandating that an indeterminate sentence must be imposed, nor is there a requirement that the minimum and maximum terms of such a sentence differ by any specific span of time. State v. Wilson, 4 Neb. App. 489, 546 N.W.2d 323 (1996).

3. Cumulative sentence

Where two sentences are imposed in the same court at the same time for two offenses, the sentences will run concurrently if the trial judge does not otherwise order. Stewart v. Delgado, 231 Neb. 401, 436 N.W.2d 512 (1989).

Where prisoner is convicted of different offenses, cumulative sentence may be imposed, each successive term to commence at termination of the one preceding. In re Walsh, 37 Neb. 454, 55 N.W. 1075 (1893).

4. Solitary confinement

Trial court erred in sentencing defendant to 4 days each year in solitary confinement, since that provision has been eliminated from this section. State v. McHenry, 247 Neb. 167, 525 N.W.2d 620 (1995).

This section as amended contains no provision for the imposition of solitary confinement as a part of a sentence. State v. Bennett, 2 Neb. App. 188, 508 N.W.2d 294 (1993).

5. Miscellaneous

This section determines an offender's minimum sentence from which parole eligibility is then calculated. Johnson v. Clarke, 258 Neb. 316, 603 N.W.2d 373 (1999).

Where a criminal statute was amended by mitigating the minimum term of a Class IV felony indeterminate sentence after the defendant committed the crime, but before final judgment was rendered on direct appeal, the punishment was that provided by the amendatory act, since the Legislature did not specifically state otherwise. State v. Urbano, 256 Neb. 194, 589 N.W.2d 144 (1999).

29-2204.01 Reduction of sentence, when.

In any criminal proceeding in which a sentence of confinement has been imposed and the particular law under which such sentence was pronounced is

thereafter amended to decrease the maximum period of confinement which may be imposed, then any person sentenced under the former law shall be entitled to his discharge from custody when he has served the maximum period of confinement authorized by the new law, notwithstanding the fact that the court may have ordered a longer period of confinement under the authority of the former law.

Source: Laws 1972, LB 1202, § 1.

Upon revocation of probation, the court may impose such punishment as may have been imposed originally for the crime of which such defendant was convicted. Resultingly, defendant who was convicted of third offense driving while intoxicated in 1980 and who violated his probation in 1984 was subject to sentencing under the penal statute in effect at the time of his conviction. State v. Jacobson, 221 Neb. 639, 379 N.W.2d 772 (1986).

Statute providing that when period of confinement is imposed and law under which defendant was sentenced is later amended to decrease the maximum period of confinement, defendant is entitled to release when he has served the maximum period as authorized by the new statute, does not apply when one statute is repealed to reclassify the offense so that under some circumstances, it would be a misdemeanor rather than a felony. State v. King, 214 Neb. 855, 336 N.W.2d 576 (1983).

This section will not be interpreted to apply to matters other than those clearly expressed within the statute itself, in the absence of a clear expression of legislative intent. State v. Peiffer, 212 Neb. 864, 326 N.W.2d 844 (1982).

Not applicable unless amendment of statute under which sentence was pronounced reduces maximum period of confinement authorized. State v. Rubek, 189 Neb. 141, 200 N.W.2d 255 (1972).

29-2205 Repealed. Laws 1987, LB 665, § 3.

29-2206 Fine and costs; commitment until paid; installments; suspension or revocation of motor vehicle operator's license.

(1) In all cases in which courts or magistrates have now or may hereafter have the power to punish offenses, either in whole or in part, by requiring the offender to pay a fine or costs, or both, such courts or magistrates may make it a part of the sentence that the party stand committed and be imprisoned in the jail of the proper county until the same is paid or secured to be paid or the defendant is otherwise discharged according to law.

(2) Notwithstanding the provisions of subsection (1) of this section, when any offender demonstrates to the court or magistrate that he or she is unable to pay such fine or costs in one lump sum, the court or magistrate shall make arrangements suitable to the court or magistrate and to the offender by which the offender may pay in installments. The court or magistrate shall enter an order specifying the terms of such arrangements and the dates on which payments are to be made. When the judgment of conviction provides for the suspension or revocation of a motor vehicle operator's license and the court authorizes the payment of a fine or costs by installments, the revocation or suspension shall be effective as of the date of judgment.

Source: G.S.1873, c. 58, § 500, p. 833; R.S.1913, § 9142; C.S.1922, § 10167; C.S.1929, § 29-2207; R.S.1943, § 29-2206; Laws 1971, LB 1010, § 2; Laws 1974, LB 966, § 1; Laws 1979, LB 111, § 1; Laws 1988, LB 370, § 6.

Cross References

Imprisonment at hard labor, see sections 29-2208, 29-2405, 29-2414, and 29-2415.

The court cannot require that a fine be satisfied by applying jail time served without giving the defendant an opportunity to pay the fine. State v. Holloway, 212 Neb. 426, 322 N.W.2d 818 (1982).

Exemption of certain type or class of offense from the imposition of costs is not an unconstitutional classification. State ex rel. Douglas v. Gradwohl, 194 Neb. 745, 235 N.W.2d 854 (1975).

This and following section authorize taxation of costs only in cases where a crime has been charged and there has been a conviction. Luther v. State, 85 Neb. 674, 124 N.W. 117 (1909); Speer v. State, 64 Neb. 77, 89 N.W. 624 (1902).

29-2206.01 Fine and costs; payment of installments; violation; penalty.

Installments provided for in section 29-2206 shall be paid pursuant to the order entered by the court. Any person who fails to comply with the terms of

such order shall be liable for punishment for contempt, unless he has the leave of the court in regard to such noncompliance.

Source: Laws 1971, LB 1010, § 3.

29-2207 Judgment for costs upon conviction; requirement.

In every case of conviction of any person for any felony or misdemeanor, it shall be the duty of the court or magistrate to render judgment for the costs of prosecution against the person convicted.

Source: G.S.1873, c. 58, § 501, p. 833; R.S.1913, § 9143; C.S.1922, § 10168; C.S.1929, § 29-2208.

A person who is reconvicted after his or her original conviction was reversed on appeal cannot be assessed the costs of the original conviction because the original conviction was nullified and the slate was wiped clean. State v. Kula, 262 Neb. 787, 635 N.W.2d 252 (2001).

The independent act considered herein is not unconstitutional for failure to mention in the incidental provision for payment or exemption from payment of costs, nor for failing to refer to and repeal certain other statutes. State ex rel. Douglas v. Gradwohl, 194 Neb. 745, 235 N.W.2d 854 (1975).

Defendant is liable for only such costs made by state as there was actual, apparent or probable necessity for incurring, and is limited to costs incurred in establishing his guilt. Biester v. State, 65 Neb. 276, 91 N.W. 416 (1902).

It is the duty of court, upon conviction, to render judgment for costs of prosecution; may sentence defendant to imprisonment in county jail until costs are paid or security for payment is given. In re Newton, 39 Neb. 757, 58 N.W. 436 (1894); In re Dobson, 37 Neb. 449, 55 N.W. 1071 (1893).

29-2208 Sentence to imprisonment in the county jail; hard labor; bread and water.

When any court or magistrate shall sentence any convict to imprisonment in the jail of the county as a punishment for the offense committed, the judgment and sentence shall require that the convict be imprisoned in the cell of the jail of the county, or that he be kept at hard labor in the jail; and when the imprisonment is to be without labor, the sentence may require the convict to be fed on bread and water only, the whole or any part of the term of imprisonment.

Source: G.S.1873, c. 58, § 502, p. 833; R.S.1913, § 9144; C.S.1922, § 10169; C.S.1929, § 29-2209.

Cross References

Employment of convicts in jails, see sections 29-2414 and 29-2415.

If jail sentence is imposed, court may couple therewith punishment under this section. Drawbridge v. State, 115 Neb. 535, 213 N.W. 839 (1927).

Section is constitutional; word ''convict'' means one who has been proved guilty of a criminal offense in a court of competent jurisdiction. State ex rel. Nelson v. Smith, 114 Neb. 653, 209 N.W. 328 (1926).

29-2209 Repealed. Laws 1984, LB 13, § 90.

29-2210 Repealed. Laws 1971, LB 680, § 32.

29-2211 Repealed. Laws 1957, c. 106, § 22.

29-2212 Repealed. Laws 1961, c. 113, § 3.

29-2213 Repealed. Laws 1957, c. 106, § 22.

29-2214 Repealed. Laws 1957, c. 106, § 22.

29-2215 Repealed. Laws 1984, LB 13, § 90.

29-2216 Repealed. Laws 1984, LB 13, § 90.

29-2217 Repealed. Laws 1971, LB 680, § 32.

29-2218 Repealed. Laws 1971, LB 680, § 32.

29-2219 Repealed. Laws 1984, LB 13, § 90.

29-2220 Repealed. Laws 1957, c. 106, § 22.

(b) HABITUAL CRIMINALS

29-2221 Habitual criminal, defined; procedure for determination; hearing; penalties; effect of pardon.

(1) Whoever has been twice convicted of a crime, sentenced, and committed to prison, in this or any other state or by the United States or once in this state and once at least in any other state or by the United States, for terms of not less than one year each shall, upon conviction of a felony committed in this state, be deemed to be a habitual criminal and shall be punished by imprisonment in a Department of Correctional Services adult correctional facility for a mandatory minimum term of ten years and a maximum term of not more than sixty years, except that:

(a) If the felony committed is in violation of section 28-303, 28-304, 28-308, 28-313, 28-319, 28-319.01, 28-502, 28-929, or 28-1222, and at least one of the habitual criminal's prior felony convictions was for a violation of one of the sections listed in this subdivision or of a similar statute in another state or of the United States, the mandatory minimum term shall be twenty-five years and the maximum term not more than sixty years;

(b) If the felony committed is in violation of subsection (3) of section 28-306 and at least one of the prior convictions is in violation of subsection (3) of section 28-306 and the other is in violation of one of the sections set forth in subdivision (a) of this subsection or if the felony committed is in violation of one of the sections set forth in subdivision (a) of this subsection and both of the prior convictions are in violation of subsection (3) of section 28-306, the mandatory minimum term shall be twenty-five years and the maximum term not more than sixty years; and

(c) If a greater punishment is otherwise provided by statute, the law creating the greater punishment shall govern.

(2) When punishment of an accused as a habitual criminal is sought, the facts with reference thereto shall be charged in the indictment or information which contains the charge of the felony upon which the accused is prosecuted, but the fact that the accused is charged with being a habitual criminal shall not be an issue upon the trial of the felony charge and shall not in any manner be disclosed to the jury. If the accused is convicted of a felony, before sentence is imposed a hearing shall be had before the court alone as to whether such person has been previously convicted of prior felonies. The court shall fix a time for the hearing and notice thereof shall be given to the accused at least three days prior thereto. At the hearing, if the court finds from the evidence submitted that the accused has been convicted two or more times of felonies and sentences imposed therefor by the courts of this or any other state or by the United States, the court shall sentence such person so convicted as a habitual criminal.

(3) If the person so convicted shows to the satisfaction of the court before which the conviction was had that he or she was released from imprisonment upon either of such sentences upon a pardon granted for the reason that he or she was innocent, such conviction and sentence shall not be considered as such under this section and section 29-2222.

Source: Laws 1921, c. 131, § 1, p. 543; C.S.1922, § 10177; C.S.1929, § 29-2217; Laws 1937, c. 68, § 1, p. 252; C.S.Supp.,1941, § 29-2217; R.S.1943, § 29-2221; Laws 1947, c. 105, § 1, p. 294; Laws 1967, c. 179, § 1, p. 497; Laws 1993, LB 31, § 10; Laws 1995, LB 371, § 13; Laws 2006, LB 1199, § 14.

1. Constitutionality
2. Nature of charge
3. Prior convictions
4. Habeas corpus
5. Miscellaneous

1. Constitutionality

A sentence of 10 to 15 years' imprisonment to be served consecutively to any sentence currently served, with a mandatory 10-year term, is not a cruel and unusual punishment of one who has been adjudged to be a habitual criminal under this section. State v. Hurbenca, 266 Neb. 853, 669 N.W.2d 668 (2003).

A sentence of 10 to 15 years' imprisonment to be served consecutively to any sentence currently served, with a mandatory 10-year term, is not an excessive sentence of one who has been adjudged to be a habitual criminal under this section. State v. Hurbenca, 266 Neb. 853, 669 N.W.2d 668 (2003).

Neither the state nor the federal Constitution requires the State to prove the fact of prior convictions beyond a reasonable doubt for purposes of sentence enhancement under this section. State v. Hurbenca, 266 Neb. 853, 669 N.W.2d 668 (2003).

This section does not deprive one of fundamental fairness, equal protection, or federal due process of law. Kerns v. Grammer, 227 Neb. 165, 416 N.W.2d 253 (1987).

The habitual criminal statute is not unconstitutional as applied. State v. White, 209 Neb. 218, 306 N.W.2d 906 (1981).

Only errors which would make a conviction void or voidable under either the state or federal constitutions are cognizable in a post conviction relief action. Therefore, defendant could raise neither prejudice from remarks by a prosecution witness nor the sufficiency of evidence offered to establish his identity at the habitual criminal hearing on post conviction review. Nor could he challenge the voluntariness of a guilty plea which led to one of the prior convictions offered at the habitual criminal hearing where he failed to challenge it at the trial level. State v. Cole, 207 Neb. 318, 298 N.W.2d 776 (1980).

Habitual criminal statute does not violate constitutional guarantees prohibiting cruel and unusual punishment nor does sentencing defendant hereunder subject him to double jeopardy. State v. Goodloe, 197 Neb. 632, 250 N.W.2d 606 (1977).

In construing habitual criminal act, court sustains a sensible interpretation, within constitutional requirements, effectuating the object of the Legislature rather than literal interpretation rendering absurd or unjust results. State v. Nance, 197 Neb. 257, 248 N.W.2d 339 (1976).

This act has been held valid on numerous occasions under Constitutions of the United States and this state. State v. Fowler, 193 Neb. 420, 227 N.W.2d 589 (1975).

This act does not contravene constitutional prohibition against cruel and unusual punishment, nor provide for punishment of a status. State v. Martin, 190 Neb. 212, 206 N.W.2d 856 (1973).

This section does not violate constitutional guarantees of due process and equal protection; habitual criminality is not a crime, but increases the punishment because of defendant's past conduct. State v. Losieau, 184 Neb. 178, 166 N.W.2d 406 (1969).

Habitual Criminal Act is constitutional. State v. Hoffman, 181 Neb. 356, 148 N.W.2d 321 (1967).

Habitual Criminal Act is constitutional, as it does not set out a distinct crime, but provides that repetition of criminal conduct justifies heavier penalties. Davis v. O'Grady, 137 Neb. 708, 291 N.W. 82 (1940).

Where state seeks to have defendant punished under Habitual Criminal Act, it is proper to allege and prove prior convictions. Section is not ex post facto even though prior conviction occurred before its enactment. Taylor v. State, 114 Neb. 257, 207 N.W. 207 (1926).

Evidence held sufficient to support sentence received under Nebraska's habitual criminal statute, and not violative of the eighth amendment protection against cruel and unusual punishment on grounds of disproportionality, under the facts of this case. Fowler v. Parratt, 682 F.2d 746 (8th Cir. 1982).

The Nebraska statute is not an unconstitutional separation of powers. Pierce v. Parratt, 666 F.2d 1205 (8th Cir. 1981).

Habitual criminal statute held not unconstitutional under Eighth Amendment prohibition of cruel and unusual punishment merely because infrequently applied. Brown v. Parratt, 560 F.2d 303 (8th Cir. 1977).

The doctrine of stare decisis precludes the U.S. District Court from overruling two decisions of the 8th Circuit Court of Appeals holding that the Nebraska habitual criminal statute is not unconstitutional on the theory that it vests unreviewable sentencing authority in the prosecuting attorney. Goodloe v. Parratt, 453 F.Supp. 1380 (D. Neb. 1978).

The imposition of concurrent terms of ten years imposed upon a defendant who was convicted of willful reckless driving and operating a motor vehicle to avoid arrest, and who had been adjudged to be an habitual criminal, does not constitute cruel and unusual punishment. Goodloe v. Parratt, 453 F.Supp. 1380 (D. Neb. 1978).

Fact that only fourteen out of one hundred four of those eligible in county were charged as habitual criminals and only three determined to be such did not demonstrate application of statute was arbitrary and thus cruel and unusual punishment. Brown v. Parratt, 419 F.Supp. 44 (D. Neb. 1976).

Habitual criminal statute is not unconstitutional on grounds it gives county attorney selectivity in applying it, nor because it punishes a status rather than an act. Martin v. Parratt, 412 F.Supp. 544 (D. Neb. 1976).

2. Nature of charge

In a habitual criminal proceeding, the State's evidence must establish with requisite trustworthiness, based upon a preponderance of the evidence, that (1) the defendant has been twice convicted of a crime, for which he or she was sentenced and

committed to prison for not less than 1 year, (2) the trial court rendered a judgment of conviction for each crime, and (3) at the time of the prior conviction and sentencing, the defendant was represented by counsel. State v. Hall, 270 Neb. 669, 708 N.W.2d 209 (2005).

A habitual criminal who is convicted of several felonies as the result of a multicount information must be sentenced on each conviction as a habitual criminal, even though the allegation with respect to his status as a habitual criminal is made with respect to only one charge. State v. Van Ackeren, 234 Neb. 535, 451 N.W.2d 707 (1990).

The rule announced in State v. Ellis, 214 Neb. 172, 333 N.W.2d 391 (1983), is not to be applied retroactively. Kerns v. Grammer, 227 Neb. 165, 416 N.W.2d 253 (1987).

The Nebraska habitual criminal statute is not a separate offense but, rather, provides an enhancement of the penalty for the crime committed, with a minimum sentence of 10 years and a maximum sentence of 60 years for each conviction committed by one found to be a habitual criminal, even though, absent a conviction as a habitual criminal, the minimum or maximum sentence might be less. State v. Rolling, 218 Neb. 51, 352 N.W.2d 175 (1984).

An offense which is a felony solely because of repetition cannot be counted as a felony for purposes of this statute. State v. Chapman, 205 Neb. 368, 287 N.W.2d 697 (1980).

In order for habitual criminal enhancement provisions to apply to an offense, it makes no difference whether the two prior sentences were to be served consecutively or concurrently, nor is it required that there be a time interval between conviction and commitment for the first offense and commission of the second offense. State v. Pierce, 204 Neb. 433, 283 N.W.2d 6 (1979).

Sentences should be in proportion to seriousness of offenses and offenders who offer greatest menace deserve greater punishment. State v. King, 196 Neb. 821, 246 N.W.2d 477 (1976).

This section makes no distinctions between malum in se and malum prohibitum offenses and no exceptions based on age of defendant at time of prior conviction. State v. Howard, 194 Neb. 521, 233 N.W.2d 573 (1975).

Sentence of twelve to fifteen years being well within statutory terms of ten to sixty years was not erroneous as excessive. State v. Silvacarvalho, 193 Neb. 447, 227 N.W.2d 602 (1975).

In view of defendant's past record, sentence of twenty to thirty years was not excessive. State v. Gaston, 193 Neb. 259, 226 N.W.2d 355 (1975).

The essential allegations in informations under this act are that defendant has been (1) twice previously convicted of crime, (2) sentenced, and (3) committed to prison for terms not less than one year each. State v. Harig, 192 Neb. 49, 218 N.W.2d 884 (1974).

Subsequent habitual criminal sentence invalid where valid sentence for particular crime had been imposed. State v. Brewer, 190 Neb. 667, 212 N.W.2d 90 (1973).

Separate penalty may not be imposed upon finding the defendant is an habitual criminal. State v. Tyndall, 187 Neb. 48, 187 N.W.2d 298 (1971).

Where act committed prior to amendment of statute increasing maximum penalty from twenty to sixty years it was not prejudicial error to advise defendant that he was subject to imprisonment for sixty years since defendant received a ten-year sentence which was minimum under both old and new acts. State v. McGhee, 184 Neb. 352, 167 N.W.2d 765 (1969).

Habitual Criminal Act does not create a new offense but provides a greater penalty for repetition of criminal conduct. State v. Sheldon, 179 Neb. 377, 138 N.W.2d 428 (1965); Rains v. State, 142 Neb. 284, 5 N.W.2d 887 (1942).

The charge of being a habitual criminal may be set out in a separate count in the information. Kennedy v. State, 171 Neb. 160, 105 N.W.2d 710 (1960).

Habitual Criminal Act does not create a new and separate criminal offense for which a person may be separately convicted. Gamron v. Jones, 148 Neb. 645, 28 N.W.2d 403 (1947).

Habitual Criminal Act does not set out a distinct crime, but provides that repetition of criminal conduct aggravates the offense and justifies heavier penalties. Jones v. State, 147 Neb. 219, 22 N.W.2d 710 (1946); Kuwitzsky v. O'Grady, 135 Neb. 466, 282 N.W. 396 (1938).

The State must prove all of the essential elements of the offense charged beyond any reasonable doubt. State v. Gray, 8 Neb. App. 973, 606 N.W.2d 478 (2000).

Primary and significant factor under this statute is a felony conviction rather than the sentence, and age of defendant at time of his prior conviction under Nebraska law has no relevance. Kennedy v. Sigler, 397 F.2d 556 (8th Cir. 1968).

3. Prior convictions

Self-authenticated judicial records from another state showing that a defendant was represented by counsel during various stages of his or her jury trial and at sentencing on a felony charge are sufficient to establish that the defendant was represented by counsel at the time of the prior conviction by jury in that state. State v. Hall, 270 Neb. 669, 708 N.W.2d 209 (2005).

The determination of whether a defendant has prior convictions that may increase the penalty for a crime beyond the prescribed statutory maximum is not a determination that must be made by the jury. State v. Hurbenca, 266 Neb. 853, 669 N.W.2d 668 (2003).

The State has the burden to prove the fact of prior convictions by a preponderance of the evidence. State v. Hurbenca, 266 Neb. 853, 669 N.W.2d 668 (2003).

The trial court determines the fact of prior convictions based upon the preponderance of the evidence standard. State v. Hurbenca, 266 Neb. 853, 669 N.W.2d 668 (2003).

Subsection (1)(a) of this section provides the specific enhancement mechanism where the current conviction is for a first degree sexual assault and the defendant has two or more prior felony convictions, at least one of which is for first degree sexual assault. State v. Burdette, 259 Neb. 679, 611 N.W.2d 615 (2000).

Prior convictions sought to be used for penalty enhancement under the habitual criminal statute cannot be attacked in a separate proceeding. State v. Kuehn, 258 Neb. 558, 604 N.W.2d 420 (2000).

To prove a prior conviction for enhancement purposes, the State need only show that at the time of the prior conviction defendant had, or waived, counsel. State v. Green, 240 Neb. 639, 483 N.W.2d 748 (1992); State v. Johns, 233 Neb. 477, 445 N.W.2d 914 (1989).

This section requires that the prior convictions relied upon by the State, except for the first conviction, be for offenses committed after each preceding conviction, and all such prior convictions must precede the commission of the principal offense. State v. Wyatt, 234 Neb. 349, 451 N.W.2d 84 (1990); State v. Lieberman, 222 Neb. 95, 382 N.W.2d 330 (1986).

A challenge to a prior conviction may only be raised in a direct appeal or in a separate proceeding commenced for the express purpose of setting aside the judgment alleged to be invalid, and not in habitual criminal proceedings. State v. Johns, 233 Neb. 477, 445 N.W.2d 914 (1989).

Two or more prior convictions arising out of the same set of circumstances may not be used to impose an enhanced penalty. State v. Lopez, 215 Neb. 65, 337 N.W.2d 130 (1983).

In order to warrant an enhanced penalty under this section, the prior convictions, except the first, must be for offenses committed after each preceding conviction, and all such prior convictions must precede the commission of the principal offense. State v. Ellis, 214 Neb. 172, 333 N.W.2d 391 (1983), overruling State v. Pierce, 204 Neb. 433, 283 N.W.2d 6 (1979).

This section does not require that convictions and commitments considered in determining whether or not an individual is a habitual criminal necessarily must set a specific minimum incarceration of at least one year; rather, it only mandates

exclusion of convictions and commitments where there occurred a pardon based upon innocence and the original commitment therein was for at least one year. Only in situations where such a pardon has occurred is the conviction and commitment disqualified from consideration in determining whether a defendant is a habitual criminal. State v. Luna, 211 Neb. 630, 319 N.W.2d 737 (1982).

The validity of a prior conviction offered to enhance punishment must be challenged at the habitual criminal hearing and failure to challenge it at that time waives the issue. Thus, the prior conviction may not be attacked in a petition under the Post Conviction Act. State v. Cole, 207 Neb. 318, 298 N.W.2d 776 (1980).

Sentence as habitual criminal set aside where information failed to charge the requisite two prior convictions and sentences. State v. Davis, 199 Neb. 165, 256 N.W.2d 678 (1977).

Prior offenses are not limited to first conviction under Habitual Criminal Act. State v. Losieau, 182 Neb. 367, 154 N.W.2d 762 (1967).

Information which charges two prior convictions and prison sentences for terms of not less than one year each, and charges a felony, meets requirements of this act. Rains v. State, 142 Neb. 284, 5 N.W.2d 887 (1942).

Generally, one deemed to be a habitual criminal shall be punished by imprisonment for a mandatory minimum term of 10 years and a maximum term of not more than 60 years upon each conviction for a felony committed subsequent to the prior convictions used as the basis for the habitual criminal charge. State v. Taylor, 12 Neb. App. 58, 666 N.W.2d 753 (2003).

Under subsection (1) of this section, a defendant convicted of a felony may be deemed a habitual criminal if the defendant has been (1) twice previously convicted of a crime, (2) sentenced, and (3) committed to prison for terms of not less than 1 year each. State v. Taylor, 12 Neb. App. 58, 666 N.W.2d 753 (2003).

4. Habeas corpus

One found to be a habitual criminal may not be placed on probation. State v. Flye, 245 Neb. 495, 513 N.W.2d 526 (1994).

Prisoner cannot attack by habeas corpus increased punishment imposed under Habitual Criminal Act upon ground that he was mentally incompetent at time of former conviction. McAvoy v. Jones, 149 Neb. 613, 31 N.W.2d 740 (1948).

Party pleading guilty under this section is not entitled to release on habeas corpus where court imposing sentence had jurisdiction of the offense and of the person of the party sentenced hereunder. Alexander v. O'Grady, 137 Neb. 645, 290 N.W. 718 (1940).

A prima facie case of a prior, counseled conviction for enhancement purposes is established by producing appropriate record evidence which discloses that at a critical point in the proceedings—arraignment, trial, conviction, or sentencing—the defendant had either intelligently and voluntarily waived counsel or in fact was represented by counsel at one of those times. State v. Britt, 1 Neb. App. 245, 493 N.W.2d 631 (1992).

5. Miscellaneous

Good time credit under subsection (1) of section 83-1,107 does not apply to mandatory minimum sentences imposed on habitual criminals pursuant to subsection (1) of this section. Johnson v. Kenney, 265 Neb. 47, 654 N.W.2d 191 (2002).

Double jeopardy principles do not apply to habitual criminal enhancement proceedings under this section. State v. Thomas, 262 Neb. 985, 637 N.W.2d 632 (2002); State v. Nelson, 262 Neb. 896, 636 N.W.2d 620 (2001).

A hearing is required to ascertain whether a defendant qualifies as a habitual criminal. State v. Myers, 258 Neb. 300, 603 N.W.2d 378 (1999).

This statute does not prescribe a separate offense but, rather, provides an enhancement of penalty for each conviction committed by one found to be a habitual criminal. State v. Rolling, 209 Neb. 243, 307 N.W.2d 123 (1981).

When a person found guilty of a substantive crime as well as being a habitual criminal is improperly sentenced, both sentences must be set aside and the case remanded for proper sentencing. State v. Rolling, 209 Neb. 243, 307 N.W.2d 123 (1981).

An enhanced sentence imposed under the provisions of the habitual criminal laws is not a new jeopardy or additional penalty for the same crime. It is simply a stiffened penalty for the latest crime which is considered to be an aggravated offense because it is a repetitive one. Addison v. Parratt, 208 Neb. 459, 303 N.W.2d 785 (1981).

A court is authorized to order a presentence investigation in any case, and it is proper to consider defendant's criminal record in passing sentence. State v. Bruns, 200 Neb. 612, 265 N.W.2d 210 (1978).

Where defendant resentenced to consecutive terms of imprisonment following vacation of prior concurrent sentences, held not an abuse of judge's discretion. State v. Davis, 200 Neb. 557, 264 N.W.2d 198 (1978).

Post conviction relief denied defendant sentenced to twenty to thirty years on a drug charge as an habitual criminal. State v. Bartlett, 199 Neb. 471, 259 N.W.2d 917 (1977).

Newspaper item citing the charges, including an habitual criminal action, pending against defendant prior to trial held not prejudicial to defendant in the absence of any evidence that the jurors knew of the article. State v. Addison, 198 Neb. 166, 251 N.W.2d 895 (1977).

Participation in a hearing on an habitual criminal charge without objection is a waiver of the notice required by this section, and a plea of nolo contendere or of guilty admits former convictions charged in information. State v. Graham, 192 Neb. 196, 219 N.W.2d 723 (1974).

On direct appeal from void sentence hereunder, Supreme Court has power to remand for a lawful sentence where the accused invoked appellate jurisdiction for correction of errors. State v. Gaston, 191 Neb. 121, 214 N.W.2d 376 (1974).

Plea of guilty or nolo contendere to information charging former convictions confesses them and no hearing for proof thereof is required hereunder. State v. Youngstrom, 191 Neb. 112, 214 N.W.2d 27 (1974).

Participation in hearing without objection was waiver of notice of hearing required by this section. State v. Huffman, 185 Neb. 417, 176 N.W.2d 506 (1970).

Definition of who is an habitual criminal stated. Huffman v. Sigler, 182 Neb. 290, 154 N.W.2d 459 (1967).

Evidence was sufficient to show that defendant was an habitual criminal. State v. Bundy, 181 Neb. 160, 147 N.W.2d 500 (1966).

Imposition of sentence as an habitual criminal was sustained. State v. Sedlacek, 178 Neb. 322, 133 N.W.2d 380 (1965).

During the trial the fact that the defendant is charged with being a habitual criminal shall not be disclosed to the jury. State v. Losieau, 174 Neb. 320, 117 N.W.2d 775 (1962).

Time in which to institute error proceedings in Supreme Court does not run pending hearing on status of defendant as a habitual criminal. Kennedy v. State, 170 Neb. 193, 101 N.W.2d 853 (1960).

Defendant was properly convicted as an habitual criminal. Kitts v. State, 153 Neb. 784, 46 N.W.2d 158 (1951).

Imposition of increased penalty for subsequent offense is for court and not for jury. Haffke v. State, 149 Neb. 83, 30 N.W.2d 462 (1948).

A defendant sentenced as a habitual criminal to the mandatory 10-year sentence under this section is not entitled to good time credit pursuant to section 83-1,110 on his or her mandatory minimum sentence. Ebert v. Nebraska Dept. of Corr. Servs., 11 Neb. App. 553, 656 N.W.2d 634 (2003).

The phrase ''mandatory minimum term of ten years'' as used in this section means that a sentence served by a habitual criminal is not to be less than 10 years' imprisonment. Ebert v.

Nebraska Dept. of Corr. Servs., 11 Neb. App. 553, 656 N.W.2d 634 (2003).

The challenge to a prior plea-based conviction that a defendant can raise in a habitual criminal allegation is limited to whether the defendant had or waived counsel. All other challenges constitute an impermissible collateral attack on the judgment, which must be raised by a direct appeal from the prior conviction. An uncounseled conviction by plea is not admissible to enhance a defendant's sentence absent a showing on the face of the conviction that the defendant knowingly, intelligently, and voluntarily waived counsel. Absent proof that the defendant knowingly, intelligently, and voluntarily waived counsel during a plea-based conviction, it is plain error to use such a conviction to enhance a defendant's sentence. State v. Gray, 8 Neb. App. 973, 606 N.W.2d 478 (2000).

While being a habitual criminal is not a separate offense, the State nonetheless bears the burden of proving that enhancement is proper. In a proceeding for an enhanced penalty, the State has the burden to show that the record of a defendant's prior conviction, based on a plea of guilty, affirmatively demonstrates that the defendant was represented by counsel, or that the defendant, having been informed of the right to counsel, voluntarily, intelligently, and knowingly waived that right. State v. Gray, 8 Neb. App. 973, 606 N.W.2d 478 (2000).

Failure of counsel at habitual offender proceedings, at which relator was allowed to plead guilty, to discover that relator had not been represented by counsel at previous criminal proceedings at which relator received underlying felony convictions constituted ineffective assistance of counsel. Tinlin v. Parratt, 680 F.2d 48 (8th Cir. 1982).

Defendant's voluntary plea of guilty to forgery, count under this section having been dismissed under plea bargaining, indicated actual knowing waiver of speedy trial. Becker v. State, 435 F.2d 157 (8th Cir. 1971).

Validity of prior sentence not irrelevant and in determining whether sentence was properly imposed under this section, even though failure to have counsel present at time of sentencing can normally be remedied by resentencing. Losieau v. Sigler, 406 F.2d 795 (8th Cir. 1969).

29-2222 Hearing; copy of former judgment as evidence.

At the hearing of any person charged with being a habitual criminal, a duly authenticated copy of the former judgment and commitment, from any court in which such judgment and commitment was had, for any of such crimes formerly committed by the party so charged, shall be competent and prima facie evidence of such former judgment and commitment.

Source: Laws 1921, c. 131, § 2, p. 543; C.S.1922, § 10178; C.S.1929, § 29-2218; Laws 1937, c. 68, § 2, p. 252; C.S.Supp.,1941, § 29-2218; R.S.1943, § 29-2222; Laws 1947, c. 105, § 2, p. 295.

1. Evidence of former judgment and commitment
2. Miscellaneous

1. Evidence of former judgment and commitment

At a second habitual criminal hearing following remand, the law-of-the-case doctrine operated to preclude the appellate court from reconsidering, for enhancement purposes, the validity of one of the defendant's prior convictions when defendant conceded its validity in his first direct appeal and did not present materially or substantially different facts regarding that conviction on remand. State v. Hall, 270 Neb. 669, 708 N.W.2d 209 (2005).

Copies of judicial records related to a defendant's conviction and sentencing in another state that are certified by a deputy clerk for the clerk of the district court in that state as a true and correct copy of the original and impressed with the court's official seal are self-authenticating under section 27-902 and do not require extrinsic evidence of authenticity for admission. State v. Hall, 270 Neb. 669, 708 N.W.2d 209 (2005).

In a habitual criminal proceeding, the State's evidence must establish with requisite trustworthiness, based upon a preponderance of the evidence, that (1) the defendant has been twice convicted of a crime, for which he or she was sentenced and committed to prison for not less than 1 year, (2) the trial court rendered a judgment of conviction for each crime, and (3) at the time of the prior conviction and sentencing, the defendant was represented by counsel. State v. Hall, 270 Neb. 669, 708 N.W.2d 209 (2005).

In habitual criminal proceedings, the existence of a prior conviction and the identity of the accused as the person convicted may be shown by any competent evidence, including the oral testimony of the accused and duly authenticated records maintained by the courts or penal and custodial authorities. State v. Hall, 270 Neb. 669, 708 N.W.2d 209 (2005).

An authenticated record establishing a prior conviction of a defendant with the same name is prima facie sufficient to establish identity for the purpose of enhancing punishment under the provisions of this section and, in the absence of any denial or contradictory evidence, is sufficient to support a finding by the court that the accused has been convicted prior thereto. State v. Sardeson, 231 Neb. 586, 437 N.W.2d 473 (1989).

This section does not confine proof of the defendant's prior convictions to the documents specifically mentioned. State v. Coffman, 227 Neb. 149, 416 N.W.2d 243 (1987).

Judicial records of prior convictions held prima facie sufficient to establish defendant's identity for punishment enhancement. State v. Mills, 199 Neb. 295, 258 N.W.2d 628 (1977).

In the absence of denial or contradictory evidence, an authenticated record of a prior conviction of a defendant with the same name is sufficient to establish identity. State v. Micek, 193 Neb. 379, 227 N.W.2d 409 (1975).

A previous judgment and commitment in the same court may be proved by a certified copy of the judgment and commitment. State v. Cole, 192 Neb. 466, 222 N.W.2d 560 (1974).

Certified transcript of judgment of conviction constituted prima facie evidence of former conviction. State v. Clingerman, 180 Neb. 344, 142 N.W.2d 765 (1966).

This section is a ''statutory recipe'' for proving former judgments and commitments for habitual criminal purposes and the Legislature has expressly provided that a duly authenticated copy of the former judgment and commitment is competent and prima facie evidence thereof. State v. Taylor, 12 Neb. App. 58, 666 N.W.2d 753 (2003).

There is no requirement that the State prove a prior conviction by a duly authenticated copy of the former judgment and commitment if the defendant admits that he or she was convicted as alleged in the complaint. The State may meet its burden of proving a prior conviction by providing copies of unsigned minute entries when such copies are duly authenticated copies of prior criminal proceedings. State v. Fletcher, 8 Neb. App. 498, 596 N.W.2d 717 (1999).

A certified copy of the judgment which showed that the defendant was convicted and sentenced and a certified copy of the sheriff's return were in substantial compliance with the requirement of proof of commitment for purposes of this section. State v. Lomack, 4 Neb. App. 465, 545 N.W.2d 455 (1996).

2. Miscellaneous

Self-authenticated judicial records from another state showing that a defendant was represented by counsel during various stages of his or her jury trial and at sentencing on a felony charge are sufficient to establish that the defendant was represented by counsel at the time of the prior conviction by jury in that state. State v. Hall, 270 Neb. 669, 708 N.W.2d 209 (2005).

The defendant failed to preserve for appellate review a challenge to the admission of exhibits reoffered at his second habitual criminal hearing following remand when counsel's only stated ground for the objection was that he was not the counsel of record at the original hearing and was not sure the proper objections were made to the exhibits at the original hearing. State v. Hall, 270 Neb. 669, 708 N.W.2d 209 (2005).

This section does not confine proof of the defendant's prior convictions to the document specifically mentioned. State v. Hurbenca, 266 Neb. 853, 669 N.W.2d 668 (2003).

An enhanced sentence imposed under the provisions of the habitual criminal laws is not a new jeopardy or additional penalty for the same crime. It is simply a stiffened penalty for the latest crime which is considered to be an aggravated offense because it is a repetitive one. Addison v. Parratt, 208 Neb. 459, 303 N.W.2d 785 (1981).

This section gives recognition to fact that probation may be more effective and less expensive than imprisonment, but trial judge did not abuse discretion in sentencing defendant for whom repeated probation for a series of offenses has been tried and failed. State v. Dovel, 189 Neb. 173, 201 N.W.2d 820 (1972).

Defendant is foreclosed from attacking on constitutional grounds a prior conviction unless objection made at time of introduction into evidence. State v. McGhee, 184 Neb. 352, 167 N.W.2d 765 (1969).

This section does not confine the proof on the issue of defendant being an habitual criminal wholly to the documents specified. State v. Bundy, 181 Neb. 160, 147 N.W.2d 500 (1966).

It is proper to set out facts invoking application of Habitual Criminal Act either in the count charging the principal crime or in a separate count in the information. Jones v. State, 147 Neb. 219, 22 N.W.2d 710 (1946).

Judgment imposed under Habitual Criminal Act cannot be set aside on habeas corpus because it does not specify the offense of which a person is convicted. Davis v. O'Grady, 137 Neb. 708, 291 N.W. 82 (1940).

(c) PROBATION

29-2223 Repealed. Laws 1971, LB 680, § 32.

29-2224 Repealed. Laws 1971, LB 680, § 32.

29-2225 Repealed. Laws 1971, LB 680, § 32.

29-2226 Repealed. Laws 1971, LB 680, § 32.

29-2227 Repealed. Laws 1971, LB 680, § 32.

29-2228 Repealed. Laws 1971, LB 680, § 32.

29-2229 Repealed. Laws 1971, LB 680, § 32.

29-2230 Repealed. Laws 1971, LB 680, § 32.

29-2231 Repealed. Laws 1971, LB 680, § 32.

29-2232 Repealed. Laws 1971, LB 680, § 32.

29-2233 Repealed. Laws 1971, LB 680, § 32.

29-2234 Repealed. Laws 1971, LB 680, § 32.

29-2235 Repealed. Laws 1971, LB 680, § 32.

29-2236 Repealed. Laws 1971, LB 680, § 32.

29-2237 Repealed. Laws 1971, LB 680, § 32.

29-2238 Repealed. Laws 1971, LB 680, § 32.

29-2239 Repealed. Laws 1971, LB 680, § 32.

29-2240 Repealed. Laws 1971, LB 680, § 32.

29-2241 Repealed. Laws 1971, LB 680, § 32.

29-2242 Repealed. Laws 1971, LB 680, § 32.

29-2243 Repealed. Laws 1971, LB 680, § 32.

29-2244 Repealed. Laws 1971, LB 680, § 32.

29-2245 Repealed. Laws 1971, LB 680, § 32.

29-2246 Terms, defined.

For purposes of the Nebraska Probation Administration Act and sections 43-2,123.01 and 83-1,102 to 83-1,104, unless the context otherwise requires:

(1) Association means the Nebraska District Court Judges Association;

(2) Court means a district court, county court, or juvenile court as defined in section 43-245;

(3) Office means the Office of Probation Administration;

(4) Probation means a sentence under which a person found guilty of a crime upon verdict or plea or adjudicated delinquent or in need of special supervision is released by a court subject to conditions imposed by the court and subject to supervision;

(5) Probationer means a person sentenced to probation;

(6) Probation officer means an employee of the system who supervises probationers and conducts presentence, predisposition, or other investigations as may be required by law or directed by a court in which he or she is serving or performs such other duties as authorized pursuant to section 29-2258, except unpaid volunteers from the community;

(7) Juvenile probation officer means any probation officer who supervises probationers of a separate juvenile court;

(8) Juvenile intake probation officer means an employee of the system who is called upon by a law enforcement officer in accordance with section 43-250 to make a decision regarding the furtherance of a juvenile's detention;

(9) Chief probation officer means the probation officer in charge of a probation district;

(10) System means the Nebraska Probation System;

(11) Administrator means the probation administrator; and

(12) Non-probation-based program or service means a program or service established within the district, county, or juvenile courts and provided to individuals not sentenced to probation who have been charged with or convicted of a crime for the purpose of diverting the individual from incarceration or to provide treatment for issues related to the individual's criminogenic needs. Non-probation-based programs or services include, but are not limited to, drug court programs and problem solving court programs established pursuant to section 24-1302 and the treatment of problems relating to substance abuse, mental health, sex offenses, or domestic violence.

Source: Laws 1971, LB 680, § 1; Laws 1972, LB 1051, § 1; Laws 1984, LB 13, § 61; Laws 1986, LB 529, § 32; Laws 2001, LB 451, § 1; Laws 2005, LB 538, § 5; Laws 2008, LB1014, § 18.
Operative date July 18, 2008.

29-2247 Nebraska District Court Judges Association; created; duties.

The Nebraska District Court Judges Association is hereby created which shall consist of all the active judges of the district courts of this state and their successors in office. The association shall:

(1) Meet at least once during each calendar year;

(2) Select from its membership officers thereof; and

(3) Adopt such bylaws and rules as may be necessary or proper for the conduct of its meetings, the exercise of its powers, and the performance of its duties and delegate to one or more of its members such powers as the association deems necessary to carry out its responsibilities.

Source: Laws 1971, LB 680, § 2.

29-2248 Association; duties.

The association shall:

(1) Encourage development and implementation of uniform criteria for sentencing criminals;

(2) Participate in planning and presenting institutes and seminars for all judges in this state who sentence criminals or juveniles to discuss problems related to sentencing criminals or juveniles;

(3) Participate in planning and presenting orientation programs for new judges, such programs to include discussions of sentencing alternatives, procedures, and purposes;

(4) Visit from time to time correctional facilities of this state;

(5) Encourage creation and development of community resources of value to the probation system;

(6) Conduct such other programs of whatever nature of interest to its members;

(7) Exercise all powers and perform all duties necessary and proper to carry out its responsibilities; and

(8) Participate in planning and presenting institutes and seminars for all county employees who work in the judicial branch of government.

Source: Laws 1971, LB 680, § 3; Laws 1979, LB 536, § 2; Laws 2001, LB 489, § 9.

29-2249 Office of Probation Administration; created; personnel.

The Office of Probation Administration is hereby created within the judicial branch of government and directly responsible to the Supreme Court. The office shall consist of the probation administrator, the Nebraska Probation System, and such other employees as may be necessary to carry out the functions of the Nebraska Probation System.

Source: Laws 1971, LB 680, § 4; Laws 1978, LB 625, § 7; Laws 1979, LB 536, § 3; Laws 1986, LB 529, § 33.

29-2249.01 Repealed. Laws 1986, LB 529, § 58.

29-2249.02 Repealed. Laws 1986, LB 529, § 58.

29-2249.03 Repealed. Laws 1986, LB 529, § 58.

29-2249.04 Transferred employees; benefits.

Accrued leave and benefits for separate juvenile court probation employees and municipal court employees who have become state employees pursuant to law shall be subject to this section.

(1) The city or county shall transfer all accrued sick leave of such employees up to the maximum number of accumulated hours for sick leave allowed by the state for state probation officers and the city or county shall reimburse the state in an amount equal to twenty-five percent of the value of such accrued sick leave hours based on the straight-time rate of pay for the employee. For any accrued sick leave hours of an employee which are in excess of the amount that can be transferred, the city or county shall reimburse the employee for twenty-five percent of the value of the sick leave hours based on the straight-time rate of pay for the employee.

(2) The transferred employee may transfer the maximum amount of accrued annual leave earned as an employee of the city or county allowed by the state. The city or county shall reimburse the state in an amount equal to one hundred percent of the value of the hours of accrued annual leave transferred. The city or county shall reimburse the transferred employee in an amount equal to one hundred percent of the hours of any accrued annual leave in excess of the amount which may be transferred based on the employee's straight-time rate of pay at the time of transfer.

(3) Any employee transferred to the Office of Probation Administration shall not lose any accrual rate value for his or her sick leave or vacation leave as a result of such transfer. The employee may use each year's service with the city or county as credit in qualifying for accrual rates with the state's sick leave and vacation leave programs.

(4) When accrued sick leave and vacation leave for a transferred employee are at a greater rate value than allowed by the state's sick leave and vacation leave plans, the city or county shall pay to the state on July 1, 1985, an amount equal to the difference between the value of such benefits allowed by the city or county and by the state based on, at the time of transfer, twenty-five percent of the employee's straight-time rate of pay for the sick leave and one hundred percent of the employee's straight-time rate of pay for vacation leave. The state may receive reimbursement based on such difference in rate values not later than July 1, 1990.

(5) The transferred employee shall not receive any additional accrual rate value for state benefits until the employee meets the qualifications for the increased accrual rates pursuant to the state's requirements.

(6) The transferred employee shall participate in and be covered by the Nebraska State Insurance Program, sections 84-1601 to 84-1615, on July 1, 1985.

Source: Laws 1984, LB 13, § 64; Laws 1986, LB 529, § 34.

Cross References

Municipal court, transfer of duties, see sections 24-515 and 24-593.

29-2250 Office of Probation Administration; duties.

The office shall:

(1) Supervise and administer the system;

(2) Establish probation policies and standards for the system, with the concurrence of the Supreme Court; and

(3) Supervise offenders placed on probation in another state who are within the state pursuant to the Interstate Compact for Adult Offender Supervision.

Source: Laws 1971, LB 680, § 5; Laws 1978, LB 625, § 8; Laws 1979, LB 536, § 4; Laws 1986, LB 529, § 35; Laws 2003, LB 46, § 4.

Note: Laws 2003, LB 46, section 51, provided this section became operative ''when thirty-five states have adopted the Interstate Compact for Adult Offender Supervision''. By June 2002, the compact had reached this threshold. (see www.interstate compact.org) LB 46 became effective May 24, 2003.

Cross References

Interstate Compact for Adult Offender Supervision, see section 29-2639.

29-2251 Probation administrator; appointment; qualifications.

The Supreme Court shall appoint a probation administrator who shall be a person with appropriate experience in the field of probation or with training in relevant disciplines at a recognized college or university and who shall serve at the pleasure of the Supreme Court.

Source: Laws 1971, LB 680, § 6; Laws 1979, LB 536, § 5; Laws 1986, LB 529, § 36.

29-2252 Probation administrator; duties.

The administrator shall:

(1) Supervise and administer the office;

(2) Establish and maintain policies, standards, and procedures for the system, with the concurrence of the Supreme Court;

(3) Prescribe and furnish such forms for records and reports for the system as shall be deemed necessary for uniformity, efficiency, and statistical accuracy;

(4) Establish minimum qualifications for employment as a probation officer in this state and establish and maintain such additional qualifications as he or she deems appropriate for appointment to the system. Qualifications for probation officers shall be established in accordance with subsection (4) of section 29-2253. An ex-offender released from a penal complex or a county jail may be appointed to a position of deputy probation or parole officer. Such ex-offender shall maintain a record free of arrests, except for minor traffic violations, for one year immediately preceding his or her appointment;

(5) Establish and maintain advanced periodic inservice training requirements for the system;

(6) Cooperate with all agencies, public or private, which are concerned with treatment or welfare of persons on probation;

(7) Organize and conduct training programs for probation officers;

(8) Collect, develop, and maintain statistical information concerning probationers, probation practices, and the operation of the system;

(9) Interpret the probation program to the public with a view toward developing a broad base of public support;

(10) Conduct research for the purpose of evaluating and improving the effectiveness of the system;

(11) Adopt and promulgate such rules and regulations as may be necessary or proper for the operation of the office or system;

(12) Transmit a report during each even-numbered year to the Supreme Court on the operation of the office for the preceding two calendar years which shall include a historical analysis of probation officer workload, including participation in non-probation-based programs and services. The report shall be transmitted by the Supreme Court to the Governor and the Clerk of the Legislature;

(13) Administer the payment by the state of all salaries, travel, and actual and necessary expenses incident to the conduct and maintenance of the office;

(14) In consultation with the Community Corrections Council, use the funds provided under section 29-2262.07 to augment operational or personnel costs associated with the development, implementation, and evaluation of enhanced probation-based programs and non-probation-based programs and services in which probation personnel or probation resources are utilized pursuant to an interlocal agreement authorized by subdivision (16) of this section and to purchase services to provide such programs aimed at enhancing adult probationer or non-probation-based program participant supervision in the community and treatment needs of probationers and non-probation-based program participants. Enhanced probation-based programs include, but are not limited to, specialized units of supervision, related equipment purchases and training, and programs developed by or through the council that address a probationer's vocational, educational, mental health, behavioral, or substance abuse treatment needs;

(15) Ensure that any risk or needs assessment instrument utilized by the system be periodically validated;

(16) Have the authority to enter into interlocal agreements in which probation resources or probation personnel may be utilized in conjunction with or as part of non-probation-based programs and services. Any such interlocal agreement shall comply with section 29-2255; and

(17) Exercise all powers and perform all duties necessary and proper to carry out his or her responsibilities.

Each member of the Legislature shall receive a copy of the report required by subdivision (12) of this section by making a request for it to the administrator.

Source: Laws 1971, LB 680, § 7; Laws 1973, LB 126, § 2; Laws 1978, LB 625, § 9; Laws 1979, LB 322, § 9; Laws 1979, LB 536, § 6; Laws 1981, LB 545, § 6; Laws 1984, LB 13, § 65; Laws 1986, LB 529, § 37; Laws 1990, LB 663, § 16; Laws 1992, LB 447, § 5; Laws 2003, LB 46, § 5; Laws 2005, LB 538, § 7.

29-2252.01 Probation administrator; report required.

On December 31 and June 30 of each fiscal year, the administrator shall provide a report to the budget division of the Department of Administrative Services and the Legislative Fiscal Analyst which shall include, but not be limited to:

(1) The total number of felony cases supervised by the office in the previous six months for both regular and intensive supervision probation;

(2) The total number of misdemeanor cases supervised by the office in the previous six months for both regular and intensive supervision probation;

(3) The felony caseload per officer for both regular and intensive supervision probation on the last day of the reporting period;

(4) The misdemeanor caseload per officer for both regular and intensive supervision probation on the last day of the reporting period;

(5) The total number of juvenile cases supervised by the office in the previous six months for both regular and intensive supervision probation;

(6) The total number of predisposition investigations completed by the office in the previous six months;

(7) The total number of presentence investigations completed by the office in the previous six months; and

(8) The total number of juvenile intake screening interviews conducted and detentions authorized by the office in the previous six months, using the detention screening instrument described in section 43-260.01.

Source: Laws 1990, LB 220, § 4; Laws 2001, LB 451, § 2.

29-2253 Probation administrator; probation districts; employees; appointment; principal office.

(1) The administrator, with the concurrence of the Supreme Court, shall divide the state into probation districts and may from time to time alter the boundaries of such districts in order to maintain the most economical, efficient, and effective utilization of the system.

(2) The administrator shall appoint temporary and permanent probation officers and employees for each probation district as may be required to provide adequate probation services.

(3) The administrator shall appoint a chief probation officer with the concurrence of the majority of all judges within a probation district.

(4) The administrator shall, with the concurrence of all of the separate juvenile court judges within each separate juvenile court, (a) appoint for each separate juvenile court a chief juvenile probation officer, any deputy juvenile probation officers required, and such other employees as may be required to provide adequate probation services for such court and (b) set the salaries of such officers and employees. The chief and deputy juvenile probation officers shall be selected with reference to experience and understanding of problems of family life and child welfare, juvenile delinquency, community organizations, and training in the recognition and treatment of behavior disorders.

(5) The administrator may direct a probation officer of one probation district to temporarily act as probation officer for a court in another probation district, and such probation officer while so serving shall have all the powers and responsibilities as if he or she were serving in the probation district to which he or she was originally appointed.

(6) The administrator, with the concurrence of the Supreme Court, shall designate the location of the principal office of the system within each probation district.

Source: Laws 1971, LB 680, § 8; Laws 1979, LB 536, § 7; Laws 1984, LB 13, § 66; Laws 1986, LB 529, § 38.

Cross References

Juvenile court, offices for officers and employees, see section 43-2,113.

29-2254 Interstate Compact for Adult Offender Supervision; administrators; duties.

The compact administrator appointed pursuant to the Interstate Compact for Adult Offender Supervision shall delegate to the probation administrator authority and responsibility for:

(1) Implementation and administration of the compact as it affects probationers; and

(2) Supervision of probationers either sentenced to probation within the state and supervised in another state or placed on probation in another state and supervised within this state pursuant to the compact.

Source: Laws 1971, LB 680, § 9; Laws 2003, LB 46, § 6.

Note: Laws 2003, LB 46, section 51, provided this section became operative "when thirty-five states have adopted the Interstate Compact for Adult Offender Supervision". By June 2002, the compact had reached this threshold. (see www.interstatecompact.org) LB 46 became effective May 24, 2003.

Cross References

Interstate Compact for Adult Offender Supervision, see section 29-2639.

29-2255 Interlocal agreement; costs; requirements.

Any interlocal agreement authorized by subdivision (16) of section 29-2252 shall require the political subdivision party to the agreement to provide sufficient resources to cover all costs associated with the participation of probation personnel or use of probation resources other than costs covered by funds provided pursuant to section 29-2262.07 or substance abuse treatment costs covered by funds appropriated to the Community Corrections Council for such purpose.

Source: Laws 2005, LB 538, § 6.

29-2255.01 Repealed. Laws 1986, LB 529, § 58.

29-2255.02 Repealed. Laws 1984, LB 639, § 1.

29-2256 Volunteers; use of.

Nothing in sections 29-2246 to 29-2268 shall be construed to prohibit any court or probation office from utilizing volunteers from the community for probation supervision; *Provided*, the volunteer program is supervised by a full-time probation officer who meets the minimum qualifications established by the office.

Source: Laws 1971, LB 680, § 11.

29-2257 Nebraska Probation System; established; duties; salary equalization.

The Nebraska Probation System is established which shall consist of the probation administrator, chief probation officers, probation officers, and support staff. The system shall be responsible for juvenile intake services, for presentence and other probation investigations, for the direct supervision of persons placed on probation, and for non-probation-based programs and services authorized by an interlocal agreement pursuant to subdivision (16) of section 29-2252. The system shall be sufficient in size to assure that no probation officer carries a caseload larger than is compatible with adequate probation investigation or supervision. Probation officers shall be compensated with salaries substantially equal to other state employees who have similar responsibilities.

This provision for salary equalization shall apply only to probation officers and support staff and shall not apply to chief probation officers, the probation administrator, the chief deputy administrator, the deputy probation administrator, or any other similarly established management positions.

Source: Laws 1971, LB 680, § 12; Laws 1986, LB 529, § 39; Laws 1995, LB 371, § 14; Laws 2001, LB 451, § 3; Laws 2005, LB 538, § 8.

29-2258 District probation officer; duties; powers.

A district probation officer shall:

(1) Conduct juvenile intake interviews and investigations in accordance with section 43-253 utilizing a standardized juvenile detention screening instrument described in section 43-260.01;

(2) Make presentence and other investigations, as may be required by law or directed by a court in which he or she is serving;

(3) Supervise probationers in accordance with the rules and regulations of the office and the directions of the sentencing court;

(4) Advise the sentencing court, in accordance with the Nebraska Probation Administration Act and such rules and regulations of the office, of violations of the conditions of probation by individual probationers;

(5) Advise the sentencing court, in accordance with the rules and regulations of the office and the direction of the court, when the situation of a probationer may require a modification of the conditions of probation or when a probationer's adjustment is such as to warrant termination of probation;

(6) Provide each probationer with a statement of the period and conditions of his or her probation;

(7) Whenever necessary, exercise the power of arrest as provided in section 29-2266;

(8) Establish procedures for the direction and guidance of deputy probation officers under his or her jurisdiction and advise such officers in regard to the most effective performance of their duties;

(9) Supervise and evaluate deputy probation officers under his or her jurisdiction;

(10) Delegate such duties and responsibilities to a deputy probation officer as he or she deems appropriate;

(11) Make such reports as required by the administrator, the judges of the probation district in which he or she serves, or the Supreme Court;

(12) Keep accurate and complete accounts of all money or property collected or received from probationers and give receipts therefor;

(13) Cooperate fully with and render all reasonable assistance to other probation officers;

(14) In counties with a population of less than twenty-five thousand people, participate in pretrial diversion programs established pursuant to sections 29-3601 to 29-3604 and juvenile pretrial diversion programs established pursuant to sections 43-260.02 to 43-260.07 as requested by judges of the probation district in which he or she serves, except that participation in such programs shall not require appointment of additional personnel and shall be consistent with the probation officer's current caseload;

(15) Participate, at the direction of the probation administrator pursuant to an interlocal agreement which meets the requirements of section 29-2255, in non-probation-based programs and services;

(16) Perform such other duties not inconsistent with the Nebraska Probation Administration Act or the rules and regulations of the office as a court may from time to time direct; and

(17) Exercise all powers and perform all duties necessary and proper to carry out his or her responsibilities.

Source: Laws 1971, LB 680, § 13; Laws 1979, LB 536, § 8; Laws 1986, LB 529, § 40; Laws 2001, LB 451, § 4; Laws 2003, LB 43, § 10; Laws 2005, LB 538, § 9.

While performing their duties under this section, juvenile probation officers are considered to be the personnel of the separate juvenile courts they serve. In re Interest of Chad S., 263 Neb. 184, 639 N.W.2d 84 (2002).

29-2259 Probation administrator; office; salaries; expenses; office space; prepare budget; interpreter services.

(1) The salaries, actual and necessary expenses, and expenses incident to the conduct and maintenance of the office shall be paid by the state. Actual and necessary expenses shall be paid as provided in sections 81-1174 to 81-1177.

(2) The salaries and actual and necessary travel expenses of the probation service shall be paid by the state. Actual and necessary expenses shall be paid as provided in sections 81-1174 to 81-1177.

(3) Except as provided in sections 29-2262 and 29-2262.04, the costs of drug testing and equipment incident to the electronic surveillance of individuals on probation shall be paid by the state.

(4) The expenses incident to the conduct and maintenance of the principal office within each probation district shall in the first instance be paid by the county in which it is located, but such county shall be reimbursed for such expenses by all other counties within the probation district to the extent and in the proportions determined by the Supreme Court based upon population, number of investigations, and probation cases handled or upon such other basis as the Supreme Court deems fair and equitable.

(5) Each county shall provide office space and necessary facilities for probation officers performing their official duties and shall bear the costs incident to maintenance of such offices other than salaries, travel expenses, and data processing and word processing hardware and software that is provided on the state computer network.

(6) The cost of interpreter services for deaf and hard of hearing persons and for persons unable to communicate the English language shall be paid by the state with money appropriated to the Supreme Court. Interpreter services shall include auxiliary aids for deaf and hard of hearing persons as defined in section 20-151 and interpreters to assist persons unable to communicate the English language as defined in section 25-2402. Interpreter services shall be provided under this section for the purposes of conducting a presentence investigation and for ongoing supervision by a probation officer of such persons placed on probation.

(7) The probation administrator shall prepare a budget and request for appropriations for the office and shall submit such request to the Supreme

Court and with its approval to the appropriate authority in accordance with law.

Source: Laws 1971, LB 680, § 14; Laws 1979, LB 536, § 9; Laws 1981, LB 204, § 43; Laws 1986, LB 529, § 41; Laws 1989, LB 2, § 1; Laws 1990, LB 220, § 5; Laws 1992, LB 1059, § 24; Laws 1999, LB 54, § 4.

29-2259.01 Probation Cash Fund; created; use; investment.

There is hereby created the Probation Cash Fund. All funds collected pursuant to subdivisions (2)(m) and (2)(o) of section 29-2262 shall be remitted to the State Treasurer for credit to the fund. Expenditures from the fund shall include, but not be limited to, supplementing any state funds necessary to support the costs of the services for which the funds were collected. 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 1990, LB 220, § 6; Laws 1992, LB 1059, § 25; Laws 1994, LB 1066, § 20; Laws 2001, Spec. Sess., LB 3, § 2; Laws 2003, LB 46, § 7.

Cross References

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

29-2259.02 State Probation Contractual Services Cash Fund; created; use; investment.

The State Probation Contractual Services Cash Fund is created. The fund shall consist only of payments received by the state pursuant to contractual agreements with local political subdivisions for probation services provided by the Office of Probation Administration. The fund shall only be used to pay for probation services provided by the Office of Probation Administration to local political subdivisions which enter into contractual agreements with the Office of Probation Administration. The fund shall be administered by the probation administrator. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 2000, LB 1216, § 29.

Cross References

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

29-2260 Certain juveniles; disposition; certain offenders; sentence of probation, when.

(1) Whenever a person is adjudicated to be as described in subdivision (1), (2), (3)(b), or (4) of section 43-247, his or her disposition shall be governed by the Nebraska Juvenile Code.

(2) Whenever a court considers sentence for an offender convicted of either a misdemeanor or a felony for which mandatory or mandatory minimum imprisonment is not specifically required, the court may withhold sentence of imprisonment unless, having regard to the nature and circumstances of the crime and

the history, character, and condition of the offender, the court finds that imprisonment of the offender is necessary for protection of the public because:

(a) The risk is substantial that during the period of probation the offender will engage in additional criminal conduct;

(b) The offender is in need of correctional treatment that can be provided most effectively by commitment to a correctional facility; or

(c) A lesser sentence will depreciate the seriousness of the offender's crime or promote disrespect for law.

(3) The following grounds, while not controlling the discretion of the court, shall be accorded weight in favor of withholding sentence of imprisonment:

(a) The crime neither caused nor threatened serious harm;

(b) The offender did not contemplate that his or her crime would cause or threaten serious harm;

(c) The offender acted under strong provocation;

(d) Substantial grounds were present tending to excuse or justify the crime, though failing to establish a defense;

(e) The victim of the crime induced or facilitated commission of the crime;

(f) The offender has compensated or will compensate the victim of his or her crime for the damage or injury the victim sustained;

(g) The offender has no history of prior delinquency or criminal activity and has led a law-abiding life for a substantial period of time before the commission of the crime;

(h) The crime was the result of circumstances unlikely to recur;

(i) The character and attitudes of the offender indicate that he or she is unlikely to commit another crime;

(j) The offender is likely to respond affirmatively to probationary treatment; and

(k) Imprisonment of the offender would entail excessive hardship to his or her dependents.

(4) When an offender who has been convicted of a crime is not sentenced to imprisonment, the court may sentence him or her to probation.

Source: Laws 1971, LB 680, § 15; Laws 1982, LB 568, § 3; Laws 1986, LB 153, § 2; Laws 1988, LB 790, § 4.

Cross References

Intensive supervision probation program, see sections 29-2262.02 to 29-2262.05.
Nebraska Juvenile Code, see section 43-2,129.

1. Probation
2. Sentencing
3. Discretion
4. Miscellaneous

1. Probation

When the sentence alleged to be excessively lenient is one of probation, it is necessary for the trial court and the reviewing appellate court to consider the provisions of this section. State v. Hamik, 262 Neb. 761, 635 N.W.2d 123 (2001).

When determining whether to impose probation, the trial court must consider the factors set forth in this section. On appeal, an appellate court must likewise consider this section in determining whether probation may be imposed, whether reviewing a sentence for excessiveness pursuant to section 29-2308 or for leniency under section 29-2322. State v. Harrison, 255 Neb. 990, 588 N.W.2d 556 (1999).

Denial of probation and imposition of a sentence within statutorily prescribed limits will not be disturbed on appeal absent an abuse of discretion. State v. Thomas, 238 Neb. 4, 468 N.W.2d 607 (1991); State v. Dean, 237 Neb. 65, 464 N.W.2d 782 (1991).

The Supreme Court will not overturn an order or sentence of the trial court which denies probation unless there has been an

abuse of discretion. State v. Swails, 195 Neb. 406, 238 N.W.2d 246 (1976).

An order granting probation is a sentence under section 29-2260(4), and for review a motion for new trial must be filed within ten days, but no motion for new trial is required for review of order revoking probation. State v. Mosley, 194 Neb. 740, 235 N.W.2d 402 (1975).

A lack of cooperation prior to sentencing could be a strong indication that the lesser restrictions of probation may not be sufficient to effect a purposeful probation. State v. Gundlach, 192 Neb. 692, 224 N.W.2d 167 (1974).

2. Sentencing

Indeterminate sentence of not less than 4 nor more than 15 years' imprisonment was not excessive considering deliberate and premeditated manner in which defendant committed burglary, and in considering his continued disrespect for the law as shown by numerous past violations of the law and probation. State v. Peterson, 236 Neb. 450, 462 N.W.2d 423 (1990).

Sentence of life imprisonment for sixteen year old who pleaded guilty to second degree murder of his father is not excessive where a lesser sentence would have depreciated the seriousness of the offense. State v. Wredt, 208 Neb. 184, 302 N.W.2d 701 (1981).

In sentencing for a felony not involving the death penalty, there is no requirement that the judge conduct a case-by-case review of similar sentencings in that jurisdiction. State v. Glover, 207 Neb. 487, 299 N.W.2d 445 (1980).

Sentence for concurrent terms of seven to ten years on sexual assault charge and one year on third degree assault was not excessive where defendant used a knife and threatened death. State v. Glover, 207 Neb. 487, 299 N.W.2d 445 (1980).

Sentence of imprisonment for one year not excessive where defendant convicted of assault with intent to inflict great bodily injury by intentionally driving auto into victims. State v. McCurry, 198 Neb. 673, 254 N.W.2d 698 (1977).

The violence with which the offense was committed and that probation would depreciate the seriousness thereof or promote disrespect for law were valid reasons for sentencing first offender to imprisonment. State v. Keen, 196 Neb. 291, 242 N.W.2d 863 (1976).

Defendant's sentence of seven years for embezzlement, which under law was sentence of one to seven years, was not excessive under facts in this case. State v. McMullen, 195 Neb. 796, 240 N.W.2d 844 (1976).

Sentence of imprisonment is proper when record shows risk of further criminal conduct, and the most effective correctional treatment will be provided by a correctional facility. State v. Dedrick, 194 Neb. 500, 233 N.W.2d 777 (1975).

A sentence to imprisonment ought not exceed the minimum period consistent with protection of the public, gravity of the offense, and rehabilitative needs of the defendant. State v. Sturm, 189 Neb. 299, 202 N.W.2d 381 (1972).

3. Discretion

The language in this section which provides that the court ''may withhold sentence of imprisonment'' is merely a guideline and does not mandate a sentence of probation. However, this section does not give the sentencing court absolute discretion to impose either a sentence of imprisonment or a sentence of probation, and the sentencing court committed no error in interpreting this section and section 29-2911 to preclude the possible imposition of probation in this case. State v. Thornton, 225 Neb. 875, 408 N.W.2d 327 (1987).

The part of this section providing that the court may withhold sentence of imprisonment is a guideline for the court and is not mandatory. State v. Gillette, 218 Neb. 672, 357 N.W.2d 472 (1984).

The granting of probation as opposed to the imposing of a sentence is a matter which is left to the sound discretion of the trial court, and, absent a showing of abuse, the trial court's denial of probation will not be disturbed on appeal. State v. Last, 212 Neb. 596, 324 N.W.2d 402 (1982).

The court's discretion is not controlled by this section. State v. Machmuller, 196 Neb. 734, 246 N.W.2d 69 (1976).

The Supreme Court will not overturn an order of the trial court which denies probation unless there has been an abuse of discretion. State v. Purviance, 194 Neb. 541, 233 N.W.2d 788 (1975).

There being nothing in the record to show sentence within limits prescribed herein was not a legitimate exercise of judicial discretion to consider the nature and circumstances of the crime and the history, character, and condition of the offender it will not be disturbed on appeal. State v. Arp, 188 Neb. 493, 197 N.W.2d 703 (1972).

This section lists grounds to be considered by the sentencing court, but specifically provides it is not to control his discretion. State v. Cottone, 188 Neb. 102, 195 N.W.2d 196 (1972).

Even had standards herein been in effect at time of sentencing, refusal to grant probation would not have been abuse of discretion under facts in this case. State v. Clifton, 187 Neb. 714, 193 N.W.2d 558 (1972).

4. Miscellaneous

There is no repugnancy or conflict between this section, section 29-2911, and section 29-2915, and this section was not repealed by implication by enactment of section 29-2911 or 29-2915. State v. Thornton, 225 Neb. 875, 408 N.W.2d 327 (1987).

Claimed intemperate remarks of judge at sentencing indicated a concern for the provisions of this section. State v. Glouser, 193 Neb. 186, 226 N.W.2d 134 (1975).

Anomie in the criminal process is a variable not to be forgotten, although its weight is light in any one case. State v. West, 188 Neb. 579, 198 N.W.2d 204 (1972).

29-2260.01 Juvenile intake services; duties; intent.

It is the intent of the Legislature to ensure that a consistent and objective method of juvenile intake occur throughout the state for juveniles held in temporary custody by a law enforcement officer, in accordance with section 43-250, to avoid either inappropriate or unnecessary detention of juveniles which may result in inordinately high detention rates, overcrowding of local detention facilities, excessive detention costs for counties, and adverse consequences for the juvenile, the juvenile's family, or the community. Juvenile intake services shall be administered by probation officers acting as juvenile probation intake officers and shall be available to all juvenile courts in the state, both county courts sitting as juvenile courts and separate juvenile courts. Such probation officers shall be appointed by the probation administrator and

designated within respective probation districts based upon the need for such services as the probation administrator determines. In order to adequately provide juvenile intake services statewide and in accordance with the Juvenile Detention and Probation Services Implementation Team Interim Report and Recommendations filed with the Legislature December 15, 2000, it is the intent of the Legislature to appropriate funds to the system to provide seven additional probation officers to act in the capacity of juvenile probation intake officers.

Source: Laws 2001, LB 451, § 8.

29-2261 Presentence investigation, when; contents; psychiatric examination; persons having access to records; reports authorized.

(1) Unless it is impractical to do so, when an offender has been convicted of a felony other than murder in the first degree, the court shall not impose sentence without first ordering a presentence investigation of the offender and according due consideration to a written report of such investigation. When an offender has been convicted of murder in the first degree and (a) a jury renders a verdict finding the existence of one or more aggravating circumstances as provided in section 29-2520 or (b)(i) the information contains a notice of aggravation as provided in section 29-1603 and (ii) the offender waives his or her right to a jury determination of the alleged aggravating circumstances, the court shall not commence the sentencing determination proceeding as provided in section 29-2521 without first ordering a presentence investigation of the offender and according due consideration to a written report of such investigation.

(2) A court may order a presentence investigation in any case, except in cases in which an offender has been convicted of a Class IIIA misdemeanor, a Class IV misdemeanor, a Class V misdemeanor, a traffic infraction, or any corresponding city or village ordinance.

(3) The presentence investigation and report shall include, when available, an analysis of the circumstances attending the commission of the crime, the offender's history of delinquency or criminality, physical and mental condition, family situation and background, economic status, education, occupation, and personal habits, and any other matters that the probation officer deems relevant or the court directs to be included. All local and state police agencies and Department of Correctional Services adult correctional facilities shall furnish to the probation officer copies of such criminal records, in any such case referred to the probation officer by the court of proper jurisdiction, as the probation officer shall require without cost to the court or the probation officer.

Such investigation shall also include:

(a) Any written statements submitted to the county attorney by a victim; and

(b) Any written statements submitted to the probation officer by a victim.

(4) If there are no written statements submitted to the probation officer, he or she shall certify to the court that:

(a) He or she has attempted to contact the victim; and

(b) If he or she has contacted the victim, such officer offered to accept the written statements of the victim or to reduce such victim's oral statements to writing.

For purposes of subsections (3) and (4) of this section, the term victim shall be as defined in section 29-119.

(5) Before imposing sentence, the court may order the offender to submit to psychiatric observation and examination for a period of not exceeding sixty days or such longer period as the court determines to be necessary for that purpose. The offender may be remanded for this purpose to any available clinic or mental hospital, or the court may appoint a qualified psychiatrist to make the examination. The report of the examination shall be submitted to the court.

(6) Any presentence report or psychiatric examination shall be privileged and shall not be disclosed directly or indirectly to anyone other than a judge, probation officers to whom an offender's file is duly transferred, the probation administrator or his or her designee, or others entitled by law to receive such information, including personnel and mental health professionals for the Nebraska State Patrol specifically assigned to sex offender registration and community notification for the sole purpose of using such report or examination for assessing risk and for community notification of registered sex offenders. For purposes of this subsection, mental health professional means (a) a practicing physician licensed to practice medicine in this state under the Medicine and Surgery Practice Act, (b) a practicing psychologist licensed to engage in the practice of psychology in this state as provided in section 38-3111, or (c) a practicing mental health professional licensed or certified in this state as provided in the Mental Health Practice Act. The court may permit inspection of the report or examination of parts thereof by the offender or his or her attorney, or other person having a proper interest therein, whenever the court finds it is in the best interest of a particular offender. The court may allow fair opportunity for an offender to provide additional information for the court's consideration.

(7) If an offender is sentenced to imprisonment, a copy of the report of any presentence investigation or psychiatric examination shall be transmitted immediately to the Department of Correctional Services. Upon request, the Board of Parole or the Office of Parole Administration may receive a copy of the report from the department.

(8) Notwithstanding subsection (6) of this section, the Nebraska Commission on Law Enforcement and Criminal Justice under the direction and supervision of the Chief Justice of the Supreme Court shall have access to presentence investigations and reports for the sole purpose of carrying out the study required under subdivision (7) of section 81-1425. The commission shall treat such information as confidential, and nothing identifying any individual shall be released by the commission.

(9) Notwithstanding subsection (6) of this section, the Supreme Court or an agent of the Supreme Court acting under the direction and supervision of the Chief Justice shall have access to psychiatric examinations and presentence investigations and reports for research purposes. The Supreme Court and its agent shall treat such information as confidential and nothing identifying any individual shall be released.

Source: Laws 1971, LB 680, § 16; Laws 1974, LB 723, § 1; Laws 1983, LB 78, § 4; Laws 2000, LB 1008, § 1; Laws 2002, LB 564, § 1; Laws 2002, Third Spec. Sess., LB 1, § 9; Laws 2003, LB 46, § 8; Laws 2004, LB 1207, § 17; Laws 2007, LB463, § 1129.

Cross References

Medicine and Surgery Practice Act, see section 38-2001.
Mental Health Practice Act, see section 38-2101.

1. Sentence
2. Presentence report

1. Sentence

Whether to order an offender to submit to psychiatric observation and evaluation is a matter within the discretion of the trial court. State v. Dethlefs, 239 Neb. 943, 479 N.W.2d 780 (1992).

Although a trial judge should take into account facts obtained from a victim's statement under the provisions of this section, as he or she should consider all facts pertinent to sentencing, a judge must not and cannot allow a victim's judgments and conclusions to be substituted for those of the court in imposing sentence. State v. Carlson, 225 Neb. 490, 406 N.W.2d 139 (1987).

It was not error for the trial court to consider certain confidential letters addressed to the court because a trial judge has broad discretion in the sources and type of evidence he may use to assist him in determining the kind and extent of punishment to be imposed, and the latitude allowed a sentencing judge in such instances is almost without limitation as long as it is relevant to the issue. State v. Porter, 209 Neb. 722, 310 N.W.2d 926 (1981).

A sentencing judge has broad discretion as to the source and type of evidence or information which may be used as assistance in determining the kind and extent of the punishment to be imposed, and the judge may consider probation officer reports, police reports, affidavits, and other information, including his own personal observations. A sentencing judge is not bound by the recommendations of the probation officer in determining the sentence to be imposed. State v. Stranghoener, 208 Neb. 598, 304 N.W.2d 679 (1981).

When imposing sentence, a judge should consider, among other things, the offender's history of delinquency or criminality including offenses committed while on probation. State v. Williams, 194 Neb. 483, 233 N.W.2d 772 (1975).

While observation and examination are authorized hereunder for the purpose of aiding the court in its disposition of the case, a sentence to the Lincoln Regional Center for a period within the discretion of the director is void. State v. Shelby, 194 Neb. 445, 232 N.W.2d 23 (1975).

In determining the kind and extent of punishment to be imposed, the judge may consider probation officer's reports, police reports, affidavits, and other information, including his own personal observations. State v. Holzapfel, 192 Neb. 672, 223 N.W.2d 670 (1974).

Unless it is impractical to do so, after a felony conviction, the court must order a presentence investigation and give written report thereof due consideration before pronouncing sentence. State v. Zobel, 192 Neb. 480, 222 N.W.2d 570 (1974).

Unless it is impractical to do so, when an offender has been convicted of a felony, the court shall not impose sentence without first ordering a presentence investigation of the offender and according due consideration to a written report of such investigation. State v. Jackson, 192 Neb. 39, 218 N.W.2d 430 (1974).

2. Presentence report

Under former law, this section requires a sentencing panel to utilize a presentence investigation only in the selection phase of capital sentencing, which phase occurs after the defendant has been determined by the jury to be eligible for the death penalty. State v. Gales, 265 Neb. 598, 658 N.W.2d 604 (2003).

A defendant may examine a presentence report with his or her attorney, subject to the court's supervision and redaction of any confidential or privileged information. State v. True, 236 Neb. 274, 460 N.W.2d 668 (1990).

It is impractical to require successive, repetitive presentence investigations when an earlier investigation is available and satisfies the requirements of this section. State v. Tolbert, 223 Neb. 794, 394 N.W.2d 288 (1986).

Requirement that presentence investigation include any written statements submitted by the victim was substantially complied with and there was no prejudice to the defendant, where the presentence report included a report of the victim's statement to the police and his deposition. State v. Todd, 223 Neb. 462, 390 N.W.2d 528 (1986).

Trial judge did not abuse discretion in denying defendant's untimely request for additional evaluations as to defendant's status as a mentally disordered sex offender. State v. Perdue, 222 Neb. 679, 386 N.W.2d 14 (1986).

Presentence investigation and report shall include any information deemed relevant by the probation officer or which the court directs be included. State v. Goodpasture, 215 Neb. 341, 338 N.W.2d 446 (1983).

Defendant was precluded from arguing that this section applies to misdemeanors where she advised the trial court, after the court offered to have a presentence report prepared, that she did not desire to have one provided. State v. Hiross, 211 Neb. 319, 318 N.W.2d 291 (1982).

Use of presentence report required only in felony cases. State v. Jablonski, 199 Neb. 341, 258 N.W.2d 918 (1977).

Presentence investigation report may include police reports, affidavits, and county attorney memoranda with other information in case of conviction for second-degree murder. State v. Robinson, 198 Neb. 785, 255 N.W.2d 835 (1977).

Necessity for successive presentence investigations before revoking probation is discretionary with sentencing judge. State v. Snider, 197 Neb. 317, 248 N.W.2d 342 (1977).

No request was made for copy of presentence report, and trial judge did not err in not offering it. State v. Keller, 195 Neb. 209, 237 N.W.2d 410 (1976).

A presentence report is required hereunder only if the offense involved is a felony. State v. Cardin, 194 Neb. 231, 231 N.W.2d 328 (1975).

Where sentencing judge examined presentence report ordered earlier by judge who accepted plea of guilty, requirements of this section were met. State v. Hilderbrand, 193 Neb. 233, 226 N.W.2d 353 (1975).

District court erred in denying defendant or his counsel access to part of presentence report relating to record of prior arrests and convictions but, under facts in this proceeding, the error was harmless. State v. Richter, 191 Neb. 34, 214 N.W.2d 16 (1973).

The mandated presentence investigation is not required before a felony sentencing when it is ''impractical'' or when the defendant waives the right to a presentence investigation. State v. Kellogg, 10 Neb. App. 557, 633 N.W.2d 916 (2001).

Pursuant to subsection (1) of this section, the use of a presentence investigation before sentencing an offender is required only as to those convicted of felonies. State v. Turco, 6 Neb. App. 725, 576 N.W.2d 847 (1998).

A presentence report is privileged and shall not be disclosed directly or indirectly to anyone other than a judge, probation officers to whom an offender's file is duly transferred, or others entitled by law to receive such information. The group of others entitled by law to receive such information does not include jurors in a criminal trial. State v. Owen, 1 Neb. App. 1060, 510 N.W.2d 503 (1993).

29-2262 Probation; conditions.

(1) When a court sentences an offender to probation, it shall attach such reasonable conditions as it deems necessary or likely to insure that the offender

will lead a law-abiding life. No offender shall be sentenced to probation if he or she is deemed to be a habitual criminal pursuant to section 29-2221.

(2) The court may, as a condition of a sentence of probation, require the offender:

(a) To refrain from unlawful conduct;

(b) To be confined periodically in the county jail or to return to custody after specified hours but not to exceed (i) for misdemeanors, the lesser of ninety days or the maximum jail term provided by law for the offense and (ii) for felonies, one hundred eighty days;

(c) To meet his or her family responsibilities;

(d) To devote himself or herself to a specific employment or occupation;

(e) To undergo medical or psychiatric treatment and to enter and remain in a specified institution for such purpose;

(f) To pursue a prescribed secular course of study or vocational training;

(g) To attend or reside in a facility established for the instruction, recreation, or residence of persons on probation;

(h) To refrain from frequenting unlawful or disreputable places or consorting with disreputable persons;

(i) To possess no firearm or other dangerous weapon if convicted of a felony, or if convicted of any other offense, to possess no firearm or other dangerous weapon unless granted written permission by the court;

(j) To remain within the jurisdiction of the court and to notify the court or the probation officer of any change in his or her address or his or her employment and to agree to waive extradition if found in another jurisdiction;

(k) To report as directed to the court or a probation officer and to permit the officer to visit his or her home;

(l) To pay a fine in one or more payments as ordered;

(m) To pay for tests to determine the presence of drugs or alcohol, psychological evaluations, offender assessment screens, and rehabilitative services required in the identification, evaluation, and treatment of offenders if such offender has the financial ability to pay for such services;

(n) To perform community service as outlined in sections 29-2277 to 29-2279 under the direction of his or her probation officer;

(o) To be monitored by an electronic surveillance device or system and to pay the cost of such device or system if the offender has the financial ability;

(p) To participate in a community correctional facility or program as provided in the Community Corrections Act;

(q) To successfully complete an incarceration work camp program as determined by the Department of Correctional Services;

(r) To satisfy any other conditions reasonably related to the rehabilitation of the offender;

(s) To make restitution as described in sections 29-2280 and 29-2281; or

(t) To pay for all costs imposed by the court, including court costs and the fees imposed pursuant to section 29-2262.06.

(3) In all cases in which the offender is guilty of violating section 28-416, a condition of probation shall be mandatory treatment and counseling as provided by such section.

(4) In all cases in which the offender is guilty of a crime covered by the DNA Identification Information Act, a condition of probation shall be the collecting of a DNA sample pursuant to the act prior to release on probation.

Source: Laws 1971, LB 680, § 17; Laws 1975, LB 289, § 1; Laws 1978, LB 623, § 29; Laws 1979, LB 292, § 1; Laws 1986, LB 504, § 2; Laws 1986, LB 528, § 4; Laws 1986, LB 956, § 14; Laws 1989, LB 592, § 3; Laws 1989, LB 669, § 1; Laws 1990, LB 220, § 8; Laws 1991, LB 742, § 2; Laws 1993, LB 627, § 2; Laws 1995, LB 371, § 15; Laws 1997, LB 882, § 1; Laws 1998, LB 218, § 16; Laws 2003, LB 46, § 9; Laws 2006, LB 385, § 1.

Cross References

Community Corrections Act, see section 47-619.
DNA Identification and Information Act, see section 29-4101.

1. Conditions of probation, generally
2. Restitution and expenses
3. Jail confinement

1. Conditions of probation, generally

Denying a probationer the ability to earn good time credit as provided for by section 47-502 is not a condition of parole authorized by statute. State v. Lobato, 259 Neb. 579, 611 N.W.2d 101 (2000).

A probationer sentenced to an intermittent sentence is not entitled to a reduction of this sentence pursuant to section 47-502. State v. Salyers, 239 Neb. 1002, 480 N.W.2d 173 (1992).

Condition of probation prohibiting defendant from circulating or promoting the circulation of any initiative or referendum petition during the period of probation is authorized by subsection (1) and subdivision (2)(p) of this section. State v. Katzman, 228 Neb. 851, 424 N.W.2d 852 (1988).

A judgment imposing reasonable terms of probation is a sentence. State v. Sock, 227 Neb. 646, 419 N.W.2d 525 (1988).

Consent to search real and personal property at any time, by any law enforcement or probation officer, without issuance of a search warrant, and the waiving of extradition in the event probation is violated were held to be reasonable conditions under this section. State v. Lingle, 209 Neb. 492, 308 N.W.2d 531 (1981).

A condition in a probation order requiring a person convicted of a drug offense to permit searches of his person or property is valid, enforceable, and constitutional if it is applied in a reasonable manner and contributes to the probationer's rehabilitation. State v. Morgan, 206 Neb. 818, 295 N.W.2d 285 (1980).

A requirement that one convicted of driving while intoxicated attend and complete and pay for an alcohol abuse course is a valid condition of probation. State v. Muggins, 192 Neb. 415, 222 N.W.2d 289 (1974).

2. Restitution and expenses

Condition of probation requiring defendant to reimburse county for the expenses incurred in providing a court-appointed attorney is within court's authority to require offenders "(t)o satisfy any other conditions reasonably related to the rehabilitation of the offender" but such authority is limited by section 29-3908. State v. Wood, 245 Neb. 63, 511 N.W.2d 90 (1994).

An order to make restitution as a condition of probation is limited to the direct loss resulting from that offense of which a defendant has been convicted. State v. Escamilla, 237 Neb. 647, 467 N.W.2d 59 (1991).

As a condition of probation upon a conviction of a criminal offense, the court may require restitution to the victim for pain and suffering, in addition to medical expenses and lost wages. State v. Behrens, 204 Neb. 785, 285 N.W.2d 513 (1979).

Restitution and reparation are not limited to the market value of the stolen property nor is the state required to establish the exact amount of the loss or damage caused by the crime. State v. McClanahan, 194 Neb. 261, 231 N.W.2d 351 (1975).

3. Jail confinement

As a general statement, jail confinement as a form of probation is not contrary to law. State v. Spiegel, 239 Neb. 233, 474 N.W.2d 873 (1991).

Under this provision, jail time is to be imposed by judges. The trial court may not delegate the authority to impose a jail sentence, or to eliminate a jail sentence, to a nonjudge. State v. Lee, 237 Neb. 724, 467 N.W.2d 661 (1991).

This section authorizes confinement in the county jail for a period not to exceed ninety days as a condition of probation in cases of conviction for a misdemeanor as well as a felony. State v. Behrens, 204 Neb. 785, 285 N.W.2d 513 (1979).

This subsection does not authorize a sentence to jail as condition of probation. State v. Nuss, 190 Neb. 755, 212 N.W.2d 565 (1973).

29-2262.01 Person released on probation, parole, or work release or inmate; undercover agent; employee of law enforcement agency; prohibited.

A person placed on probation by a court of the State of Nebraska, an inmate of any jail or correctional or penal facility, or an inmate who has been released on parole, probation, or work release shall be prohibited from acting as an undercover agent or employee of any law enforcement agency of the state or

any political subdivision. Any evidence derived in violation of this section shall not be admissible against any person in any proceeding whatsoever.

Source: Laws 1978, LB 695, § 1; Laws 1988, LB 670, § 1.

The determination whether a probationer, inmate, or parolee is acting as an undercover agent of state or local agencies in violation of this section is a mixed question of law and fact. When making this determination, a court must examine the totality of the circumstances to determine, among other things, who initiated the undercover investigation, whether a federal or outside agency was contacted by local law enforcement to continue the investigation, and the amount of cooperation or control maintained by local law enforcement in the ongoing investigation. State v. Rathjen, 266 Neb. 62, 662 N.W.2d 591 (2003).

The exclusionary rule of this section applies only to information obtained while the informant is both (1) in jail, on probation, or on parole and (2) acting as an undercover agent or employee of a law enforcement agency. State v. Tyma, 264 Neb. 712, 651 N.W.2d 582 (2002).

The exclusionary rule provided by this section does not apply unless the informant is both (1) in jail, on probation, or on parole, and (2) acting as an undercover agent or employee of a law enforcement agency. Appellant's motion for new trial was properly denied when defense counsel failed to take full advantage of opportunities before and during the trial to gather evidence relevant to determining whether informant's tip was inadmissible under this section. State v. McCormick and Hall, 246 Neb. 271, 518 N.W.2d 133 (1994).

The ''good faith'' exception to the fourth amendment exclusionary rule has no application to this section. State v. Wilcox, 230 Neb. 123, 430 N.W.2d 58 (1988).

This section does not conflict with section 27-601. State v. Wilcox, 230 Neb. 123, 430 N.W.2d 58 (1988).

This section is a rule of procedure and not a rule of substantive criminal law. As such, it applies to any proceeding had after the effective date of the legislation. State v. Wilcox, 230 Neb. 123, 430 N.W.2d 58 (1988).

29-2262.02 Intensive supervision probation programs; legislative findings and intent.

The Legislature finds and declares that intensive supervision probation programs are an effective and desirable alternative to imprisonment. It is the Legislature's intent to encourage the establishment of programs for the intensive supervision of selected probationers. It is further the intent of the Legislature that such programs be formulated to protect the safety and welfare of the public in the community where the programs are operating and throughout the State of Nebraska.

Source: Laws 1990, LB 220, § 1.

29-2262.03 Court; order of intensive supervision probation; when; laws applicable.

(1) Whenever the court considers the sentence for an offender convicted of any crime for which a term of imprisonment of six months or more is possible and mandatory minimum imprisonment is not specifically required, the court may withhold the sentence of imprisonment and sentence the offender to intensive supervision probation. The decision whether to sentence an offender to intensive supervision probation shall be guided by the criteria for withholding a sentence of imprisonment as set forth in subsection (2) of this section and subsections (2) and (3) of section 29-2260.

(2) Intensive supervision probation shall be governed by the laws governing probation except as required by specific provisions of this section and sections 29-2252.01, 29-2262.02, 29-2262.04, and 29-2262.05.

Source: Laws 1990, LB 220, § 7.

29-2262.04 Intensive supervision probation programs; contents; supervision required; electronic device or system; cost.

Selected offenders in intensive supervision probation programs shall receive the highest level of supervision that is provided to probationers. Such programs may include, but shall not be limited to, highly restricted activities, daily contact between the offender and the probation officer, monitored curfew, home visitation, employment visitation and monitoring, drug and alcohol

screening, treatment referrals and monitoring, and restitution and community service. Selected offenders monitored by an electronic device or system shall be required to pay the cost of such a device or system if the offender has the financial ability. It is the intent of the Legislature that such programs shall minimize any risk to the public.

Source: Laws 1990, LB 220, § 2.

29-2262.05 Intensive supervision probation programs; Supreme Court; duties.

The Supreme Court shall establish and enforce the standards and criteria for the administration of the intensive supervision probation programs.

Source: Laws 1990, LB 220, § 3.

29-2262.06 Fees; waiver; when; failure to pay; effect.

(1) Except as otherwise provided in this section, whenever a district court or county court sentences an adult offender to probation, the court shall require the probationer to pay a one-time administrative enrollment fee and thereafter a monthly probation programming fee.

(2) Participants in non-probation-based programs or services in which probation personnel or probation resources are utilized pursuant to an interlocal agreement authorized by subdivision (16) of section 29-2252 and in which all or a portion of the costs of such probation personnel or such probation resources are covered by funds provided pursuant to section 29-2262.07 shall pay the one-time administrative enrollment fee described in subdivision (3)(a) of this section and the monthly probation programming fee described in subdivision (3)(c) of this section. In addition, the provisions of subsections (4), (7), and (10) of this section applicable to probationers apply to participants in non-probation-based programs or services. Any participant in a non-probation-based program or service who defaults on the payment of any such fees may, at the discretion of the court, be subject to removal from such non-probation-based program or service. This subdivision does not preclude a court or other governmental entity from charging additional local fees for participation in such non-probation-based programs and services or other similar non-probation-based programs and services.

(3) The court shall establish the administrative enrollment fee and monthly probation programming fees as follows:

(a) Adult probationers placed on either probation or intensive supervision probation and participants in non-probation-based programs or services shall pay a one-time administrative enrollment fee of thirty dollars. The fee shall be paid in a lump sum upon the beginning of probation supervision or participation in a non-probation-based program or service;

(b) Adult probationers placed on probation shall pay a monthly probation programming fee of twenty-five dollars, not later than the tenth day of each month, for the duration of probation; and

(c) Adult probationers placed on intensive supervision probation and participants in non-probation-based programs or services shall pay a monthly probation programming fee of thirty-five dollars, not later than the tenth day of each month, for the duration of probation or participation in a non-probation-based program or service.

(4) The court shall waive payment of the monthly probation programming fees in whole or in part if after a hearing a determination is made that such payment would constitute an undue hardship on the offender due to limited income, employment or school status, or physical or mental handicap. Such waiver shall be in effect only during the period of time that the probationer or participant in a non-probation-based program or service is unable to pay his or her monthly probation programming fee.

(5) If a probationer defaults in the payment of monthly probation programming fees or any installment thereof, the court may revoke his or her probation for nonpayment, except that probation shall not be revoked nor shall the offender be imprisoned for such nonpayment if the probationer is financially unable to make the payment, if he or she so states to the court in writing under oath, and if the court so finds after a hearing.

(6) If the court determines that the default in payment described in subsection (5) of this section was not attributable to a deliberate refusal to obey the order of the court or to failure on the probationer's part to make a good faith effort to obtain the funds required for payment, the court may enter an order allowing the probationer additional time for payment, reducing the amount of each installment, or revoking the fees or the unpaid portion in whole or in part.

(7) No probationer or participant in a non-probation-based program or service shall be required to pay more than one monthly probation programming fee per month. This subsection does not preclude local fees as provided in subsection (2) of this section.

(8) The imposition of monthly probation programming fees in this section shall be considered separate and apart from the fees described in subdivisions (2)(m) and (o) of section 29-2262.

(9) Any adult probationer received for supervision pursuant to section 29-2637 or the Interstate Compact for Adult Offender Supervision shall be assessed both a one-time administrative enrollment fee and monthly probation programming fees during the period of time the probationer is actively supervised by Nebraska probation authorities.

(10) The probationer or participant in a non-probation-based program or service shall pay the fees described in this section to the clerk of the court. The clerk of the court shall remit all fees so collected to the State Treasurer for credit to the Probation Program Cash Fund.

Source: Laws 2003, LB 46, § 12; Laws 2005, LB 538, § 10.

Cross References

Interstate Compact for Adult Offender Supervision, see section 29-2639.

29-2262.07 Probation Program Cash Fund; created; use; investment.

The Probation Program Cash Fund is created. All funds collected pursuant to section 29-2262.06 shall be remitted to the State Treasurer for credit to the fund. The fund shall be utilized by the administrator, in consultation with the Community Corrections Council, for the purposes stated in subdivision (14) of section 29-2252. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 2003, LB 46, § 13.

Cross References

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

29-2263 Probation; term; court; powers; probation obligation satisfied, when; probationer outside of jurisdiction without permission; effect.

(1) When a court has sentenced an offender to probation, the court shall specify the term of such probation which shall be not more than five years upon conviction of a felony or second offense misdemeanor and two years upon conviction of a first offense misdemeanor. The court, on application of a probation officer or of the offender or on its own motion, may discharge an offender at any time.

(2) During the term of probation, the court on application of a probation officer or of the offender, or its own motion, may modify or eliminate any of the conditions imposed on the offender or add further conditions authorized by section 29-2262. This subsection does not preclude a probation officer from imposing administrative sanctions with the offender's full knowledge and consent as authorized by subsection (2) of section 29-2266.

(3) Upon completion of the term of probation, or the earlier discharge of the offender, the offender shall be relieved of any obligations imposed by the order of the court and shall have satisfied the sentence for his or her crime.

(4) Whenever a probationer disappears or leaves the jurisdiction of the court without permission, the time during which he or she keeps his or her whereabouts hidden or remains away from the jurisdiction of the court shall be added to the original term of probation.

Source: Laws 1971, LB 680, § 18; Laws 1975, LB 289, § 2; Laws 2003, LB 46, § 10.

The maximum term over which a sentence of probation may run for a misdemeanor is two years, unless it is a second offense misdemeanor. State v. Ladehoff, 229 Neb. 111, 425 N.W.2d 352 (1988).

Terms of probation may be terminated, modified, or extended under lawful limits by the trial court. State v. Sock, 227 Neb. 646, 419 N.W.2d 525 (1988).

The provisions for discharge from probation and removal of civil disabilities and disqualifications do not apply to a jail sentence already served. State v. Adamson, 194 Neb. 592, 233 N.W.2d 925 (1975).

The Nebraska court's expunction of the defendant's conviction for possession of marijuana with intent to distribute, after defendant had served approximately half of probation, did not expunge the record for purposes of federal statute relating to receipt of firearms in interstate commerce by persons previously convicted of a crime punishable by imprisonment exceeding one year. United States v. Germaine, 720 F.2d 998 (8th Cir. 1983).

29-2264 Probation; completion; conviction may be set aside; conditions; retroactive effect.

(1) Whenever any person is placed on probation by a court and satisfactorily completes the conditions of his or her probation for the entire period or is discharged from probation prior to the termination of the period of probation, the sentencing court shall issue an order releasing the offender from probation. Such order in all felony cases shall provide notice that the person's voting rights are restored two years after completion of probation. The order shall include information on restoring other civil rights through the pardon process, including application to and hearing by the Board of Pardons.

(2) Whenever any person is convicted of a misdemeanor or felony and is placed on probation by the court or is sentenced to a fine only, he or she may, after satisfactory fulfillment of the conditions of probation for the entire period or after discharge from probation prior to the termination of the period of probation and after payment of any fine, petition the sentencing court to set aside the conviction.

(3) In determining whether to set aside the conviction, the court shall consider:

(a) The behavior of the offender after sentencing;

(b) The likelihood that the offender will not engage in further criminal activity; and

(c) Any other information the court considers relevant.

(4) The court may grant the offender's petition and issue an order setting aside the conviction when in the opinion of the court the order will be in the best interest of the offender and consistent with the public welfare. The order shall:

(a) Nullify the conviction; and

(b) Remove all civil disabilities and disqualifications imposed as a result of the conviction.

(5) The setting aside of a conviction in accordance with the Nebraska Probation Administration Act shall not:

(a) Require the reinstatement of any office, employment, or position which was previously held and lost or forfeited as a result of the conviction;

(b) Preclude proof of a plea of guilty whenever such plea is relevant to the determination of an issue involving the rights or liabilities of someone other than the offender;

(c) Preclude proof of the conviction as evidence of the commission of the misdemeanor or felony whenever the fact of its commission is relevant for the purpose of impeaching the offender as a witness, except that the order setting aside the conviction may be introduced in evidence;

(d) Preclude use of the conviction for the purpose of determining sentence on any subsequent conviction of a criminal offense;

(e) Preclude the proof of the conviction as evidence of the commission of the misdemeanor or felony in the event an offender is charged with a subsequent offense and the penalty provided by law is increased if the prior conviction is proved;

(f) Preclude the proof of the conviction to determine whether an offender is eligible to have a subsequent conviction set aside in accordance with the Nebraska Probation Administration Act;

(g) Preclude use of the conviction as evidence of commission of the misdemeanor or felony for purposes of determining whether an application filed or a license issued under sections 71-1901 to 71-1906.01 or the Child Care Licensing Act or a certificate issued under sections 79-806 to 79-815 should be denied, suspended, or revoked;

(h) Preclude proof of the conviction as evidence whenever the fact of the conviction is relevant to a determination of risk of recidivism under section 29-4013; or

(i) Relieve a person who is convicted of an offense for which registration is required under the Sex Offender Registration Act of the duty to register and to comply with the terms of the act.

(6) Except as otherwise provided for the notice in subsection (1) of this section, changes made to this section by Laws 2005, LB 713, shall be retroactive in application and shall apply to all persons, otherwise eligible in accor-

dance with the provisions of this section, whether convicted prior to, on, or subsequent to September 4, 2005.

Source: Laws 1971, LB 680, § 19; Laws 1993, LB 564, § 1; Laws 1994, LB 677, § 1; Laws 1995, LB 401, § 1; Laws 1997, LB 310, § 1; Laws 1998, Spec. Sess., LB 1, § 3; Laws 2002, LB 1054, § 6; Laws 2003, LB 685, § 2; Laws 2004, LB 1005, § 3; Laws 2005, LB 53, § 3; Laws 2005, LB 713, § 3.

Cross References

Child Care Licensing Act, see section 71-1908.
Sex Offender Registration Act, see section 29-4001.

The removal of civil disabilities operates prospectively from the date of the order setting aside a defendant's conviction. McCray v. Nebraska State Patrol, 270 Neb. 225, 701 N.W.2d 349 (2005).

Being placed on probation is not a prerequisite to the application of this section. State v. Wester, 269 Neb. 295, 691 N.W.2d 536 (2005).

Subsection (2) of this section applies after (1) the satisfactory fulfillment of the conditions of probation for the entire period, (2) the discharge from probation prior to termination of the period of probation, or (3) after the payment of any fine if the defendant has been sentenced to a fine only. State v. Wester, 269 Neb. 295, 691 N.W.2d 536 (2005).

This section indicates that it is the province of the sentencing court to set aside a conviction and gives guidelines for determination of whether to set aside a conviction. State v. Wester, 269 Neb. 295, 691 N.W.2d 536 (2005).

When the Legislature enacted the 1993 amendment to subsection (2) of this section, it intended to include those who had been fined only within the class of those who could have their convictions set aside. State v. Wester, 269 Neb. 295, 691 N.W.2d 536 (2005).

This section is constitutional. It does not violate the separation of powers clause of the Nebraska Constitution, article II, section 1, as an infringement of the power expressly delegated to the Board of Pardons. State v. Spady, 264 Neb. 99, 645 N.W.2d 539 (2002).

Where defendant admitted a felony conviction, his introduction of order terminating probation was permissible and did not open matter to further development. State v. Boss, 195 Neb. 467, 238 N.W.2d 639 (1976).

The provisions for discharge from probation and removal of civil disabilities and disqualifications do not apply to a jail sentence already served. State v. Adamson, 194 Neb. 592, 233 N.W.2d 925 (1975).

The Nebraska court's expunction of the defendant's conviction for possession of marijuana with intent to distribute, after defendant had served approximately half of probation, did not expunge the record for purposes of federal statute relating to receipt of firearms in interstate commerce by persons previously convicted of a crime punishable by imprisonment exceeding one year. United States v. Germaine, 720 F.2d 998 (8th Cir. 1983).

29-2265 Probation; transfer or retention of jurisdiction over probationer; determination; effect.

(1) Whenever an offender is placed on probation and will reside in a location outside the jurisdiction of the sentencing court, the sentencing court may:

(a) Retain jurisdiction over the probationer and the subject matter of the action; or

(b) Transfer jurisdiction over the probationer and the subject matter of the action to an appropriate court in the judicial district in which the probationer will reside.

(2) When a court determines to transfer jurisdiction under subdivision (1)(b) of this section, it shall:

(a) Obtain the concurrence of the court to which transfer is to be made;

(b) File a certified transcript of the action out of which the probationer's conviction arose with the clerk of the court to which jurisdiction is transferred; and

(c) Furnish the chief probation officer of the district in which the probationer will reside with a copy of any presentence investigation.

(3) Upon the filing of the transcript in accordance with subdivision (2)(b) of this section, the court making the transfer shall have no further jurisdiction of the subject matter of the action or over the probationer. The court to which jurisdiction is transferred shall immediately enter an order placing the transferred probationer on probation under such conditions as it may deem appropriate in accordance with the Nebraska Probation Administration Act.

(4) When a court retains jurisdiction under subdivision (1)(a) of this section and the probationer will reside in a different probation district from that of the sentencing court, the court may notify the chief probation officer in the probation district in which the probationer will reside to supervise such probationer under the terms of the probation order and in accordance with the Nebraska Probation Administration Act.

Source: Laws 1971, LB 680, § 20; Laws 1986, LB 529, § 42.

29-2266 Probation; violation; procedure.

(1) For purposes of this section:

(a) Administrative sanction means additional probation requirements imposed upon a probationer by his or her probation officer, with the full knowledge and consent of the probationer, designed to hold the probationer accountable for substance abuse or noncriminal violations of conditions of probation, including:

(i) Counseling or reprimand by his or her probation officer;

(ii) Increased supervision contact requirements;

(iii) Increased substance abuse testing;

(iv) Referral for substance abuse or mental health evaluation or other specialized assessment, counseling, or treatment;

(v) Imposition of a designated curfew for a period not to exceed thirty days;

(vi) Community service for a specified number of hours pursuant to sections 29-2277 to 29-2279;

(vii) Travel restrictions to stay within his or her county of residence or employment unless otherwise permitted by the supervising probation officer; and

(viii) Restructuring court-imposed financial obligations to mitigate their effect on the probationer;

(b) Noncriminal violation means a probationer's activities or behaviors which create the opportunity for re-offending or diminish the effectiveness of probation supervision resulting in a violation of an original condition of probation, including:

(i) Moving traffic violations;

(ii) Failure to report to his or her probation officer;

(iii) Leaving the jurisdiction of the court or leaving the state without the permission of the court or his or her probation officer;

(iv) Failure to work regularly or attend training or school;

(v) Failure to notify his or her probation officer of change of address or employment;

(vi) Frequenting places where controlled substances are illegally sold, used, distributed, or administered;

(vii) Failure to perform community service as directed; and

(viii) Failure to pay fines, court costs, restitution, or any fees imposed pursuant to section 29-2262.06 as directed; and

(c) Substance abuse violation means a probationer's activities or behaviors associated with the use of chemical substances or related treatment services resulting in a violation of an original condition of probation, including:

(i) Positive breath test for the consumption of alcohol if the offender is required to refrain from alcohol consumption;

(ii) Positive urinalysis for the illegal use of drugs;

(iii) Failure to report for alcohol testing or drug testing; and

(iv) Failure to appear for or complete substance abuse or mental health treatment evaluations or inpatient or outpatient treatment.

(2) Whenever a probation officer has reasonable cause to believe that a probationer has committed or is about to commit a substance abuse violation or noncriminal violation while on probation, but that the probationer will not attempt to leave the jurisdiction and will not place lives or property in danger, the probation officer shall either:

(a) Impose one or more administrative sanctions with the approval of his or her chief probation officer or such chief's designee. The decision to impose administrative sanctions in lieu of formal revocation proceedings rests with the probation officer and his or her chief probation officer or such chief's designee and shall be based upon the probationer's risk level, the severity of the violation, and the probationer's response to the violation. If administrative sanctions are to be imposed, the probationer shall acknowledge in writing the nature of the violation and agree upon the administrative sanction. The probationer has the right to decline to acknowledge the violation; and if he or she declines to acknowledge the violation, the probation officer shall take action pursuant to subdivision (2)(b) of this section. A copy of the report shall be submitted to the county attorney of the county where probation was imposed; or

(b) Submit a written report to the sentencing court, with a copy to the county attorney of the county where probation was imposed, outlining the nature of the probation violation and request that formal revocation proceedings be instituted against the probationer.

(3) Whenever a probation officer has reasonable cause to believe that a probationer has violated or is about to violate a condition of probation other than a substance abuse violation or noncriminal violation and that the probationer will not attempt to leave the jurisdiction and will not place lives or property in danger, the probation officer shall submit a written report to the sentencing court, with a copy to the county attorney of the county where probation was imposed, outlining the nature of the probation violation.

(4) Whenever a probation officer has a reasonable cause to believe that a probationer has violated or is about to violate a condition of his or her probation and that the probationer will attempt to leave the jurisdiction or will place lives or property in danger, the probation officer shall arrest the probationer without a warrant and may call on any peace officer for assistance. Whenever a probationer is arrested, with or without a warrant, he or she shall be detained in a jail or other detention facility.

(5) Immediately after arrest and detention pursuant to subsection (4) of this section, the probation officer shall notify the county attorney of the county where probation was imposed and submit a written report of the reason for

such arrest and of any violation of probation. After prompt consideration of such written report, the county attorney shall:

(a) Order the probationer's release from confinement; or

(b) File with the sentencing court a motion or information to revoke the probation.

(6) Whenever a county attorney receives a report from a probation officer that a probationer has violated a condition of probation, the county attorney may file a motion or information to revoke probation.

(7) The administrator shall adopt and promulgate rules and regulations to carry out this section.

Source: Laws 1971, LB 680, § 21; Laws 2003, LB 46, § 11.

Where a complete record of the evidence and testimony is made at a probation revocation hearing, the court is not required to specify which particular evidence, exhibits, or witnesses were relied on for its judgment. State v. Jaworski, 194 Neb. 645, 234 N.W.2d 221 (1975).

A written report from the probation officer is not a jurisdictional requirement in a probation revocation proceeding. State v. Kartman, 192 Neb. 803, 224 N.W.2d 753 (1975).

Where errors in state probation revocation proceedings were not prejudicial to the probationer, he was not entitled to federal habeas corpus. Kartman v. Parratt, 397 F.Supp. 531 (D. Neb. 1975).

29-2267 Probation; revocation; procedure.

Whenever a motion or information to revoke probation is filed, the probationer shall be entitled to a prompt consideration of such charge by the sentencing court. The court shall not revoke probation or increase the requirements imposed thereby on the probationer, except after a hearing upon proper notice where the violation of probation is established by clear and convincing evidence. The probationer shall have the right to receive, prior to the hearing, a copy of the information or written notice of the grounds on which the information is based. The probationer shall have the right to hear and controvert the evidence against him, to offer evidence in his defense and to be represented by counsel.

Source: Laws 1971, LB 680, § 22.

1. Burden of proof
2. Defendant's rights
3. Miscellaneous

1. Burden of proof

While the revocation of probation is a matter entrusted to the discretion of the trial court, unless the probationer admits to a violation of a condition of probation, the state must prove the violation by clear and convincing evidence. State v. Finnegan, 232 Neb. 75, 439 N.W.2d 496 (1989).

Violation of a single condition of probation established by clear and convincing evidence can support revocation. State v. Clark, 197 Neb. 42, 246 N.W.2d 657 (1976).

The violation of an order of probation must be established by clear and convincing evidence. State v. Parker, 191 Neb. 263, 214 N.W.2d 630 (1974).

2. Defendant's rights

The rights afforded a defendant in probation revocation proceedings do not include a right to remain silent. State v. Burow, 223 Neb. 867, 394 N.W.2d 665 (1986).

In a hearing hereunder, a defendant must be allowed to confront and cross-examine adverse witnesses unless the trial court specifically finds good cause for not allowing confrontation. State v. Mosley, 194 Neb. 740, 235 N.W.2d 402 (1975).

3. Miscellaneous

An order denying a defendant's motion to discharge under this section is not a final, appealable order. State v. Sklenar, 269 Neb. 98, 690 N.W.2d 631 (2005).

State's unexplained lack of diligence in serving warrant forfeits the State's right to revoke probation after the probationary term has ended. State v. Windels, 244 Neb. 30, 503 N.W.2d 834 (1993).

Where a probationer was tried, convicted, and sentenced in the county court, it is the county court, not the district court which served in its appellate capacity, that has jurisdiction to hear a motion to revoke probation. State v. Daniels, 224 Neb. 264, 397 N.W.2d 631 (1986).

A motion or information to revoke probation must be filed in the sentencing court followed by a prompt preliminary hearing before an independent officer. A judge, other than the sentencing judge, may conduct hearing on the merits and may base finding on unlawful conduct on evidence relating to another offense without regard to whether probationer has been convicted thereof. State v. Kartman, 192 Neb. 803, 224 N.W.2d 753 (1975).

An amendment to a probation order which was not made in conformance with this section is void. State v. Pawling, 9 Neb. App. 824, 621 N.W.2d 821 (2000).

Where errors in state probation revocation proceedings were not prejudicial to the probationer, he was not entitled to federal habeas corpus. Kartman v. Parratt, 397 F.Supp. 531 (D. Neb. 1975).

29-2268 Probation; violation; court; determination.

(1) If the court finds that the probationer did violate a condition of his probation, it may revoke the probation and impose on the offender such new sentence as might have been imposed originally for the crime of which he was convicted.

(2) If the court finds that the probationer did violate a condition of his probation, but is of the opinion that revocation of probation is not appropriate, the court may order that:

(a) The probationer receive a reprimand and warning;

(b) Probation supervision and reporting be intensified;

(c) The probationer be required to conform to one or more additional conditions of probation which may be imposed in accordance with the provisions of sections 29-2246 to 29-2268; and

(d) The probationer's term of probation be extended, subject to the provisions of section 29-2263.

Source: Laws 1971, LB 680, § 23.

This section permits a court, upon determining that a probationer has violated a condition of probation, to revoke the probation and impose on the offender such new sentence as might have been imposed originally for the crime of which he was convicted; violation of a single condition of probation is sufficient. State v. Finnegan, 232 Neb. 75, 439 N.W.2d 496 (1989).

Where the defendant violates a condition of his probation, the court may extend the terms of the probation, provided that the total length of probation does not exceed two years for a first offense misdemeanor or five years for a second offense misdemeanor or felony. State v. Ladehoff, 229 Neb. 111, 425 N.W.2d 352 (1988).

In order to revoke probation for nonpayment of restitution, the evidence must clearly and convincingly show that the probationer has willfully refused to make restitution when he or she has the resources to pay or has failed to make sufficient bona fide efforts to find employment and otherwise legally acquire the resources to pay restitution. State v. Heaton, 225 Neb. 702, 407 N.W.2d 780 (1987).

The violation of probation is not itself a crime, but merely a mechanism which may trigger the revocation of a previously granted probation. Once a court determines that a condition of probation has been violated and that the probation should be revoked, this section provides that the court is to impose a new sentence for the crime of which the defendant was originally convicted. State v. Painter, 223 Neb. 808, 394 N.W.2d 292 (1986).

Upon revocation of probation, the court may impose such punishment as may have been imposed originally for the crime of which such defendant was convicted. Defendant who was convicted of third offense driving while intoxicated in 1980 and who violated his probation in 1984 was subject to sentencing under the penal statute in effect at the time of his conviction. State v. Jacobson, 221 Neb. 639, 379 N.W.2d 772 (1986).

The court, under the language of this section, was free to require the defendant, after the revocation of probation, to serve the thirty days of jail time mandated by section 28-106 without regard to the forty-eight hours he had already served. State v. Schulz, 221 Neb. 473, 378 N.W.2d 165 (1985).

If the court finds that the probationer violated a condition of his probation, it may revoke the probation and impose such new sentence as might have been imposed originally for the crime of which he was convicted. State v. Osterman, 197 Neb. 727, 250 N.W.2d 654 (1977); State v. Williams, 194 Neb. 483, 233 N.W.2d 772 (1975).

Violation of a single condition of probation established by clear and convincing evidence can support revocation. State v. Clark, 197 Neb. 42, 246 N.W.2d 657 (1976).

An amendment to a probation order which was not made in conformance with subsection (2)(c) of this section is void. State v. Pawling, 9 Neb. App. 824, 621 N.W.2d 821 (2000).

29-2269 Act, how cited.

Sections 29-2246 to 29-2269 shall be known and may be cited as the Nebraska Probation Administration Act.

Source: Laws 1971, LB 680, § 31; Laws 1990, LB 220, § 9; Laws 2003, LB 46, § 14; Laws 2005, LB 538, § 11.

29-2270 Individual less than nineteen years of age; conditions of probation.

Any individual who is less than nineteen years of age and who is subject to the supervision of a juvenile probation officer or an adult probation officer

pursuant to an order of the district court, county court, or juvenile court shall, as a condition of probation, be required to:

(1) Attend school to obtain vocational training or to achieve an appropriate educational level as prescribed by the probation officer after consultation with the school the individual attends or pursuant to section 29-2272. If the individual fails to attend school regularly, maintain appropriate school behavior, or make satisfactory progress as determined by the probation officer after consultation with the school and the individual does not meet the requirements of subdivision (2) of this section, the district court, county court, or juvenile court shall take appropriate action to enforce, modify, or revoke its order granting probation; or

(2) Attend an on-the-job training program or secure and maintain employment. If the individual fails to attend the program or maintain employment and does not meet the requirements of subdivision (1) of this section, the district court, county court, or juvenile court shall take appropriate action to enforce, modify, or revoke its order granting probation.

Source: Laws 1994, LB 1250, § 1.

29-2271 Individuals less than nineteen years of age; applicability of section.

Section 29-2270 shall not apply to individuals who pass the general education development test or who earn a high school diploma. Subdivision (2) of section 29-2270 shall not apply to an individual required to attend school pursuant to section 79-201.

Source: Laws 1994, LB 1250, § 2; Laws 1996, LB 900, § 1034.

29-2272 Individuals less than nineteen years of age; readmission to school; school officials; duties; court review; expulsion; screening for disabilities.

(1) If the individual chooses to meet the requirements of section 29-2270 by attending a public school and the individual has previously been expelled from school, prior to the readmission of the individual to the school, school officials shall meet with the individual's probation officer and assist in developing conditions of probation that will provide specific guidelines for behavior and consequences for misbehavior at school as well as educational objectives that must be achieved. The district court, county court, or juvenile court shall review the conditions of probation for the individual and may continue the expulsion or return the individual to school under the agreed conditions.

(2) The school board may expel the individual for subsequent actions as provided in section 79-267.

(3) The individual shall be screened by the school to which he or she is admitted for possible disabilities and, if the screening so indicates, be referred for evaluation for possible placement in a special education program.

Source: Laws 1994, LB 1250, § 3; Laws 1996, LB 900, § 1035.

29-2273 Individuals less than nineteen years of age; establishment of programs; authorized.

The school district and the district court, county court, or juvenile court may establish education, counseling, or other programs to improve the behavior and educational performance of individuals covered by section 29-2270.

Source: Laws 1994, LB 1250, § 4.

29-2274 Repealed. Laws 1989, LB 2, § 2.

29-2275 Repealed. Laws 1989, LB 2, § 2.

29-2276 Repealed. Laws 1989, LB 2, § 2.

(d) COMMUNITY SERVICE

29-2277 Terms, defined.

As used in sections 29-2277 to 29-2279, unless the context otherwise requires:

(1) Agency shall mean any public or governmental unit, institution, division, or agency or any private nonprofit organization which provides services intended to enhance the social welfare or general well-being of the community, which agrees to accept community service from offenders and to supervise and report the progress of such community service to the court or its representative; and

(2) Community service shall mean uncompensated labor for an agency to be performed by an offender when the offender is not working or attending school.

Source: Laws 1986, LB 528, § 1.

29-2278 Community service; sentencing; when; failure to perform; effect; exception to eligibility.

An offender may be sentenced to community service (1) as an alternative to a fine, incarceration, or supervised probation, or in lieu of incarceration if he or she fails to pay a fine as ordered, except when the violation of a misdemeanor or felony requires mandatory incarceration or imposition of a fine, (2) as a condition of probation, or (3) in addition to any other sanction. The court shall establish the terms and conditions of community service including, but not limited to, a reasonable time limit for completion. If an offender fails to perform community service as ordered by the court, he or she may be arrested and after a hearing may be resentenced on the original charge, have probation revoked, or be found in contempt of court. No person convicted of an offense involving serious bodily injury or sexual assault shall be eligible for community service.

Source: Laws 1986, LB 528, § 2.

Statute does not permit the requirement of community service in addition to a period of incarceration. State v. Burnett, 227 Neb. 351, 417 N.W.2d 355 (1988).

29-2279 Community service; length.

The length of a community service sentence shall be as follows:

(1) For a Class IV or Class V misdemeanor, not less than four nor more than eighty hours;

(2) For a Class III or Class IIIA misdemeanor, not less than eight nor more than one hundred fifty hours;

(3) For a Class I or Class II misdemeanor, not less than twenty nor more than four hundred hours;

(4) For a Class IIIA or Class IV felony, not less than two hundred nor more than three thousand hours; and

(5) For a Class III felony, not less than four hundred nor more than six thousand hours.

Source: Laws 1986, LB 528, § 3; Laws 1997, LB 364, § 15.

(e) RESTITUTION

29-2280 Restitution; order; when.

A sentencing court may order the defendant to make restitution for the actual physical injury or property damage or loss sustained by the victim as a direct result of the offense for which the defendant has been convicted. With the consent of the parties, the court may order restitution for the actual physical injury or property damage or loss sustained by the victim of an uncharged offense or an offense dismissed pursuant to plea negotiations. Whenever the court believes that restitution may be a proper sentence or the victim of any offense or the prosecuting attorney requests, the court shall order that the presentence investigation report include documentation regarding the nature and amount of the actual damages sustained by the victim.

Source: Laws 1986, LB 956, § 1; Laws 1992, LB 111, § 4.

1. Restrictions on restitution
2. Miscellaneous

1. Restrictions on restitution

Trial court erred in ordering defendant to pay restitution in the amount of total back child support owed rather than only the amount defendant was convicted of failing to pay. State v. Beck, 238 Neb. 449, 471 N.W.2d 128 (1991).

Defendant cannot be made to pay restitution if the record does not reflect that actual physical injury or property damage or loss was sustained by the victim as a direct result of the offense for which defendant has been convicted. State v. Brohimer, 238 Neb. 45, 468 N.W.2d 623 (1991).

An order to make restitution as a condition of probation is limited to the direct loss resulting from that offense of which a defendant has been convicted. State v. Escamilla, 237 Neb. 647, 467 N.W.2d 59 (1991).

Restitution is restricted to the loss sustained by the victim of the offense for which the defendant has been convicted. State v. Kelly, 235 Neb. 997, 458 N.W.2d 255 (1990).

A sentence may only include restitution to the victims of the crime for which the defendant has been charged and convicted. State v. Arvizo, 233 Neb. 327, 444 N.W.2d 921 (1989).

This section vests trial courts with the authority to order restitution for actual damages sustained by the victim of a crime for which a defendant is convicted. State v. Hosack, 12 Neb. App. 168, 668 N.W.2d 707 (2003).

Nebraska law does not authorize restitution in the form of a defendant's in-kind labor. State v. McMann, 4 Neb. App. 243, 541 N.W.2d 418 (1995).

2. Miscellaneous

The provision in section 54-611 that allows the court to order disposition of an offending dog is similar to this section, which allows a court to order restitution to the victim of a crime. State v. Dittoe, 269 Neb. 317, 693 N.W.2d 261 (2005).

Restitution ordered by a court pursuant to this section is a criminal penalty imposed as punishment for a crime, not an administrative or civil penalty as is restitution under section 28-427. State v. Duran, 224 Neb. 774, 401 N.W.2d 482 (1987).

This section sets forth a state policy regarding the rights afforded to persons ordered to make restitution, and a municipality or other governmental unit cannot permissibly enact laws inconsistent therewith. State v. Salisbury, 7 Neb. App. 86, 579 N.W.2d 570 (1998).

The certainty and precision prescribed for the criminal sentencing process applies to criminal sentences containing restitution ordered pursuant to this section. State v. McGinnis, 2 Neb. App. 77, 507 N.W.2d 46 (1993).

29-2281 Restitution; determination of amount; manner of payment.

To determine the amount of restitution, the court may hold a hearing at the time of sentencing. The amount of restitution shall be based on the actual damages sustained by the victim and shall be supported by evidence which shall become a part of the court record. The court shall consider the defendant's earning ability, employment status, financial resources, and family or other legal obligations and shall balance such considerations against the obligation to the victim. A person may not be granted or denied probation or parole either solely or primarily due to his or her financial resources or ability or inability to pay restitution. The court may order that restitution be made immediately, in specified installments, or within a specified period of time not

to exceed five years after the date of judgment or defendant's final release date from imprisonment, whichever is later. Restitution payments shall be made through the clerk of the court ordering restitution. The clerk shall maintain a record of all receipts and disbursements.

Source: Laws 1986, LB 956, § 2; Laws 1992, LB 1059, § 26.

Before restitution can be properly ordered, the trial court must consider (1) whether restitution should be ordered, (2) the amount of actual damages sustained by the victim of a crime, and (3) the amount of restitution a criminal defendant is capable of paying. An evidentiary hearing is required to support a restitution order under this section. Restitution shall be ordered after a hearing and should be based on evidence of both actual damages and the defendant's ability to pay. State v. Holecek, 260 Neb. 976, 621 N.W.2d 100 (2000).

Before restitution can be properly ordered, the trial court must consider: (1) Whether restitution should be ordered, (2) the amount of actual damages sustained by the victim of a crime, and (3) the amount of restitution a criminal defendant is capable of paying. The amount of actual damages and the amount of restitution a criminal defendant is capable of paying shall be based on sworn information which may be documentary in nature. For purposes of restitution, the court's consideration of ''the defendant's earning ability, employment status, financial resources, and family or other legal obligations'' is mandatory. The plain language of this section and the case law require appropriate sworn documentation in the record of both the actual damages sustained by the victim and the defendant's ability to pay restitution. State v. Wells, 257 Neb. 332, 598 N.W.2d 30 (1999).

If the sentencing court decides that a hearing is necessary to determine the amount of restitution, that hearing must be held at the time of sentencing. State v. Campbell, 247 Neb. 517, 527 N.W.2d 868 (1995).

A sentencing court is not limited by the maximum criminal fine authorized for the offense in ordering a person to make restitution as a condition of probation. State v. Stueben, 240 Neb. 170, 481 N.W.2d 178 (1992).

Record lacked sufficient documentation to support victim's assertion of lost wages. State v. McLain, 238 Neb. 225, 469 N.W.2d 539 (1991).

Before restitution can be properly ordered, the trial court must consider (1) whether restitution should be ordered, (2) the amount of actual damages sustained by the victim of a crime, and (3) the amount of restitution a criminal defendant is capable of paying. State v. Hosack, 12 Neb. App. 168, 668 N.W.2d 707 (2003).

Trial court's failure to inform defendant whether restitution must be made immediately, in specified installments, or within a specified time not to exceed 5 years was plain error. State v. Mettenbrink, 3 Neb. App. 7, 520 N.W.2d 780 (1994).

A victim's unsworn and uncorroborated statements in a presentence report fall short of the requirement that a victim's actual damages be supported by evidence in the record. State v. McGinnis, 2 Neb. App. 77, 507 N.W.2d 46 (1993).

29-2282 Property damage; bodily injury; death; relief authorized.

In determining restitution, if the offense results in damage, destruction, or loss of property, the court may require: (1) Return of the property to the victim, if possible; (2) payment of the reasonable value of repairing the property, including property returned by the defendant; or (3) payment of the reasonable replacement value of the property, if return or repair is impossible, impractical, or inadequate. If the offense results in bodily injury, the court may require payment of necessary medical care, including, but not limited to, physical or psychological treatment and therapy, and payment for income lost due to such bodily injury. If the offense results in the death of the victim, the court may require payment to be made to the estate of the victim for the cost of any medical care prior to death and for funeral and burial expenses.

Source: Laws 1986, LB 956, § 3.

29-2283 Collateral payment; effect; setoff.

The court shall not impose restitution for a loss for which the victim has received compensation, except that the court may order payment by the defendant to any person who has compensated the victim to the extent that such compensation has been provided. Any amount paid to a victim pursuant to an order of restitution shall be set off against any amount later recovered as compensatory damages in a civil action.

Source: Laws 1986, LB 956, § 4.

An insurance company which makes payments to a victim is included under the term ''person'' found in this section. State v. Holecek, 260 Neb. 976, 621 N.W.2d 100 (2000).

29-2284 Probation or parole; revocation; conditions.

If the defendant is placed on probation or paroled, the court may revoke probation, and the Board of Parole may revoke parole if the defendant fails to comply with the restitution order. In determining whether to revoke probation or parole, the court or Board of Parole shall consider the defendant's earning ability and financial resources, the willfulness of the defendant's failure to pay, and any special circumstances affecting the defendant's ability to pay. Probation or parole may not be revoked unless noncompliance with the restitution order is attributable to an intentional refusal to obey the order or a failure to make a good faith effort to comply with the order.

Source: Laws 1986, LB 956, § 5.

29-2285 Restitution; petition to adjust; procedures.

A defendant, victim, or the personal representative of the victim's estate may petition the sentencing court to adjust or otherwise waive payment or performance of any ordered restitution or any unpaid or unperformed portion thereof. The court may schedule a hearing and give the parties notice of the hearing date, place, and time and inform the parties that he or she will have an opportunity to be heard. If the court finds that the circumstances upon which it based the imposition or amount and method of payment or other restitution ordered no longer exist or that it otherwise would be unjust to require payment or other restitution as imposed, the court may adjust or waive payment of the unpaid portion thereof or other restitution or modify the time or method of making restitution.

Source: Laws 1986, LB 956, § 6.

29-2286 Restitution; enforcement; by whom.

An order of restitution may be enforced by a victim named in the order to receive the restitution or the personal representative of the victim's estate in the same manner as a judgment in a civil action. If the victim is deceased and no claim is filed by the personal representative of the estate or if the victim cannot be found, the Attorney General may enforce such order of restitution for the benefit of the Victim's Compensation Fund.

Source: Laws 1986, LB 956, § 7.

Cross References

Reparations, Nebraska Crime Victim's Reparations Act, see section 81-1841.
Victim's Compensation Fund, see section 81-1835.

29-2287 Restitution; effect on civil action.

(1) Sections 29-2280 to 29-2289 shall not limit or impair the right of a victim to sue and recover damages from the defendant in a civil action.

(2) The findings in the sentencing hearing and the fact that restitution was required or paid shall not be admissible as evidence in a civil action and shall have no legal effect on the merits of a civil action.

(3) Any restitution paid by the defendant to the victim shall be set off against any judgment in favor of the victim in a civil action arising out of the facts or events which were the basis for the restitution. The court trying the civil action shall hold a separate hearing to determine the validity and amount of any setoff asserted by the defendant.

Source: Laws 1986, LB 956, § 8.

29-2288 Restitution; imposed on organization; persons liable to pay; failure; effect.

If restitution is imposed on an organization, it shall be the duty of any person authorized to order the disbursement of assets of the organization, and his or her superiors, to pay the restitution from assets of the organization under his or her control. Failure to do so shall render a person subject to an order to show cause why he or she should not be held in contempt of court.

Source: Laws 1986, LB 956, § 9.

29-2289 Victim's Compensation Fund; subrogation; subordination.

(1) Whenever a victim is paid by the Victim's Compensation Fund for loss arising out of a criminal act, the fund shall be subrogated to the rights of the victim to any restitution ordered by the court.

(2) The rights of the Victim's Compensation Fund shall be subordinate to the claims of victims who have suffered loss arising out of the offenses or any transaction which is part of the same continuous scheme of criminal activity.

Source: Laws 1986, LB 956, § 10.

Cross References

Reparations, Nebraska Crime Victim's Reparations Act, see section 81-1841.
Victim's Compensation Fund, see section 81-1835.

(f) HUMAN IMMUNODEFICIENCY VIRUS ANTIBODY OR ANTIGEN TEST

29-2290 Test, counseling, and reports; when required; Department of Correctional Services; Department of Health and Human Services; duties; cost; appeal; effect.

(1) Notwithstanding any other provision of law, when a person has been convicted of sexual assault pursuant to sections 28-317 to 28-320, sexual assault of a child in the second or third degree pursuant to section 28-320.01, sexual assault of a child in the first degree pursuant to section 28-319.01, or any other offense under Nebraska law when sexual contact or sexual penetration is an element of the offense, the presiding judge shall, at the request of the victim as part of the sentence of the convicted person when the circumstances of the case demonstrate a possibility of transmission of the human immunodeficiency virus, order the convicted person to submit to a human immunodeficiency virus antibody or antigen test. Such test shall be conducted under the jurisdiction of the Department of Correctional Services. The Department of Correctional Services shall make the results of the test available only to the victim, to the parents or guardian of the victim if the victim is a minor or is mentally incompetent, to the convicted person, to the parents or guardian of the convicted person if the convicted person is a minor or mentally incompetent, to the court issuing the order for testing, and to the Department of Health and Human Services.

(2) If the human immunodeficiency virus test indicates the presence of human immunodeficiency virus infection, the Department of Correctional Services shall provide counseling to the convicted person regarding human immunodeficiency virus disease and referral to appropriate health care and support services.

(3) The Department of Correctional Services shall provide to the Department of Health and Human Services the result of any human immunodeficiency virus test conducted pursuant to this section and information regarding the request of the victim. The Department of Health and Human Services shall notify the victim or the parents or guardian of the victim if the victim is a minor or mentally incompetent and shall make available to the victim counseling and testing regarding human immunodeficiency virus disease and referral to appropriate health care and support services.

(4) The cost of testing under this section shall be paid by the convicted person tested unless the court has determined the convicted person to be indigent.

(5) Filing of a notice of appeal shall not automatically stay an order that the convicted person submit to a human immunodeficiency virus test.

(6) For purposes of this section:

(a) Convicted shall include adjudicated under juvenile proceedings;

(b) Convicted person shall include a child adjudicated of an offense described in subsection (1) of this section; and

(c) Sentence shall include a disposition under juvenile proceedings.

(7) The Department of Correctional Services, in consultation with the Department of Health and Human Services, shall adopt and promulgate rules and regulations to carry out this section.

Source: Laws 1991, LB 186, § 5; Laws 1994, LB 693, § 1; Laws 1996, LB 1044, § 77; Laws 2006, LB 1199, § 15.

Cross References

Human immunodeficiency virus testing, consent not required, see section 71-531.

(g) DOMESTIC VIOLENCE CONVICTION

29-2291 Misdemeanor domestic violence conviction; notification to defendant; State Court Administrator's Office; duty.

(1) When sentencing a person convicted of a misdemeanor crime of domestic violence as defined in 18 U.S.C. 921(a)(33), as such section existed on July 18, 2008, the court shall provide written or oral notification to the defendant that it may be a violation of federal law for the individual: To ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

(2) The State Court Administrator's Office shall create a standard notification that provides the information in subsection (1) of this section and shall provide a copy of such notification to all judges in this state.

Source: Laws 2008, LB1014, § 17.
Operative date July 18, 2008.

ARTICLE 23

REVIEW OF JUDGMENTS IN CRIMINAL CASES

Cross References

Constitutional provisions:
- Bail, right to, see Article I, section 9, Constitution of Nebraska.
- Capital cases, direct appeal to Supreme Court, see Article I, section 23, Constitution of Nebraska.
- Right of appeal, see Article I, section 23, Constitution of Nebraska.

Section
29-2301. Appeal; notice; effect.
29-2302. Misdemeanor cases; appeal; recognizance.
29-2303. Felony cases; appeal; custody of person convicted; escape; procedures.
29-2304. Repealed. Laws 1982, LB 722, § 13.
29-2305. Appeal; dismissed; conviction affirmed; procedure; defendant; credit for time incarcerated.
29-2306. Criminal case; docket fee; when paid by county; in forma pauperis; costs.
29-2306.01. Repealed. Laws 1973, LB 146, § 6.
29-2306.02. Repealed. Laws 1973, LB 146, § 6.
29-2306.03. Repealed. Laws 1973, LB 146, § 6.
29-2307. Repealed. Laws 1973, LB 146, § 6.
29-2308. Reduction of sentence; conditions.
29-2308.01. Repealed. Laws 1995, LB 127, § 3.
29-2309. Repealed. Laws 1982, LB 722, § 13.
29-2310. Repealed. Laws 1982, LB 722, § 13.
29-2311. Repealed. Laws 1969, c. 411, § 1.
29-2312. Repealed. Laws 1969, c. 411, § 1.
29-2313. Repealed. Laws 1969, c. 411, § 1.
29-2314. Repealed. Laws 1959, c. 121, § 4.
29-2315. Prosecuting attorney, defined.
29-2315.01. Appeal by prosecuting attorney; application; procedure.
29-2315.02. Error proceedings by county attorney; appointment of counsel for defendant; fee.
29-2316. Error proceedings by prosecuting attorney; decision on appeal; effect.
29-2317. Notice of intent to appeal to district court; procedure.
29-2318. Appeal of ruling or decision; counsel for defendant; appointment; fees.
29-2319. Exception proceedings by prosecuting attorney; decision of district court; effect.
29-2320. Appeal of sentence by prosecuting attorney; when authorized.
29-2321. Appeal of sentence by prosecuting attorney; procedure.
29-2322. Appeal of sentence by prosecutor; review; considerations.
29-2323. Appeal of sentence by prosecutor; sentencing alternatives.
29-2324. Appeal of sentence by prosecutor; credit for time served.
29-2325. Appeal of sentence by prosecutor; defendant's right to appeal not affected.
29-2326. Appeal; no oral argument; when.

29-2301 Appeal; notice; effect.

When a person is convicted of an offense and gives notice of his or her intention to appeal to the Court of Appeals or Supreme Court, the execution of the sentence or judgment shall be suspended until such time as the appeal has been determined. The trial court, in its discretion, may allow the defendant to continue at liberty under bail or admit the defendant to bail during the suspension of sentence.

Source: G.S.1873, c. 58, § 503, p. 833; R.S.1913, § 9172; C.S.1922, § 10179; C.S.1929, § 29-2301; R.S.1943, § 29-2301; Laws 1951, c. 87, § 3, p. 252; Laws 1957, c. 107, § 1, p. 378; Laws 1973, LB 146, § 4; Laws 1982, LB 722, § 3; Laws 1991, LB 732, § 75.

Cross References

Bail, conditions, see section 29-901.

When the execution of a sentence has been suspended under this section, and the defendant has been at liberty under bail, the bond may be continued without the consent of the surety during the period of the suspension. State v. Hurley, 201 Neb. 569, 270 N.W.2d 915 (1978).

The subject of review of judgments in criminal cases is covered by Chapter 29, article 23, Reissue Revised Statutes of Nebraska, 1943, and amendments thereto. State v. Berry, 192 Neb. 826, 224 N.W.2d 767 (1975).

Date of execution of death sentence is not an essential part of judgment. Iron Bear v. Jones, 149 Neb. 651, 32 N.W.2d 125 (1948); Iron Bear v. State, 149 Neb. 634, 32 N.W.2d 130 (1948).

Application for a writ of habeas corpus is proper procedure for the review of judgment where the petitioner is imprisoned without due process of law. Kuwitzsky v. O'Grady, 135 Neb. 466, 282 N.W. 396 (1938).

Error proceeding in a criminal case does not suspend the sentence within the legal meaning of the term, but does stay the execution of the sentence. State ex rel. Hunter v. Jurgensen, 135 Neb. 136, 280 N.W. 886 (1938).

Where defendant negligently failed to file transcript and petition in error in Supreme Court within time required after rendition of judgment, a motion to dismiss the petition in error must be sustained. Goodman v. State, 131 Neb. 662, 269 N.W. 383 (1936).

Petition in error must be filed in Supreme Court within one month after rendition of judgment. District court cannot set aside its own judgment during term and re-enter same judgment merely to confer jurisdiction on Supreme Court. Dimmel v. State, 128 Neb. 191, 258 N.W. 271 (1935).

Jurisdiction of matter of suspension of sentence rests with district court. Barker v. State, 75 Neb. 289, 103 N.W. 1134, 106 N.W. 450 (1905).

29-2302 Misdemeanor cases; appeal; recognizance.

The execution of sentence and judgment against any person or persons convicted and sentenced in the district court for a misdemeanor shall be suspended during an appeal to the Court of Appeals or Supreme Court. The district court shall fix the amount of a recognizance, which in all cases shall be reasonable, conditioned that the appeal shall be prosecuted without delay and that in case the judgment is affirmed he, she, or they will abide, do, and perform the judgment and sentence of the district court.

Source: G.S.1873, c. 58, § 504, p. 834; R.S.1913, § 9173; Laws 1917, c. 149, § 1, p. 344; C.S.1922, § 10180; C.S.1929, § 29-2302; R.S. 1943, § 29-2302; Laws 1982, LB 722, § 4; Laws 1991, LB 732, § 76.

Right of review in criminal case has statutory limitation of one month. Cunningham v. State, 153 Neb. 912, 46 N.W.2d 636 (1951).

Supersedeas bond is not satisfied by surrender of body of defendant prior to issuance of execution and return thereof unsatisfied in whole or in part. State v. Swedland, 114 Neb. 280, 207 N.W. 29 (1926).

29-2303 Felony cases; appeal; custody of person convicted; escape; procedures.

Whenever a person shall be convicted of a felony, and the judgment shall be suspended as a result of the notice of appeal, it shall be the duty of the court to order the person so convicted into the custody of the sheriff, to be imprisoned until the appeal is disposed of, or such person is admitted to bail. If a person so convicted shall escape, the jailer or other officer from whose custody the escape was made may return to the clerk of the proper court the writ by virtue of which the convict was held in custody, with information of the escape endorsed thereon, whereupon the clerk shall issue a warrant stating such conviction, and commanding the sheriff of the county to pursue such person into any county in the state; and the sheriff shall take such person and commit him or her to the jail of the county.

Source: G.S.1873, c. 58, § 505, p. 834; R.S.1913, § 9174; C.S.1922, § 10181; C.S.1929, § 29-2303; R.S.1943, § 29-2303; Laws 1982, LB 722, § 5.

This section controls the right to bail after conviction and its provisions are purely discretionary. State v. Woodward, 210 Neb. 740, 316 N.W.2d 759 (1982).

Court may in its discretion admit to bail upon showing of probable error which would call for reversal in all save exceptional cases mentioned in Constitution. Ford v. State, 42 Neb. 418, 60 N.W. 960 (1894).

Trial court has absolute discretion regarding appeal bonds. State v. Hernandez, 1 Neb. App. 830, 511 N.W.2d 535 (1993).

29-2304 Repealed. Laws 1982, LB 722, § 13.

29-2305 Appeal; dismissed; conviction affirmed; procedure; defendant; credit for time incarcerated.

If the appeal in such case is dismissed or the conviction is affirmed on hearing, such judgment shall be executed by the court by which it was rendered on receipt of the mandate of the appellate court. A defendant who was not admitted to bail during the time the appeal was pending shall receive credit against the sentence for all of the time he or she was incarcerated while the appeal was pending.

Source: G.S.1873, c. 58, §§ 506, 507, p. 834; R.S.1913, § 9176; C.S. 1922, § 10183; C.S.1929, § 29-2305; R.S.1943, § 29-2305; Laws 1982, LB 722, § 6; Laws 1991, LB 732, § 77.

29-2306 Criminal case; docket fee; when paid by county; in forma pauperis; costs.

If a defendant in a criminal case files, within thirty days after the entry of the judgment, order, or sentence, an application to proceed in forma pauperis in accordance with sections 25-2301 to 25-2310 with the clerk of the district court, then no payment of the docket fee shall be required of him or her unless the defendant's application to proceed in forma pauperis is denied. The clerk of the district court shall forward a certified copy of such application, including the affidavit, to the Clerk of the Supreme Court. If an application to proceed in forma pauperis is filed and granted, the Court of Appeals or Supreme Court shall acquire jurisdiction of the case when the notice of appeal is filed with the clerk of the district court. In cases in which an application to proceed in forma pauperis is granted, the amount of the costs shall be endorsed on the mandate and shall be paid by the county in which the indictment was found.

Source: G.S.1873, c. 58, § 508, p. 834; Laws 1883, c. 86, § 1, p. 332; R.S.1913, § 9177; C.S.1922, § 10184; C.S.1929, § 29-2306; R.S.1943, § 29-2306; Laws 1949, c. 73, § 1, p. 187; Laws 1957, c. 107, § 2, p. 379; Laws 1961, c. 134, § 3, p. 390; Laws 1973, LB 146, § 5; Laws 1982, LB 722, § 7; Laws 1987, LB 33, § 4; Laws 1991, LB 732, § 78; Laws 1999, LB 43, § 17; Laws 1999, LB 689, § 13.

Cross References

Docket fee, see sections 25-1912 and 33-103.

1. Method of review
2. Time
3. Record
4. Miscellaneous

1. Method of review

When notice of appeal is filed, jurisdiction is vested in Supreme Court and district court loses it in criminal case. State v. Moore, 186 Neb. 71, 180 N.W.2d 888 (1970).

Method of review of all criminal cases by the Supreme Court is upon writ of error. Krell v. Mantell, 157 Neb. 900, 62 N.W.2d 308 (1954).

Error proceedings are commenced in Supreme Court by filing of petition in error and transcript. Fisher v. State, 153 Neb. 226, 43 N.W.2d 600 (1950).

2. Time

The relevant date under this section is the date the defendant files the application to proceed in forma pauperis, not the date on which the court grants the application. State v. Harms, 263 Neb. 814, 643 N.W.2d 359 (2002).

An appeal shall be deemed perfected, giving the court jurisdiction, when notice of appeal has been timely filed and the docket fee timely deposited. State v. Price, 198 Neb. 229, 252 N.W.2d 165 (1977).

Appeal was lodged by timely writing judge setting out intent to appeal, indigency, and request for counsel. State v. Moore, 187 Neb. 507, 192 N.W.2d 157 (1971).

Supreme Court acquires no jurisdiction of a criminal appeal unless notice of appeal is filed within one month. State v. Wycoff, 183 Neb. 373, 160 N.W.2d 221 (1968).

Improper to apply time limitations for appeal where indigency and desire to appeal manifest and defendant, without services of trial counsel, failed to specifically request appointment of appellate counsel. State v. Williams, 181 Neb. 692, 150 N.W.2d 260 (1967).

Under former law Supreme Court had jurisdiction in criminal case on timely filing of petition in error, transcript, and poverty affidavit. Kennedy v. State, 170 Neb. 193, 101 N.W.2d 853 (1960).

The 1949 amendment to this section did not operate to remove the limitation of one month in which to institute error proceedings in criminal cases. Cunningham v. State, 153 Neb. 912, 46 N.W.2d 636 (1951).

Where defendant negligently fails to file transcript and petition in error within time prescribed after rendition of judgment, Supreme Court had no jurisdiction. Goodman v. State, 131 Neb. 662, 269 N.W. 383 (1936).

Under former statute, proceedings in error had to be instituted within six months after judgment. Kock v. State, 73 Neb. 354, 102 N.W. 768 (1905).

Only after final judgment may writ of error be allowed. Green v. State, 10 Neb. 102, 4 N.W. 422 (1880).

3. Record

On review of conviction, motion for new trial not preserved and authenticated as part of transcript on appeal cannot be considered; evidence not contained in bill of exceptions as settled by trial judge, although physically appended thereto, will not be considered. Lee v. State, 124 Neb. 165, 245 N.W. 445 (1932).

This section regulates the administration of relief in error proceedings where errors have been preserved in record and are properly presented. Scott v. State, 121 Neb. 232, 236 N.W. 608 (1931).

Where evidence, in criminal case, tried in county court, is certified to district court in form of bill of exceptions, which is used therein to maintain petition in error, filed in that court, Supreme Court, on appeal from district court, will examine entire proceeding and affirm or reverse. Cooper v. State, 97 Neb. 461, 150 N.W. 207 (1914).

Affidavits used on trial of issue of fact do not become part of record by being certified to Supreme Court by clerk of district court. Hoy v. State, 69 Neb. 516, 96 N.W. 228 (1903).

Unauthenticated statement by trial judge, found in transcript, of what transpired during proceedings, is stricken out as it is not made part of the record. Bush v. State, 47 Neb. 642, 66 N.W. 638 (1896).

4. Miscellaneous

The poverty affidavit in a criminal appeal must follow the language of this section, stating that defendant is unable by reason of poverty to pay the costs. An affidavit which states only that defendant is unable to pay the costs of retaining counsel is insufficient and does not vest jurisdiction with the appellate court. State v. Schmailzl, 248 Neb. 314, 534 N.W.2d 743 (1995).

Where a defendant invoked remedy by appeal, he could not at the same time carry on proceeding under the Post Conviction Act. State v. Carr, 181 Neb. 251, 147 N.W.2d 619 (1967).

Mere filing of affidavit of inability to pay filing fee is not conclusive but may be contested. State v. Eberhardt, 179 Neb. 843, 140 N.W.2d 802 (1966).

In a criminal case, payment of docket fee or in lieu thereof filing of affidavit of poverty is a jurisdictional step. State v. Goff, 174 Neb. 217, 117 N.W.2d 319 (1962).

Confinement in penitentiary under void or erroneous sentence, during pendency of proceedings in error, is not partial execution of legal sentence. McCormick v. State, 71 Neb. 505, 99 N.W. 237 (1904).

For criminal appeals, in order to be effective for content, a poverty affidavit is valid if it satisfies one requirement: The affiant must state that he or she is unable by reason of poverty to pay the costs of the appeal. State v. Barnett, 1 Neb. App. 708, 511 N.W.2d 150 (1993).

29-2306.01 Repealed. Laws 1973, LB 146, § 6.

29-2306.02 Repealed. Laws 1973, LB 146, § 6.

29-2306.03 Repealed. Laws 1973, LB 146, § 6.

29-2307 Repealed. Laws 1973, LB 146, § 6.

29-2308 Reduction of sentence; conditions.

In all criminal cases that now are or may hereafter be pending in the Court of Appeals or Supreme Court, the appellate court may reduce the sentence rendered by the district court against the accused when in its opinion the sentence is excessive, and it shall be the duty of the appellate court to render such sentence against the accused as in its opinion may be warranted by the evidence. No judgment shall be set aside, new trial granted, or judgment rendered in any criminal case on the grounds of misdirection of the jury or the improper admission or rejection of evidence or for error as to any matter of pleading or procedure if the appellate court, after an examination of the entire cause, considers that no substantial miscarriage of justice has actually occurred.

Source: Laws 1887, c. 110, § 1, p. 668; R.S.1913, § 9179; Laws 1921, c. 157, § 1, p. 648; C.S.1922, § 10186; C.S.1929, § 29-2308; R.S. 1943, § 29-2308; Laws 1982, LB 722, § 8; Laws 1991, LB 732, § 79.

Cross References

Homicide, special procedures for sentencing, see sections 29-2519 to 29-2546.

1. Scope

2. Reduction of sentence
3. Harmless error
4. Substantial miscarriage of justice

1. Scope

When determining whether to impose probation, the trial court must consider the factors set forth in section 29-2260. On appeal, an appellate court must likewise consider section 29-2260 in determining whether probation may be imposed, whether reviewing a sentence for excessiveness pursuant to this section or for leniency under section 29-2322. State v. Harrison, 255 Neb. 990, 588 N.W.2d 556 (1999).

In a nondeath sentence an appellate court will not conduct a de novo review to determine whether a sentence is proportionate and thus appropriate; rather, a sentence imposed within statutory limits will not be disturbed on appeal absent an abuse of discretion. State v. Philipps, 242 Neb. 894, 496 N.W.2d 874 (1993).

It is the duty of an appellate court to disturb a sentence on appeal which was within the statutory limits only if the sentence imposed was an abuse of judicial discretion. ''Judicial abuse of discretion'' means that the reasons or rulings of the trial judge are clearly untenable and deny a just result to the defendant. State v. Riley, 242 Neb. 887, 497 N.W.2d 23 (1993).

When a sentence imposed by a court is within statutory limits, an appellate court will not disturb the sentence unless there has been an abuse of discretion. State v. Reynolds, 242 Neb. 874, 496 N.W.2d 872 (1993).

In considering whether or not to reduce a sentence on the grounds of alleged excessiveness, a sentencing judge is required to have only an open mind, not an empty one. State v. Christensen, 213 Neb. 820, 331 N.W.2d 793 (1983).

Sentence of eighteen months for attempted robbery affirmed; absent an abuse of discretion, a sentence imposed within statutory limits will not be disturbed on appeal. State v. Last, 212 Neb. 596, 324 N.W.2d 402 (1982).

Effective sentence of one to two years imprisonment for conviction of manslaughter not excessive. State v. Rice, 198 Neb. 758, 255 N.W.2d 282 (1977).

In absence of abuse of discretion, a sentence imposed within statutory limits will not be disturbed on appeal. State v. Gillham, 196 Neb. 563, 244 N.W.2d 177 (1976).

Were the sentencing herein made concurrent with defendant's present sentence, it would be tantamount to defendant receiving no sentence at all and the court's refusal to do so was not an abuse of discretion. State v. Erving, 193 Neb. 667, 228 N.W.2d 619 (1975).

This section is not a directive to reduce a sentence whenever asked, but only where the trial court has abused its judicial discretion and fixed a penalty which is clearly excessive. State v. Orner, 192 Neb. 523, 222 N.W.2d 819 (1974).

Where record fails to show factors claimed to require modification of sentence, it will not be modified. State v. Cano, 191 Neb. 709, 217 N.W.2d 480 (1974).

The Supreme Court may reduce a sentence which in its opinion is excessive and it is then its duty to render such sentence as the evidence warrants. State v. West, 188 Neb. 579, 198 N.W.2d 204 (1972).

When in the opinion of the Supreme Court, a sentence is excessive or not warranted by the evidence, this section contemplates correction on appeal. State v. Etchison, 188 Neb. 134, 195 N.W.2d 498 (1972).

A technique for deterrence of crime is scaling of penal sanctions. State v. Keck, 187 Neb. 794, 194 N.W.2d 186 (1972).

Unless an abuse of discretion appears, sentence within statutory limits will not be disturbed. State v. Morosin, 187 Neb. 521, 192 N.W.2d 165 (1971).

Supreme Court may substitute lower sentence. State v. Leadinghorse, 187 Neb. 386, 191 N.W.2d 440 (1971).

The penalty under an amendatory statute enacted before the actual trial, but after commission of the prohibited act, may be applied under this section where the sentence had not become final because an appeal was pending. State v. Goham, 187 Neb. 34, 187 N.W.2d 305 (1971).

Supreme Court may reduce sentence when in its opinion the sentence is excessive. State v. Dixon, 186 Neb. 143, 181 N.W.2d 250 (1970); Havlicek v. State, 101 Neb. 782, 165 N.W. 251 (1917).

Crime committed was so brutal that maximum penalty was required. State v. Escamilla, 182 Neb. 466, 155 N.W.2d 344 (1968).

In absence of bill of exceptions, sentence within statutory limits will not be disturbed. Guedea v. State, 162 Neb. 680, 77 N.W.2d 166 (1956).

Sentence imposed within statutory limits will not be disturbed in absence of abuse of discretion. Salyers v. State, 159 Neb. 235, 66 N.W.2d 576 (1954); Onstott v. State, 156 Neb. 55, 54 N.W.2d 380 (1952); Young v. State, 155 Neb. 261, 51 N.W.2d 326 (1952).

In absence of proper showing of abuse of discretion, Supreme Court will not reduce sentence. Taylor v. State, 159 Neb. 210, 66 N.W.2d 514 (1954).

This section is not effective to sustain a conviction where province of jury is prejudicially invaded. Schluter v. State, 151 Neb. 284, 37 N.W.2d 396 (1949).

Where an instruction has the effect of infringing upon the right of the jury to judge of the credibility of the witnesses, it is prejudicially erroneous. Wilson v. State, 150 Neb. 436, 34 N.W.2d 880 (1948).

Supreme Court cannot substitute itself for jury in determining whether essential elements of offense have been established beyond a reasonable doubt where instruction omits one of such elements. Whitehead v. State, 147 Neb. 797, 25 N.W.2d 45 (1946).

An instruction that omits an essential element of offense charged cannot be deemed to come within purview of this section. Hans v. State, 147 Neb. 730, 25 N.W.2d 35 (1946).

In prosecution for murder, this section was applied to rulings on admission of evidence, and the giving and refusing of instructions. Bassinger v. State, 142 Neb. 93, 5 N.W.2d 222 (1942).

This section does not prevent reversal of a conviction if the defendant did not have a fair trial because of questionable rulings upon the admission or rejection of evidence. Hansen v. State, 141 Neb. 278, 3 N.W.2d 441 (1942).

Section applied to conviction for embezzlement. Escher v. State, 140 Neb. 633, 1 N.W.2d 322 (1941).

Court was not empowered to reduce sentence on proceedings in error to review denial of motion to withdraw plea of guilty. Bordeau v. State, 125 Neb. 133, 249 N.W. 291 (1933).

Where errors are prejudicial, statute is not applicable. Fetty v. State, 119 Neb. 619, 230 N.W. 440 (1930).

Section has no application where province of jury is prejudicially invaded. Kleinschmidt v. State, 116 Neb. 577, 218 N.W. 384 (1928).

Supreme Court will not often reduce sentence imposed by trial court, particularly where crime involves great moral turpitude and is one of violence. Peterson v. State, 115 Neb. 302, 212 N.W. 610 (1927).

Section does not obviate necessity of alleging in information every material element of alleged offense. Barton v. State, 111 Neb. 673, 197 N.W. 423 (1924).

Section should be liberally construed in favor of justice. Cryderman v. State, 101 Neb. 85, 161 N.W. 1045 (1917).

It is duty of court under this section to reduce sentence when warranted by evidence; this is in no sense a commutation or an

act of clemency. Anderson v. State, 26 Neb. 387, 41 N.W. 951 (1889).

2. Reduction of sentence

The Nebraska Supreme Court has the duty to render a reduced sentence against an accused when, in the opinion of the court, it is warranted. State v. McArthur, 230 Neb. 653, 432 N.W.2d 839 (1988).

Where a sentence to a term of years and an order to pay a fine are in excess of the statutory limits, the sentence and order are to be modified to fit within the prescribed limits. State v. Haverkamp, 224 Neb. 73, 395 N.W.2d 570 (1986).

Where defendant had no other significant criminal record, his prison behavior was exemplary, and facts indicated extended incarceration was not needed to rehabilitate the defendant, the Supreme Court may properly modify the sentence imposed by the district court. State v. Suggett, 200 Neb. 693, 264 N.W.2d 876 (1978).

Sentence of five to ten years reduced to two to five years for eighteen-year-old with no criminal record who pleaded guilty on a charge of uttering a forged instrument. State v. Moore, 198 Neb. 317, 252 N.W.2d 617 (1977).

This section authorizes reduction of sentence by Supreme Court in capital offenses in addition to provisions of sections 29-2519 to 29-2523. State v. Stewart, 197 Neb. 497, 250 N.W.2d 849 (1977).

A sentence of three to nine years for kicking a four-year-old child was excessive under the facts in this case and was reduced to one to three years. State v. Foutch, 196 Neb. 644, 244 N.W.2d 291 (1976).

The Supreme Court is authorized to reduce a sentence and it may render such sentence as in its opinion may be warranted by the evidence. State v. Burkhardt, 194 Neb. 265, 231 N.W.2d 354 (1975).

Sentences of one defendant modified to fit apparent purpose of making total less harsh than that of other defendant. State v. Pope, 192 Neb. 755, 224 N.W.2d 521 (1974).

Upon consideration of presentence report and other circumstances, sentence of one year for escape consecutive to present term not excessive. State v. Maddox, 190 Neb. 361, 208 N.W.2d 274 (1973).

Defendant's sentence of seven years for assault with intent to commit rape was not excessive. State v. Stroh, 189 Neb. 637, 204 N.W.2d 156 (1973).

Sentence reduced to five years for first offense as defendant affected by immature thinking and social naivete, with cultural, educational, and pecuniary handicaps in adjusting to adult life, and who had been made trusty by sheriff during confinement in county jail. State v. Thunder Hawk, 188 Neb. 294, 196 N.W.2d 194 (1972).

Sentences imposed for petit larceny were not excessive. State v. Curry, 184 Neb. 682, 171 N.W.2d 163 (1969).

Cited in reducing sentence where Legislature had reduced penalty during pendency of appeal. State v. Brockman, 184 Neb. 435, 168 N.W.2d 367 (1969).

No abuse of discretion shown where sentence of ten years imposed when statutory range was from three to fifty years. State v. Williams, 183 Neb. 395, 160 N.W.2d 201 (1968).

Evidence was insufficient to reduce sentence of trial court. State v. Alvarez, 182 Neb. 358, 154 N.W.2d 746 (1967).

Supreme Court has the right to reduce a sentence when in its opinion the sentence is excessive. State v. Paul, 177 Neb. 668, 131 N.W.2d 129 (1964).

In absence of bill of exceptions, a sentence imposed within statutory limits will not be reduced. State v. Ohler, 177 Neb. 418, 129 N.W.2d 116 (1964).

Mental condition of defendant convicted of murder in the first degree justified Supreme Court in reducing sentence to life imprisonment. State v. Hall, 176 Neb. 295, 125 N.W.2d 918 (1964).

Supreme Court is authorized to reduce sentence when in its opinion the sentence is excessive. State v. Neuman, 175 Neb. 832, 125 N.W.2d 5 (1963).

Imposition of jail sentence under Brand Inspection Act was excessive and sentence reduced to payment of fine. Satterfield v. State, 172 Neb. 275, 109 N.W.2d 415 (1961).

Sentence imposed of from one to two years in State Reformatory upon conviction of motor vehicle homicide was not excessive. Olney v. State, 169 Neb. 717, 100 N.W.2d 838 (1960).

Reduction in sentence from death to life imprisonment was not justified on claimed weakness of evidence as to deliberation and premeditation. Starkweather v. State, 167 Neb. 477, 93 N.W.2d 619 (1958).

Sentence of seven years for statutory rape was not excessive. Drewes v. State, 156 Neb. 319, 56 N.W.2d 113 (1952).

Supreme Court has authority to reduce and render such sentence as is warranted by evidence. Sundahl v. State, 154 Neb. 550, 48 N.W.2d 689 (1951).

Seven year sentence on conviction of manslaughter was excessive. Fisher v. State, 154 Neb. 166, 47 N.W.2d 349 (1951).

Sentence of six years upon conviction of statutory rape was not excessive. Truman v. State, 153 Neb. 247, 44 N.W.2d 317 (1950).

Sentence of three years for malicious destruction of property was not excessive. Pauli v. State, 151 Neb. 385, 37 N.W.2d 717 (1949).

Sentence of five years for manslaughter was not excessive. Anderson v. State, 150 Neb. 116, 33 N.W.2d 362 (1948).

Sentence of seven years on charge of larceny as bailee was not excessive. Yost v. State, 149 Neb. 584, 31 N.W.2d 538 (1948).

Sentence of five years for burglary was not excessive. Sedlacek v. State, 147 Neb. 834, 25 N.W.2d 533 (1946).

Notwithstanding previous criminal record of accused, sentence to imprisonment for sixteen years was reduced to ten years. Jump v. State, 146 Neb. 501, 20 N.W.2d 375 (1945).

Age of defendant warranted reduction in sentence in rape case. Wiedeman v. State, 141 Neb. 579, 4 N.W.2d 566 (1942).

Age of defendant, station in life, and previous reputation as a peaceful citizen are factors to be taken into consideration in determining whether sentence of death should be reduced to life imprisonment. Rogers v. State, 141 Neb. 6, 2 N.W.2d 529 (1942).

Fifteen year sentence for rape was excessive under the circumstances and reduced to seven years. Haynes v. State, 137 Neb. 69, 288 N.W. 382 (1939).

Where defendant was convicted of larceny of property valued at fifty-five dollars, sentence was reduced from five years to three years. Greenough v. State, 136 Neb. 20, 284 N.W. 740 (1939).

Where, under the circumstances, the sentence of the trial court is excessive, it will be modified on appeal. Haines v. State, 135 Neb. 433, 281 N.W. 860 (1938).

Sentence of thirty days imprisonment in county jail for assault was excessive, and reduced to fine of $25. Schleif v. State, 131 Neb. 875, 270 N.W. 510 (1936).

Fine of $500 for selling two bottles of beer without license was excessive, and reduced. Wilson v. State, 130 Neb. 752, 266 N.W. 614 (1936).

Sentence on charge of unlawful possession of intoxicating liquor reduced. Fast v. State, 128 Neb. 782, 261 N.W. 176 (1935).

Sentence on burglary charge reduced. Bulwan v. State, 127 Neb. 436, 255 N.W. 559 (1934); Barnes v. State, 124 Neb. 826, 248 N.W. 381 (1933).

Sentence of ten years on conviction of "shooting with intent to kill," was excessive and reduced to five years because of extenuating circumstances. Lillard v. State, 123 Neb. 838, 244 N.W. 640 (1932).

Sentence on charge of receiving stolen property reduced from three to one year. Smith v. State, 123 Neb. 17, 241 N.W. 750 (1932).

In prosecution for shooting with intent to kill, sentence reduced from seven years to three years. Swartz v. State, 121 Neb. 696, 238 N.W. 312 (1931).

One year in penitentiary for burglary reduced to five months in county jail. Haney v. State, 119 Neb. 862, 228 N.W. 939 (1930).

Sentence of ten years for manslaughter by stabbing was reduced to five. Pembrook v. State, 119 Neb. 417, 229 N.W. 271 (1930).

Death penalty for murder reduced to life imprisonment. Swartz v. State, 118 Neb. 591, 225 N.W. 766 (1929); Wesley v. State, 112 Neb. 360, 199 N.W. 719 (1924); Muzik v. State, 99 Neb. 496, 156 N.W. 1056 (1916); Hamblin v. State, 81 Neb. 148, 115 N.W. 850 (1908); O'Hearn v. State, 79 Neb. 513, 113 N.W. 130 (1907).

Death penalty upheld. Sherman v. State, 118 Neb. 84, 223 N.W. 645 (1929); Carter v. State, 115 Neb. 320, 212 N.W. 614 (1927).

Sentence on charge of manslaughter reduced from ten years to five years. Banks v. State, 114 Neb. 33, 206 N.W. 18 (1925); Welter v. State, 114 Neb. 28, 206 N.W. 16 (1925).

On charge of manslaughter, sentence was reduced to three years. Howard v. State, 113 Neb. 67, 201 N.W. 968 (1925).

Sentence on charge of rape reduced to four years. Fox v. State, 106 Neb. 537, 184 N.W. 68 (1921).

Sentence of five years for larceny of forty dollars reduced. Junod v. State, 73 Neb. 208, 102 N.W. 462 (1905).

Sentence of seven years on charge of manslaughter reduced to three years. Ford v. State, 71 Neb. 246, 98 N.W. 807 (1904).

Sentence of seven years for cattle stealing reduced. Palmer v. State, 70 Neb. 136, 97 N.W. 235 (1903).

Life sentence for second degree murder, on indirect and circumstantial evidence, reduced to twenty years. Nelson v. State, 33 Neb. 528, 50 N.W. 679 (1891).

Sentence of ten years for burglary reduced. Charles v. State, 27 Neb. 881, 44 N.W. 39 (1889).

On charge of rape, sentence of twelve years was reduced to six years. Fager v. State, 22 Neb. 332, 35 N.W. 195 (1887).

3. Harmless error

Harmless error analysis undertaken by an appellate court does not violate a defendant's right to a trial by jury. State v. Nesbitt, 264 Neb. 612, 650 N.W.2d 766 (2002).

Prosecutor's comments in final argument held not to be a reflection on defendant's failure to testify. State v. Donald, 199 Neb. 70, 256 N.W.2d 107 (1977).

Since defendant did appeal and had a trial de novo in the district court, the improper attempt by the county judge to chill his right to appeal was harmless error. State v. Goodloe, 196 Neb. 381, 243 N.W.2d 69 (1976).

Admission of irrelevant evidence is harmless error unless, when with other evidence properly adduced, it affects substantial rights of the adverse party. State v. Rathburn, 195 Neb. 485, 239 N.W.2d 253 (1976).

No substantial miscarriage of justice occurred under facts in this case by overruling motion for mistrial. State v. Van Ackeren, 194 Neb. 650, 235 N.W.2d 210 (1975).

No substantial miscarriage of justice occurred, under facts in this case, by erroneous admission of evidence of similar acts. State v. Franklin, 194 Neb. 630, 234 N.W.2d 610 (1975).

Even if asking of two questions to which objections were sustained was error, no prejudice was indicated and judgment should not be set aside. State v. Bartlett, 194 Neb. 502, 233 N.W.2d 904 (1975).

An erroneous instruction in a criminal case is not ground for reversal unless prejudicial to the defendant. State v. Garza, 193 Neb. 283, 226 N.W.2d 768 (1975).

Fact that another jury selected from the same jury panel had previously found defendant's companion guilty of the separate and distinct offense did not constitute prejudice to a substantial right of defendant. State v. Harris, 184 Neb. 301, 167 N.W.2d 386 (1969).

Valuations placed on property taken in burglary did not prejudice the defendant. State v. Bundy, 181 Neb. 160, 147 N.W.2d 500 (1966).

Harmless error in a criminal prosecution is not a ground for reversal of judgment of conviction. State v. Burton, 174 Neb. 457, 118 N.W.2d 502 (1962).

Error in requiring defendant to answer question as to another offense was not prejudicial. Texter v. State, 170 Neb. 426, 102 N.W.2d 655 (1960).

Proof of betting by a prospective juror was not prejudicial to defendant where verdict returned by jury was contrary to juror's bet. Fugate v. State, 169 Neb. 420, 99 N.W.2d 868 (1959).

Statement on existing constitutional or statutory provisions as to pardons and paroles was not prejudicial error. Grandsinger v. State, 161 Neb. 419, 73 N.W.2d 632 (1955).

Admission of hearsay evidence was harmless error. Gates v. State, 160 Neb. 722, 71 N.W.2d 460 (1955).

Misdirection, not causing substantial miscarriage of justice, does not require reversal. Bell v. State, 159 Neb. 474, 67 N.W.2d 762 (1954).

Prejudicial error in prosecution for second degree murder was not shown. Vanderheiden v. State, 156 Neb. 735, 57 N.W.2d 761 (1953).

Instruction on reasonable doubt was not prejudicial. Owens v. State, 152 Neb. 841, 43 N.W.2d 168 (1950).

Where charge to jury, considered as a whole, correctly states the law, the verdict will not be set aside merely because a single instruction is incomplete. Kirkendall v. State, 152 Neb. 691, 42 N.W.2d 374 (1950).

In prosecution for abortion resulting in death, the admission in evidence of a dying declaration reduced to writing was not prejudicial error requiring reversal, where written statement added nothing to story recited by witnesses examined at trial. Piercy v. State, 138 Neb. 905, 297 N.W. 137 (1941).

Recommendation of leniency by jury does not make sentence imposed by trial court excessive so as to require application of this statute, since penalty is for trial court and not the jury to determine. Ayres v. State, 138 Neb. 604, 294 N.W. 392 (1940).

Harmless error does not require a second trial, as the law recognizes the possibility of harmless imperfections and does not defeat itself by exacting absolute perfection. Jurgensen v. State, 135 Neb. 537, 283 N.W. 228 (1939).

Unless error complained of was prejudicial to rights of defendant, the cause should not be reversed. Mason v. State, 132 Neb. 7, 270 N.W. 661 (1937); Lovejoy v. State, 130 Neb. 154, 264 N.W. 417 (1936); Dobry v. State, 130 Neb. 51, 263 N.W. 681 (1935).

Variance between information and complaint filed in county court did not prejudice defendant. Clarke v. State, 125 Neb. 445, 250 N.W. 551 (1933).

Consolidation of two indictments is within discretion of trial court, especially where defendant consents or requests such consolidation. Luke v. State, 123 Neb. 101, 242 N.W. 265 (1932).

Instruction given in manslaughter case fell within class of instructions where conviction will not be reversed for nonprejudicial misdirection. Crawford v. State, 116 Neb. 125, 216 N.W. 294 (1927).

Defendant, released on bail, may waive right to be present when court gives supplemental instruction to jury, and where no prejudice results, conviction will not be set aside. Scott v. State, 113 Neb. 657, 204 N.W. 381 (1925).

Any error occurring in the trial of a criminal case which does not cause a substantial miscarriage of justice should be disregarded. Marchand v. State, 113 Neb. 87, 201 N.W. 890 (1925).

Correction in instructions after same have been delivered and jury has retired is not ground for reversal, ordinarily, unless found to be prejudicial to person complaining. Quinton v. State, 112 Neb. 684, 200 N.W. 881 (1924).

Conviction of constructive contempt will not be set aside because information was verified on information and belief where objection was not made until after verdict. Tasich v. State, 111 Neb. 465, 196 N.W. 688 (1923).

Misconduct of prosecutor was not of such injurious nature as to justify reversal. Melcher v. State, 109 Neb. 865, 192 N.W. 502 (1923).

Where no error appears and sentence is warranted by statute, it will not be reduced because of apparent undue severity. Fanton v. State, 50 Neb. 351, 69 N.W. 953 (1897); Barney v. State, 49 Neb. 515, 68 N.W. 636 (1896).

4. Substantial miscarriage of justice

Presence, in view of jury, of evidence which had not yet been received into evidence, but was received later for limited purposes, did not constitute a ''substantial miscarriage of justice,'' such that mistrial would be in order. State v. Valdez, 239 Neb. 453, 476 N.W.2d 814 (1991).

Examination of record showed no substantial prejudice to the defendant by trial court's exclusion of certain hearsay testimony. State v. Turner, 221 Neb. 852, 381 N.W.2d 149 (1986).

References to previous contradictory statements of witnesses in direct examination and caution in instruction that they went only to credibility caused no substantial miscarriage of justice. State v. Fronning, 186 Neb. 463, 183 N.W.2d 920 (1971).

Allowing testimony of witness as to value of property taken under circumstances did not constitute substantial miscarriage of justice. State v. Schumacher, 184 Neb. 653, 171 N.W.2d 181 (1969).

Admission of incriminating, inculpatory, and extra-judicial declarations of a co-conspirator after the arrest and after the termination of the conspiracy was prejudicial error. State v. Watson, 182 Neb. 692, 157 N.W.2d 156 (1968).

Examination of entire case and record conclusively shows no substantial miscarriage of justice. State v. Riley, 182 Neb. 300, 154 N.W.2d 741 (1967).

Error in instruction on credibility of child as witness was not cured. Rakes v. State, 158 Neb. 55, 62 N.W.2d 273 (1954).

Supreme Court has privilege within its discretion to examine instructions which appear to be conflicting or confusing, and to determine whether or not error in instructions would result in miscarriage of justice. Planck v. State, 151 Neb. 599, 38 N.W.2d 790 (1949).

Where one of essential elements of offense is omitted from instruction, this section will not prevent reversal. Glasgow v. State, 147 Neb. 279, 22 N.W.2d 842 (1946).

Where court allows proceedings in absence of defendant, it is substantial invasion of defendant's rights, and is prejudicial error. Strasheim v. State, 138 Neb. 651, 294 N.W. 433 (1940).

In cattle stealing case, judgment was sustained because court could not say, after examination of entire record, that substantial miscarriage of justice had occurred. Taylor v. State, 138 Neb. 156, 292 N.W. 233 (1940).

The obvious failure of an information to charge an offense as defined in the statute is not a defect of technical procedure, but involves a substantial right. Dutiel v. State, 135 Neb. 811, 284 N.W. 321 (1939).

If Supreme Court, in criminal case, after examination of entire cause, shall consider that no substantial miscarriage of justice shall have occurred, it must affirm the judgment. Harrison v. State, 133 Neb. 794, 277 N.W. 96 (1938).

Misdirection of jury not causing substantial miscarriage of justice does not require that a judgment be set aside. Lorimer v. State, 127 Neb. 758, 257 N.W. 217 (1934).

In contempt proceedings, conviction will not be set aside where no substantial miscarriage of justice has occurred. McCauley v. State, 124 Neb. 102, 245 N.W. 269 (1932).

In prosecution for defrauding bank, errors relied upon did not result in substantial miscarriage of justice. Kirchman v. State, 122 Neb. 624, 241 N.W. 100 (1932).

This section does not authorize court to declare there has been no substantial miscarriage of justice merely because the court from an examination of the evidence may believe the defendant is guilty. Scott v. State, 121 Neb. 232, 236 N.W. 608 (1931).

Where no substantial miscarriage of justice occurs, conviction will be affirmed. Norton v. State, 119 Neb. 588, 230 N.W. 438 (1930).

Court will not ignore ''error as to any matter of pleading or procedure'' when the rights of the accused conferred by the Constitution have been violated. Stowe v. State, 117 Neb. 440, 220 N.W. 826 (1928).

Instructions in murder case, while not in apt language, did not result in substantial miscarriage of justice. Phegley v. State, 113 Neb. 138, 202 N.W. 419 (1925).

Instruction to jury in rape case on reasonable doubt did not cause substantial miscarriage of justice. Bennett v. State, 111 Neb. 552, 196 N.W. 905 (1924).

29-2308.01 Repealed. Laws 1995, LB 127, § 3.

29-2309 Repealed. Laws 1982, LB 722, § 13.

29-2310 Repealed. Laws 1982, LB 722, § 13.

29-2311 Repealed. Laws 1969, c. 411, § 1.

29-2312 Repealed. Laws 1969, c. 411, § 1.

29-2313 Repealed. Laws 1969, c. 411, § 1.

29-2314 Repealed. Laws 1959, c. 121, § 4.

29-2315 Prosecuting attorney, defined.

For purposes of sections 29-2315.01 to 29-2325, prosecuting attorney means a county attorney, city attorney, or designated attorney.

Source: Laws 2003, LB 17, § 10.

29-2315.01 Appeal by prosecuting attorney; application; procedure.

The prosecuting attorney may take exception to any ruling or decision of the court made during the prosecution of a cause by presenting to the trial court the application for leave to docket an appeal with reference to the rulings or decisions of which complaint is made. Such application shall contain a copy of the ruling or decision complained of, the basis and reasons for objection thereto, and a statement by the prosecuting attorney as to the part of the record he or she proposes to present to the appellate court. Such application shall be presented to the trial court within twenty days after the final order is entered in the cause, and upon presentation, if the trial court finds it is in conformity with the truth, the judge of the trial court shall sign the same and shall further indicate thereon whether in his or her opinion the part of the record which the prosecuting attorney proposes to present to the appellate court is adequate for a proper consideration of the matter. The prosecuting attorney shall then present such application to the appellate court within thirty days from the date of the final order. If the application is granted, the prosecuting attorney shall within thirty days from such granting order a bill of exceptions in accordance with section 29-2020 if such bill of exceptions is desired and otherwise proceed to obtain a review of the case as provided in section 25-1912.

Source: Laws 1959, c. 121, § 1, p. 453; Laws 1961, c. 135, § 4, p. 391; Laws 1982, LB 722, § 9; Laws 1987, LB 33, § 5; Laws 1991, LB 732, § 80; Laws 1992, LB 360, § 8; Laws 2003, LB 17, § 11.

1. Error proceedings
2. Procedure
3. Miscellaneous

1. Error proceedings

This statute does not permit review of issues upon which no ruling was made. State v. Jensen, 226 Neb. 40, 409 N.W.2d 319 (1987).

District court's ruling on motion to dismiss habitual criminal charge reviewed and reversed in error proceedings. State v. Nance, 197 Neb. 257, 248 N.W.2d 339 (1976).

Scope and purpose of review of proceedings hereunder is to provide authoritative exposition of the law as precedent in subsequent cases. State v. Jennings, 195 Neb. 434, 238 N.W.2d 477 (1976).

Pendency of error proceedings under this section does not preclude appeal under section 29-3002. State v. Carpenter, 186 Neb. 605, 185 N.W.2d 663 (1971).

Error proceedings by the state may be had to review dismissal of prosecution for lack of sufficient evidence. State v. Faircloth, 181 Neb. 333, 148 N.W.2d 187 (1967).

2. Procedure

The State's right to seek a review is limited to the procedure set forth in this section. State v. Recek, 263 Neb. 644, 641 N.W.2d 391 (2002).

The county attorney in a criminal proceeding must present to the trial court an application for leave to docket an appeal according to this section before seeking review under the general appeal statute, section 25-1912. State v. Baird, 238 Neb. 724, 472 N.W.2d 203 (1991).

An order of the district court reversing a judgment of the county court in a criminal case, vacating the sentence, and remanding the cause for imposition of a sentence may be reviewed under this section. Pursuant to this section, "trial court" is merely a synonym for "district court." State v. Schall, 234 Neb. 101, 449 N.W.2d 225 (1989).

An order in a criminal case whereby the district court vacates a sentence and remands the cause for imposition of sentence in the county court is reviewable under this section. State v. Ziemba, 216 Neb. 612, 346 N.W.2d 208 (1984).

County attorney's appeals involving criminal matters were dismissed where civil appeals improperly perfected. State v. Gillett & Gaston, 199 Neb. 829, 261 N.W.2d 763 (1978).

This section prevents the state from a cross-appeal on an order granting defendant a new trial in a criminal case. State v. Martinez, 198 Neb. 347, 252 N.W.2d 630 (1977).

The right of the county attorney to review questions of law hereunder is limited to cases in which a final order or judgment in the criminal case has been entered, and authority does not extend to city attorneys nor prosecutions under city ordinances. State v. Linn, 192 Neb. 798, 224 N.W.2d 539 (1974).

Proper practice would be to institute error proceedings only after sentence is imposed or motion for new trial is overruled, but since decision here will not affect defendant, and will govern only pending or future similar cases, motion to dismiss because prematurely filed is overruled. State v. Weidner, 192 Neb. 161, 219 N.W.2d 742 (1974).

Review of order sustaining demurrer to information was properly brought by the state. State v. Buttner, 180 Neb. 529, 143 N.W.2d 907 (1966).

County attorney is required to apply for leave to docket proceedings within one month from date of final order. State v. Satterfield, 179 Neb. 451, 138 N.W.2d 656 (1965).

3. Miscellaneous

Failure to strictly comply with the jurisdictional prerequisites of this section prevents the State from obtaining any review of a trial court's final order in a criminal case. State v. Johnson, 259 Neb. 942, 613 N.W.2d 459 (2000).

The State may request an appellate court to review an adverse decision or ruling in a criminal case made by a district court after a final order or judgment in the criminal case has been entered. The purpose of this procedure is to provide an authori-

tative exposition of the law to serve as precedent in future cases. State v. Dorcey, 256 Neb. 795, 592 N.W.2d 495 (1999).

This section grants the state the right to seek Supreme Court review of adverse criminal rulings and specifies the special procedure by which to obtain review. State v. Wieczorek, 252 Neb. 705, 565 N.W.2d 481 (1997).

Under this section, the State may request review of an adverse decision or ruling in a criminal case after a final order or judgment in the criminal case has been entered. The purpose of this procedure is to provide an authoritative exposition of the law to serve as precedent in future cases. State v. Detweiler, 249 Neb. 485, 544 N.W.2d 83 (1996).

The trial judge has no authority to decide whether an appeal under this section may be taken. State v. Wren, 234 Neb. 291, 450 N.W.2d 684 (1990).

In proceedings under this section, exceptions of state were sustained. State v. Ransburg, 181 Neb. 352, 148 N.W.2d 324 (1967).

The right of the state to appeal is limited. State v. Taylor, 179 Neb. 42, 136 N.W.2d 179 (1965).

Information attempting to charge disturbing the peace was tested under this section. State v. Coomes, 170 Neb. 298, 102 N.W.2d 454 (1960).

The purpose of appellate review under this section is to provide an authoritative exposition of the law for use as a precedent in similar cases which may now be pending or which may subsequently arise. State v. Rubek, 11 Neb. App. 489, 653 N.W.2d 861 (2002).

In a criminal proceeding tried in the county court and appealed to the district court, ''trial court'' as used in this section is a synonym for ''district court''. A trial judge has no authority to decide whether an appeal under this section may be taken, and a district judge's refusal to sign an application for leave to docket the appeal does not deprive a higher court of jurisdiction. State v. Rubek, 7 Neb. App. 68, 578 N.W.2d 502 (1998).

The purpose of appellate review under this section is to provide an authoritative exposition of the law for use as precedent in similar cases which may be pending or may subsequently arise. State v. Wilen, 4 Neb. App. 132, 539 N.W.2d 650 (1995).

29-2315.02 Error proceedings by county attorney; appointment of counsel for defendant; fee.

If the application be granted, the trial court shall appoint a lawyer to argue the case against the prosecuting attorney, which lawyer shall receive for his services a fee not exceeding two hundred dollars, to be fixed by such court, and to be paid out of the treasury of the county. For such purpose, the court may appoint the defendant's attorney, but if he is not appointed the defendant may in any event appear and participate through an attorney of his own choice.

Source: Laws 1959, c. 121, § 2, p. 454.

Appeal cannot be taken by state from interlocutory ruling of trial court in criminal proceeding. State v. Taylor, 179 Neb. 42, 136 N.W.2d 179 (1965).

29-2316 Error proceedings by prosecuting attorney; decision on appeal; effect.

The judgment of the court in any action taken pursuant to section 29-2315.01 shall not be reversed nor in any manner affected when the defendant in the trial court has been placed legally in jeopardy, but in such cases the decision of the appellate court shall determine the law to govern in any similar case which may be pending at the time the decision is rendered or which may thereafter arise in the state. When the decision of the appellate court establishes that the final order of the trial court was erroneous and the defendant had not been placed legally in jeopardy prior to the entry of such erroneous order, the trial court may upon application of the prosecuting attorney issue its warrant for the rearrest of the defendant and the cause against him or her shall thereupon proceed in accordance with the law as determined by the decision of the appellate court.

Source: G.S.1873, c. 58, § 517, p. 836; R.S.1913, § 9187; C.S.1922, § 10194; C.S.1929, § 29-2316; R.S.1943, § 29-2316; Laws 1959, c. 121, § 3, p. 454; Laws 1991, LB 732, § 81; Laws 1992, LB 360, § 9; Laws 2003, LB 17, § 12.

1. Scope
2. Defendant in jeopardy
3. Miscellaneous

1. Scope

The purpose of an appellate review is to provide an authoritative exposition of the law to serve as precedent in future cases. State v. Falcon, 260 Neb. 119, 615 N.W.2d 436 (2000).

Scope and purpose of review of proceedings hereunder is to provide authoritative exposition of the law as precedent in subsequent cases. State v. Jennings, 195 Neb. 434, 238 N.W.2d 477 (1976).

Scope and purpose of review are to secure authoritative expositions of law to be used as precedent in similar cases. State v. Taylor, 179 Neb. 42, 136 N.W.2d 179 (1965).

Upon reversal of order to quash complaint, further proceedings were authorized. State v. Amick, 173 Neb. 770, 114 N.W.2d 893 (1962).

Function of Supreme Court is to determine law of the case. State v. Luttrell, 159 Neb. 641, 68 N.W.2d 332 (1955).

Judgment under this section cannot reverse or affect judgment of trial court, but is solely to obtain authoritative exposition of the law. State v. McDaniels, 145 Neb. 261, 16 N.W.2d 164 (1944).

Judgment hereunder does not in any manner affect judgment of district court, but merely determines law governing similar cases or those arising in future. State v. Kastle, 120 Neb. 758, 235 N.W. 458 (1931).

2. Defendant in jeopardy

Where defendant's motion for a new trial was overruled and he did not appeal, he has been placed in jeopardy and ruling in error proceedings could not affect him. State v. Weidner, 192 Neb. 161, 219 N.W.2d 742 (1974).

When defendant has been placed in jeopardy, error proceeding by state will not affect the judgment of the trial court. State v. Faircloth, 181 Neb. 333, 148 N.W.2d 187 (1967).

3. Miscellaneous

Remanded for proceedings after district court's ruling on motion to dismiss habitual criminal charges reversed. State v. Nance, 197 Neb. 257, 248 N.W.2d 339 (1976).

Dismissal of complaint on appeal was erroneous, for which judgment was reversed. State v. Ruggiere, 180 Neb. 869, 146 N.W.2d 373 (1966).

Exceptions of state were sustained in case involving jurisdiction over the trial of a youth under eighteen years. State v. McCoy, 145 Neb. 750, 18 N.W.2d 101 (1945).

Exceptions of state were sustained in case involving question of trial without jury by magistrates and police courts of misdemeanors. State v. Kacin, 123 Neb. 64, 241 N.W. 785 (1932).

29-2317 Notice of intent to appeal to district court; procedure.

(1) A prosecuting attorney may take exception to any ruling or decision of the county court made during the prosecution of a cause by presenting to the court a notice of intent to take an appeal to the district court with reference to the rulings or decisions of which complaint is made.

(2) The notice shall contain a copy of the rulings or decisions complained of, the basis and reasons for objection thereto, and a statement by the prosecuting attorney as to the part of the record he or she proposes to present to the district court. The notice shall be presented to the court within twenty days after the final order is entered in the cause. If the court finds it is in conformity with the truth, the judge shall sign it and shall indicate thereon whether, in his or her opinion, the part of the record which the prosecuting attorney proposes to present to the district court is adequate for a proper consideration of the matter.

(3) The prosecuting attorney shall then file the notice in the district court within thirty days from the date of final order and within thirty days from the date of filing the notice shall file a bill of exceptions covering the part of the record referred to in the notice. Such appeal shall be on the record.

Source: Laws 1975, LB 130, § 1; Laws 1984, LB 13, § 70; Laws 1987, LB 33, § 6; Laws 2003, LB 17, § 13.

Cross References

Appeals from county court, see section 25-2728.
Appeals from juvenile court, see section 43-2,106.01.

The district court lacked subject matter jurisdiction and thus properly dismissed the State's appeal of a criminal prosecution brought pursuant to this section, where, before filing notice of its intent to appeal to the district court, the State voluntarily dismissed the case in the county court. State v. Dorcey, 256 Neb. 795, 592 N.W.2d 495 (1999).

Grant of right to prosecuting attorney to appeal a decision of municipal or county court does not repeal by implication the authority of the prosecuting attorney to refile in county court or to file directly in a district court. State v. Rubek, 220 Neb. 537, 371 N.W.2d 537 (1985).

This section provides no means of appeal for a defendant who has previously been placed in jeopardy since a proceeding under this section cannot subsequently affect that defendant's rights. State v. Sports Couriers, Inc., 210 Neb. 168, 313 N.W.2d 447 (1981).

Where a previously announced sentence has been subsequently modified, the prosecuting attorney may appeal. State v. McDermott, 200 Neb. 337, 263 N.W.2d 482 (1978).

Pursuant to subsection (2) of this section, to obtain review of a county court's decision in a criminal case, the State must present both the required notice of appeal and a copy of the ruling complained of to the county court. Failure to include a copy of the ruling or decision complained of is a jurisdictional

defect. State v. Steinbach, 11 Neb. App. 468, 652 N.W.2d 632 (2002).

29-2318 Appeal of ruling or decision; counsel for defendant; appointment; fees.

When a notice is filed, the trial court shall appoint a lawyer to argue the case against the prosecuting attorney, which lawyer shall receive for his or her services a fee not exceeding two hundred dollars to be fixed by the court and to be paid out of the treasury of the county. The court may appoint the defendant's attorney, but if an attorney is not appointed the defendant may be represented by an attorney of his or her choice.

Source: Laws 1975, LB 130, § 2; Laws 1984, LB 13, § 71.

29-2319 Exception proceedings by prosecuting attorney; decision of district court; effect.

(1) The judgment of the court in any action taken under the provisions of sections 29-2317 and 29-2318 shall not be reversed nor in any manner affected when the defendant in the trial court has been placed legally in jeopardy, but in such cases the decision of the district court shall determine the law to govern in any similar case which may be pending at the time the decision is rendered, or which may thereafter arise in the district.

(2) When the decision of the district court establishes that the final order of the trial court was erroneous and that the defendant had not been placed legally in jeopardy prior to the entry of such erroneous order, the trial court may upon application of the prosecuting attorney issue its warrant for the rearrest of the defendant and the cause against the defendant shall thereupon proceed in accordance with the law as determined by the decision of the district court.

(3) The prosecuting attorney may take exception to any ruling or decision of the district court in the manner provided by sections 29-2315.01 to 29-2316.

Source: Laws 1975, LB 130, § 3; Laws 2003, LB 17, § 14.

There is no statutory authorization for a city attorney representing the State to appeal a decision of a district court which reverses the decision of a county court upon appeal by a criminal defendant. State v. Jones, 264 Neb. 812, 652 N.W.2d 288 (2002).

The protections afforded by this section are no greater than or different from the double jeopardy protections afforded by the U.S. and Nebraska Constitutions. State v. Neiss, 260 Neb. 691, 619 N.W.2d 222 (2000).

29-2320 Appeal of sentence by prosecuting attorney; when authorized.

Whenever a defendant is found guilty of a felony following a trial or the entry of a plea of guilty or tendering a plea of nolo contendere, the prosecuting attorney charged with the prosecution of such defendant may appeal the sentence imposed if such attorney reasonably believes, based on all of the facts and circumstances of the particular case, that the sentence is excessively lenient.

Source: Laws 1982, LB 402, § 1; Laws 1991, LB 732, § 82; Laws 2003, LB 17, § 15.

This section does not provide the State with statutory authority to appeal the sentence of a defendant who has been acquitted of the death penalty and sentenced to life imprisonment. State v. Seberger, 257 Neb. 747, 601 N.W.2d 229 (1999).

The protections of the Double Jeopardy Clause of the U.S. Constitution prevent the State from challenging as excessively lenient a life sentence resulting from a first degree murder conviction under the capital sentencing procedure. State v. Rust, 247 Neb. 503, 528 N.W.2d 320 (1995).

When the State appeals and claims that a sentence imposed on a defendant is excessively lenient, the standard of review is whether the sentencing court abused its discretion in the sen-

tence imposed. State v. Wojcik, 238 Neb. 863, 472 N.W.2d 732 (1991); State v. Reynolds, 235 Neb. 662, 457 N.W.2d 405 (1990).

This section is not unconstitutional. State v. Reeves, 234 Neb. 711, 453 N.W.2d 359 (1990).

In State's appeal under this section on a claim that an imposed sentence is excessively lenient, the sentence imposed will be upheld unless the sentencing court abused its discretion concerning the questioned sentence. State v. Stastny, 227 Neb. 748, 419 N.W.2d 873 (1988).

When the State appeals and claims that a sentence imposed on a defendant is excessively lenient, the standard of review is whether the sentencing court abused its discretion in the sentence imposed. State v. Rittenhouse, 1 Neb. App. 633, 510 N.W.2d 336 (1993).

29-2321 Appeal of sentence by prosecuting attorney; procedure.

Appeals under section 29-2320 shall be taken as follows:

(1) Within ten days of the imposition of sentence, the prosecuting attorney shall request the approval of the Attorney General to proceed with such appeal. A copy of such request for approval shall be sent to the defendant or counsel for the defendant;

(2) If the Attorney General approves the request described in subdivision (1) of this section, the prosecuting attorney shall file a notice of appeal indicating such approval in the district court. Such notice of appeal must be filed within twenty days of the imposition of sentence. A copy of the notice of appeal shall be sent to the defendant or counsel for the defendant;

(3) If the Attorney General does not approve the request described in subdivision (1) of this section, an appeal under sections 29-2320 to 29-2325 shall not be permitted; and

(4) In addition to such notice of appeal, the docket fee required by section 33-103 shall be deposited with the clerk of the district court.

Upon compliance with the requirements of this section, the appeal shall proceed as provided by law for appeals to the Court of Appeals.

Source: Laws 1982, LB 402, § 2; Laws 1991, LB 732, § 83; Laws 2003, LB 17, § 16.

29-2322 Appeal of sentence by prosecutor; review; considerations.

If the appeal has been properly filed, as set forth in section 29-2321, the appellate court, upon a review of the record, shall determine whether the sentence imposed is excessively lenient, having regard for:

(1) The nature and circumstances of the offense;

(2) The history and characteristics of the defendant;

(3) The need for the sentence imposed:

(a) To afford adequate deterrence to criminal conduct;

(b) To protect the public from further crimes of the defendant;

(c) To reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; and

(d) To provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner; and

(4) Any other matters appearing in the record which the appellate court deems pertinent.

Source: Laws 1982, LB 402, § 3; Laws 1991, LB 732, § 84.

When determining whether to impose probation, the trial court must consider the factors set forth in section 29-2260. On appeal, an appellate court must likewise consider section 29-2260 in determining whether probation may be imposed, whether reviewing a sentence for excessiveness pursuant to

section 29-2308 or for leniency under this section. Pursuant to subsection (3)(c) of this section, although the seriousness of the crime may weigh in favor of the defendant, it does not, by itself, indicate that probation is inappropriate. State v. Harrison, 255 Neb. 990, 588 N.W.2d 556 (1999).

Sentence of probation for defendant who was convicted of first degree sexual assault of a child was excessively lenient. State v. Hoffman, 246 Neb. 265, 517 N.W.2d 618 (1994).

Following a review of standards set forth in this section, the Supreme Court found the sentence of 5 years' probation for an individual who was convicted of operating a motor vehicle while his license was suspended for life was excessively lenient and remanded the cause for resentencing to a term of imprisonment for 5 years. State v. Foral, 236 Neb. 597, 462 N.W.2d 626 (1990).

A sentence of probation for an individual who was convicted of possession of a deadly combination of illegal drugs with intent to deliver, who has a history of violating probation and disregarding the law, and who continues to deny his guilt is excessively lenient. State v. Winsley, 223 Neb. 788, 393 N.W.2d 723 (1986).

Factors to be considered when the Supreme Court reviews an appeal by a prosecutor are set forth in this section. State v. Dobbins, 221 Neb. 778, 380 N.W.2d 640 (1986).

Based upon consideration of the facts in this case as they relate to the statutory factors to consider pursuant to this section, the sentence imposed upon the defendant by the sentencing court was excessively lenient. State v. Silva, 7 Neb. App. 480, 584 N.W.2d 665 (1998).

Concurrent 5-year terms of probation with 180 days in county jail plus restitution were excessively lenient sentences for defendant convicted of issuing a bad check and two counts of forgery, where defendant had numerous prior felony convictions. State v. Cotton, 2 Neb. App. 901, 519 N.W.2d 1 (1994).

A sentence of 60 days in county jail for one convicted of two counts of felony forgery, where defendant had an extensive criminal record and had failed to take further actions to cure her drug addiction, was excessively lenient. State v. Ummel, 1 Neb. App. 541, 500 N.W.2d 191 (1993).

29-2323 Appeal of sentence by prosecutor; sentencing alternatives.

Upon consideration of the criteria enumerated in section 29-2322, the appellate court shall:

(1) If it determines that the sentence imposed is excessively lenient, set aside the sentence, and:

(a) Remand the case for imposition of a greater sentence;

(b) Remand the case for further sentencing proceedings; or

(c) Impose a greater sentence; or

(2) If it determines that the sentence imposed is not excessively lenient, affirm the sentence.

Source: Laws 1982, LB 402, § 4; Laws 1991, LB 732, § 85.

The Supreme Court has sentencing alternatives upon appeal of a sentence by a prosecutor. State v. Dobbins, 221 Neb. 778, 380 N.W.2d 640 (1986).

29-2324 Appeal of sentence by prosecutor; credit for time served.

If a more severe sentence is imposed by the appellate court or on remand, any time served on the sentence appealed from shall be deemed to have been served on the new sentence imposed under subdivision (1) of section 29-2323.

Source: Laws 1982, LB 402, § 6; Laws 1991, LB 732, § 86.

29-2325 Appeal of sentence by prosecutor; defendant's right to appeal not affected.

Nothing contained in sections 29-2320 to 29-2325 shall affect the right of the defendant to appeal the conviction and sentence, as otherwise provided by law.

Source: Laws 1982, LB 402, § 6.

29-2326 Appeal; no oral argument; when.

There shall be no oral argument in an appeal to the district court in any criminal case where the sole allegation of error is that the sentence imposed was excessive or excessively lenient or the trial court refused to reduce the sentence upon application of the defendant.

Source: Laws 2008, LB1014, § 15.
Operative date January 1, 2009.

ARTICLE 24

EXECUTION OF SENTENCES

Section
29-2401. Execution of sentences; conviction of felony; delivery of prisoner to Department of Correctional Services.
29-2402. Delivery of prisoner to Department of Correctional Services; powers and duties of sheriff.
29-2403. Person sentenced to county jail; commitment procedure.
29-2404. Misdemeanor cases; fines and costs; judgment; levy; commitment.
29-2405. Imprisonment for fine and costs; hard labor.
29-2406. Sentence to cell; execution when no cell in jail.
29-2407. Judgments for fines, costs, and forfeited recognizances; lien; exemptions; duration.
29-2408. Judgments for fines, costs, and forfeited recognizances; execution.
29-2409. Replevy of fine and costs; recognizance; breach; effect.
29-2410. Replevy of fine and costs; effect.
29-2411. Judgments for fines, costs, and forfeited recognizances; execution in other counties.
29-2412. Fine and costs; nonpayment; commutation upon confinement; credit; amount.
29-2413. Judgments for fines and costs; execution in another county or against real estate; filing of transcript in district court.
29-2414. Sentence to hard labor; employment of convicts in jail.
29-2415. Jail convict labor; disposition of proceeds.

29-2401 Execution of sentences; conviction of felony; delivery of prisoner to Department of Correctional Services.

Every person sentenced to the Department of Correctional Services shall, within thirty days, and as early as practicable after his sentence, unless the execution thereof be suspended, be conveyed to the facility designated by the Director of Correctional Services by the sheriff of the county in which the conviction took place, and shall there be delivered into the custody of the division, together with a copy of the sentence of the court ordering such imprisonment, there to be safely kept until the term of his confinement shall have expired, or he shall be pardoned. If the execution of the sentence be suspended and the judgment is afterward affirmed, the defendant shall be conveyed to the facility designated by the director within thirty days after the court shall direct the sentence to be executed.

Source: G.S.1873, c. 58, § 518, p. 836; R.S.1913, § 9188; C.S.1922, § 10195; C.S.1929, § 29-2401; R.S.1943, § 29-2401; Laws 1969, c. 817, § 67, p. 3105.

Absent any contrary evidence, it is presumed, in proceedings under the habitual criminal act, that confinement directions of the statutes were followed. State v. Addison, 197 Neb. 482, 249 N.W.2d 746 (1977).

When after conviction and sentence, defendant who is out on bond exhausts appeal procedures and files motion for post conviction relief without setting up grounds therefor, the district court should direct execution of sentence. State v. Carpenter, 186 Neb. 605, 185 N.W.2d 663 (1971).

In the absence of proof to the contrary, it will be presumed, in proceedings under the habitual criminal law, that commitment was properly carried out by officers. Rains v. State, 142 Neb. 284, 5 N.W.2d 887 (1942).

Penitentiary sentence for less than minimum term prescribed by statute is not void; trial court, after sentence for less than minimum term has been served, was without jurisdiction to vacate it and impose greater penalty. Hickman v. Fenton, 120 Neb. 66, 231 N.W. 510, 70 A.L.R. 819 (1930).

Confinement in penitentiary under void sentence because of failure of accused to procure suspension during pendency of error proceedings is not a part of execution of subsequent legal sentence. McCormick v. State, 71 Neb. 505, 99 N.W. 237 (1904).

Term of imprisonment dates from sentence, not from delivery to warden. In re Fuller, 34 Neb. 581, 52 N.W. 577 (1892).

29-2402 Delivery of prisoner to Department of Correctional Services; powers and duties of sheriff.

The sheriffs of the several counties of this state, during the time they shall be employed in conveying to the Department of Correctional Services any person sentenced to the custody thereof, shall have the same power and authority to secure him in any jail within the state, and to demand the assistance of any sheriff, jailer or other person within this state, in keeping such prisoner, as if the sheriff were in his own proper county; and all such sheriffs, jailers or other persons so called upon shall be liable, on refusal, to the same penalties as if the sheriff making the demand were in his own county.

Source: G.S.1873, c. 58, § 519, p. 836; R.S.1913, § 9189; C.S.1922, § 10196; C.S.1929, § 29-2402; R.S.1943, § 29-2402; Laws 1969, c. 817, § 68, p. 3105.

29-2403 Person sentenced to county jail; commitment procedure.

When any person convicted of an offense is sentenced to imprisonment in the county jail, the court or magistrate shall order the defendant into the custody of the sheriff or other proper officer and shall issue to such officer a warrant of commitment. The officer shall deliver the convict, together with a copy of the warrant, to the jailer, in whose custody he or she shall remain in the jail of the proper county until the term of his or her confinement shall have expired or he or she shall have been pardoned or otherwise legally discharged.

Source: G.S.1873, c. 58, § 520, p. 837; R.S.1913, § 9190; C.S.1922, § 10197; C.S.1929, § 29-2403; R.S.1943, § 29-2403; Laws 1988, LB 1030, § 27.

Sentence does not begin to run until defendant is taken into custody or offers to surrender himself to the custody of proper officer. Riggs v. Sutton, 113 Neb. 556, 203 N.W. 999 (1925).

29-2404 Misdemeanor cases; fines and costs; judgment; levy; commitment.

In all cases of misdemeanor in which courts or magistrates shall have power to fine any offender, and shall render judgment for such fine, it shall be lawful to issue executions for the same, with the costs taxed against the offender, to be levied on the goods and chattels of any such offender, and, for want of the same, upon the body of the offender, who shall thereupon be committed to the jail of the proper county until the fine and costs be paid, or secured to be paid, or the offender be otherwise discharged according to law.

Source: G.S.1873, c. 58, § 521, p. 837; R.S.1913, § 9191; C.S.1922, § 10198; C.S.1929, § 29-2404.

Where defendant was sentenced to pay fine and gave supersedeas bond, he cannot be committed except for want of goods and chattels out of which to meet demands of execution. State v. Swedland, 114 Neb. 280, 207 N.W. 29 (1926).

29-2405 Imprisonment for fine and costs; hard labor.

When the convict is adjudged to be imprisoned for fines or costs, as provided for in section 29-2206, the sentence and execution may require the imprisonment to be at hard labor.

Source: G.S.1873, c. 58, § 522, p. 837; Laws 1875, § 41, p. 18; Laws 1899, c. 109, § 1, p. 365; R.S.1913, § 9192; C.S.1922, § 10199; C.S.1929, § 29-2405.

Cross References

Imprisonment at hard labor, see sections 29-2208, 29-2414, and 29-2415.

29-2406 Sentence to cell; execution when no cell in jail.

Where any jail, in any county in this state, shall not have a cell or dungeon therein, then, and in that case, when the court shall sentence any person or persons to imprisonment in the cell of any jail, under the provisions of this code, the person or persons so sentenced shall be confined in that part of the jail usually allotted to the confinement of criminals, or such convict may be imprisoned as provided in section 29-1001, when there is the necessity thereof mentioned in said section.

Source: G.S.1873, c. 58, § 523, p. 837; R.S.1913, § 9193; C.S.1922, § 10200; C.S.1929, § 29-2406.

29-2407 Judgments for fines, costs, and forfeited recognizances; lien; exemptions; duration.

Judgments for fines and costs in criminal cases shall be a lien upon all the property of the defendant within the county from the time of docketing the case by the clerk of the proper court, and judgments upon forfeited recognizance shall be a like lien from the time of forfeiture. No property of any convict shall be exempt from execution issued upon any such judgment as set out in this section against such convict except in cases when the convict is sentenced to a Department of Correctional Services adult correctional facility for a period of more than two years or to suffer death, in which cases there shall be the same exemptions as at the time may be provided by law for civil cases. The lien on real estate of any such judgment for costs shall terminate as provided in section 25-1716.

Source: G.S.1873, c. 58, § 524, p. 837; R.S.1913, § 9194; C.S.1922, § 10201; C.S.1929, § 29-2407; R.S.1943, § 29-2407; Laws 1974, LB 666, § 2; Laws 1993, LB 31, § 11.

Cross References

Exemptions in civil cases, see section 25-1552 et seq.

Where convict is sentenced to penitentiary for more than two years, he has same exemptions as provided by law in civil cases. Canada v. State, 148 Neb. 115, 26 N.W.2d 509 (1947).

Judgment for fine and costs, where sentence is less than two years in the penitentiary, is lien on homestead of convict. Mancuso v. State, 123 Neb. 204, 242 N.W. 430 (1932).

Lien attaches to real estate owned in county at time of docketing cause, and statute of limitations runs against assignee of such judgment from date of assignment. Predohl v. O'Sullivan, 59 Neb. 311, 80 N.W. 903 (1899).

29-2408 Judgments for fines, costs, and forfeited recognizances; execution.

It shall be the duty of the clerk of the district court to issue execution for every judgment rendered during the term, for fines and forfeited recognizance, and for the costs in such cases, which remain unpaid and unreplevied; and upon like condition each magistrate shall issue execution forthwith for fines and costs assessed by him.

Source: G.S.1873, c. 58, § 525, p. 838; R.S.1913, § 9195; C.S.1922, § 10202; C.S.1929, § 29-2408.

Execution issued by clerk may command commitment to jail for want of goods. Luther v. State, 85 Neb. 674, 124 N.W. 117 (1909).

Police judge has authority to issue execution to collect fine imposed for violation of city ordinance. Cleaver v. Jenkins, 84 Neb. 565, 121 N.W. 992 (1909).

29-2409 Replevy of fine and costs; recognizance; breach; effect.

It shall be lawful for any person or persons convicted of any criminal offense to replevy the judgment for the fine and costs, or the costs only when no fine

shall be imposed, by such convicted person or persons, with one or more good and sufficient freeholders, entering into a recognizance before the court or magistrate, to the people of this state, for the payment of such fine and costs, or costs only, within five months from the date of the acknowledgment; which recognizance so taken is hereby declared valid in law, and to create a lien on the real estate of all such persons as shall acknowledge the same. Upon the breach thereof, execution shall be issued against the goods and chattels, lands and tenements of the persons who entered into the recognizance, in the same manner as if it had been a judgment, which execution shall be collected in the same manner as is prescribed in section 29-2408. No scire facias shall be necessary previous to issuing such execution.

Source: G.S.1873, c. 58, § 526, p. 838; R.S.1913, § 9196; C.S.1922, § 10203; C.S.1929, § 29-2409.

29-2410 Replevy of fine and costs; effect.

In all cases where the person or persons, convicted as aforesaid, shall replevy the fine and costs, as is provided in the section 29-2409, no execution shall issue for such fine and costs as prescribed in the section 29-2408, and further, such person or persons, after replevying the fine and costs as aforesaid, shall not be imprisoned for such fine and costs, but such person or persons shall be wholly discharged from any imprisonment in consequence of any conviction, unless where imprisonment is by this code made a part of the punishment. In that case such convicted person or persons shall be discharged from his, her or their imprisonment at the expiration thereof, if he, she or they have replevied the fine and costs as aforesaid.

Source: G.S.1873, c. 58, § 527, p. 838; R.S.1913, § 9197; C.S.1922, § 10204; C.S.1929, § 29-2410.

29-2411 Judgments for fines, costs, and forfeited recognizances; execution in other counties.

Executions for fines and costs of prosecution, and on recognizances taken in pursuance of section 29-2409, may be issued into any county in this state.

Source: G.S.1873, c. 58, § 527, p. 838; R.S.1913, § 9198; C.S.1922, § 10205; C.S.1929, § 29-2411.

29-2412 Fine and costs; nonpayment; commutation upon confinement; credit; amount.

Whenever it is made satisfactorily to appear to the district court, or to the county judge of the proper county, after all legal means have been exhausted, that any person who is subject to being or is confined in jail for any fine or costs of prosecution for any criminal offense has no estate with which to pay such fine or costs, it shall be the duty of such court or judge, on his or her own motion or upon the motion of the person so confined, to discharge such person from further imprisonment for such fine or costs, which discharge shall operate as a complete release of such fine or costs. Nothing in this section shall authorize any person to be discharged from imprisonment before the expiration of the time for which he or she may be sentenced to be imprisoned, as part of his or her punishment, or when such person shall default on a payment due pursuant to an installment agreement arranged by the court. Any person held in custody for nonpayment of a fine or costs or for default on an installment shall

be entitled to a credit on the fine, costs, or installment of sixty dollars for each day so held. In no case shall a person held in custody for nonpayment of a fine or costs be held in such custody for more days than the maximum number to which he or she could have been sentenced if the penalty set by law includes the possibility of confinement.

Source: G.S.1873, c. 58, § 528, p. 838; R.S.1913, § 9199; C.S.1922, § 10206; C.S.1929, § 29-2412; R.S.1943, § 29-2412; Laws 1959, c. 122, § 2, p. 455; Laws 1979, LB 111, § 2; Laws 1986, LB 528, § 5; Laws 1988, LB 370, § 7.

An indigent may not be required to satisfy a fine by imprisonment. The court cannot require that a fine be satisfied by applying jail time served without giving defendant an opportunity to pay the fine or show indigency. State v. Holloway, 212 Neb. 426, 322 N.W.2d 818 (1982).

Sentence by county court that defendant was "fined sixty days in county jail" was inaccurate and was reversed with directions to resentence. Sinner v. State, 128 Neb. 759, 260 N.W. 275 (1935).

Issuance of execution to collect fine is not prerequisite to imprisonment until fine is paid. State ex rel. Marasco v. Mundell, 127 Neb. 673, 256 N.W. 519 (1934).

Prisoner, confined for nonpayment of costs, can be released only after imprisonment of at least one day for each three dollars. In re Newton, 39 Neb. 757, 58 N.W. 436 (1894); In re Dobson, 37 Neb. 449, 55 N.W. 1071 (1893).

29-2413 Judgments for fines and costs; execution in another county or against real estate; filing of transcript in district court.

In every case, whenever it is desirable to obtain execution to be issued to another county, or against the lands or real estate of any person against whom a judgment for fine or costs has been rendered by a magistrate, the magistrate may file with the clerk of the district court of the county wherein such magistrate holds his office, a transcript of the judgment and proceedings in the cause, whereupon such clerk shall enter the cause upon the proper docket for execution to be forthwith issued thereon by such clerk, and served in all respects as though the judgment had been rendered in the district court of such county.

Source: G.S.1873, c. 58, § 529, p. 839; R.S.1913, § 9200; C.S.1922, § 10207; C.S.1929, § 29-2413.

29-2414 Sentence to hard labor; employment of convicts in jail.

For the purpose of enabling the county board of any county in this state to employ in a profitable manner all persons who have heretofore been or may hereafter be sentenced to hard labor in the jail of the county, the board, or a majority of them, shall have power to designate the place where the persons so sentenced shall work, and to make all proper and needful regulations and provisions for the profitable employment of such convicts, and for their safe custody during such employment. The county jail is hereby declared to extend to any stone quarry, road or other place that shall be designated by the county board for the employment of such convicts.

Source: G.S.1873, c. 58, § 531, p. 839; R.S.1913, § 9202; C.S.1922, § 10209; C.S.1929, § 29-2414.

29-2415 Jail convict labor; disposition of proceeds.

It shall be the duty of the county board to make the contracts for the employment of convicts as specified in section 29-2414, and the sheriff of the county, or such other person as may be charged with the administrative direction of the jail, shall collect the proceeds of all such labor, and after paying

the board of such convicts and the expenses incident to such labor, to pay the balance to the county treasurer within ten days.

Source: G.S.1873, c. 58, § 532, p. 839; R.S.1913, § 9202; C.S.1922, § 10209; C.S.1929, § 29-2415; R.S.1943, § 29-2415; Laws 1984, LB 394, § 8.

ARTICLE 25

SPECIAL PROCEDURE IN CASES OF HOMICIDE

Section

29-2501. Repealed. Laws 1973, LB 146, § 6.
29-2502. Repealed. Laws 1973, LB 146, § 6.
29-2503. Repealed. Laws 1973, LB 146, § 6.
29-2504. Repealed. Laws 1973, LB 146, § 6.
29-2505. Repealed. Laws 1973, LB 146, § 6.
29-2506. Repealed. Laws 1973, LB 146, § 6.
29-2507. Repealed. Laws 1973, LB 146, § 6.
29-2508. Repealed. Laws 1973, LB 146, § 6.
29-2509. Repealed. Laws 1973, LB 146, § 6.
29-2510. Repealed. Laws 1973, LB 146, § 6.
29-2511. Repealed. Laws 1973, LB 146, § 6.
29-2512. Repealed. Laws 1973, LB 146, § 6.
29-2513. Repealed. Laws 1973, LB 146, § 6.
29-2514. Repealed. Laws 1973, LB 146, § 6.
29-2514.01. Repealed. Laws 1973, LB 146, § 6.
29-2515. Repealed. Laws 1973, LB 146, § 6.
29-2516. Repealed. Laws 1973, LB 146, § 6.
29-2517. Repealed. Laws 1973, LB 146, § 6.
29-2518. Repealed. Laws 1973, LB 146, § 6.
29-2519. Statement of intent.
29-2520. Aggravation hearing; procedure.
29-2521. Sentencing determination proceeding.
29-2521.01. Legislative findings.
29-2521.02. Criminal homicide cases; review and analysis by Supreme Court; manner; judicial notice.
29-2521.03. Criminal homicide cases; appeal; sentence; Supreme Court review.
29-2521.04. Criminal homicide cases; Supreme Court review and analyze; district court; provide records.
29-2521.05. Aggravating circumstances; interlocutory appeal prohibited.
29-2522. Sentence; considerations; determination; contents.
29-2523. Aggravating and mitigating circumstances.
29-2524. Sections; how construed.
29-2524.01. Criminal homicide; report filed by county attorney; contents; time of filing.
29-2524.02. State Court Administrator; criminal homicide report; provide forms.
29-2525. Capital punishment cases; appeal; procedure; expedited opinion.
29-2526. Repealed. Laws 1982, LB 722, § 13.
29-2527. Briefs; payment for printing by county.
29-2528. Death penalty cases; Supreme Court; orders.
29-2529. Repealed. Laws 1985, LB 41, § l.
29-2530. Repealed. Laws 1985, LB 41, § l.
29-2531. Repealed. Laws 1985, LB 41, § l.
29-2532. Mode of inflicting punishment for death.
29-2533. Punishment inflicted; exclude view of persons; exception.
29-2534. Execution; persons permitted.
29-2535. Warden; military force necessary to carry out punishment; inform Governor.
29-2536. Warden; inflict punishment; return of proceedings; clerk of court; duty.

Section
29-2537. Convict; appears to be mentally incompetent; notice to judge; suspend sentence; commission appointed; findings; suspension of execution; when.
29-2538. Suspension of execution pending investigation; convict found sane; judge; appoint a day of execution.
29-2539. Commission members; mileage; payment.
29-2540. Female convict; pregnant; warden notify judge; procedures.
29-2541. Female convict; finding convict is pregnant; judge; duties; costs.
29-2542. Escaped convict; return; notify Governor; fix time of execution.
29-2543. Person convicted of crime punishable by death; clerk of court; warrant; remove convicted person to Department of Correctional Services adult correctional facility.
29-2544. Warden; duty.
29-2545. Court; day certain for execution; notice to warden; duties.
29-2546. Reversal of judgment of conviction; warden deliver convict to custody of sheriff; await further judgment and order of court.

29-2501 Repealed. Laws 1973, LB 146, § 6.

29-2502 Repealed. Laws 1973, LB 146, § 6.

29-2503 Repealed. Laws 1973, LB 146, § 6.

29-2504 Repealed. Laws 1973, LB 146, § 6.

29-2505 Repealed. Laws 1973, LB 146, § 6.

29-2506 Repealed. Laws 1973, LB 146, § 6.

29-2507 Repealed. Laws 1973, LB 146, § 6.

29-2508 Repealed. Laws 1973, LB 146, § 6.

29-2509 Repealed. Laws 1973, LB 146, § 6.

29-2510 Repealed. Laws 1973, LB 146, § 6.

29-2511 Repealed. Laws 1973, LB 146, § 6.

29-2512 Repealed. Laws 1973, LB 146, § 6.

29-2513 Repealed. Laws 1973, LB 146, § 6.

29-2514 Repealed. Laws 1973, LB 146, § 6.

29-2514.01 Repealed. Laws 1973, LB 146, § 6.

29-2515 Repealed. Laws 1973, LB 146, § 6.

29-2516 Repealed. Laws 1973, LB 146, § 6.

29-2517 Repealed. Laws 1973, LB 146, § 6.

29-2518 Repealed. Laws 1973, LB 146, § 6.

29-2519 Statement of intent.

(1) The Legislature hereby finds that it is reasonable and necessary to establish mandatory standards for the imposition of the sentence of death; that the imposition of the death penalty in every instance of the commission of the

crimes specified in section 28-303 fails to allow for mitigating factors which may dictate against the penalty of death; and that the rational imposition of the death sentence requires the establishment of specific legislative guidelines to be applied in individual cases by the court. The Legislature therefor determines that the death penalty should be imposed only for the crimes set forth in section 28-303 and, in addition, that it shall only be imposed in those instances when the aggravating circumstances existing in connection with the crime outweigh the mitigating circumstances, as set forth in sections 29-2520 to 29-2524.

(2) The Legislature hereby finds and declares that:

(a) The decision of the United States Supreme Court in Ring v. Arizona (2002) requires that Nebraska revise its sentencing process in order to ensure that rights of persons accused of murder in the first degree, as required under the Sixth and Fourteenth Amendments of the United States Constitution, are protected;

(b) The changes made by Laws 2002, LB 1, Ninety-seventh Legislature, Third Special Session, are intended to be procedural only in nature and ameliorative of the state's prior procedures for determination of aggravating circumstances in the sentencing process for murder in the first degree;

(c) The changes made by Laws 2002, LB 1, Ninety-seventh Legislature, Third Special Session, are not intended to alter the substantive provisions of sections 28-303 and 29-2520 to 29-2524;

(d) The aggravating circumstances defined in section 29-2523 have been determined by the United States Supreme Court to be ''functional equivalents of elements of a greater offense'' for purposes of the defendant's Sixth Amendment right, as applied to the states under the Fourteenth Amendment, to a jury determination of such aggravating circumstances, but the aggravating circumstances are not intended to constitute elements of the crime generally unless subsequently so required by the state or federal constitution; and

(e) To the extent that such can be applied in accordance with state and federal constitutional requirements, it is the intent of the Legislature that the changes to the murder in the first degree sentencing process made by Laws 2002, LB 1, Ninety-seventh Legislature, Third Special Session, shall apply to any murder in the first degree sentencing proceeding commencing on or after November 23, 2002.

Source: Laws 1973, LB 268, § 1; Laws 1978, LB 748, § 21; Laws 2002, Third Spec. Sess., LB 1, § 10.

The state's Special Procedure in Cases of Homicide statutes, sections 29-2519 to 29-2546, create a two-tier sentencing process and differentiate between the role performed by the district court judge or a three-judge district court panel in sentencing as compared to the role of the Supreme Court in reviewing that sentence. The statutes are specific regarding the sentencing procedures, and nowhere do they give the Supreme Court authority to resentence when it has found error on the part of the sentencing court that is not minor and not harmless. State v. Reeves, 258 Neb. 511, 604 N.W.2d 151 (2000).

There is no conflict between this section and section 29-2522. Only section 29-2522 details the standards which govern the imposition of the death penalty. State v. Moore, 250 Neb. 805, 553 N.W.2d 120 (1996).

The Supreme Court is required, before imposing the death sentence, to not only consider the presence or absence of aggravating and mitigating circumstances but also to review death sentences and determine whether the sentence of death is excessive or disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant. State v. Reeves, 216 Neb. 206, 344 N.W.2d 433 (1984).

A finding that an aggravating circumstance exists is of importance only where the death sentence has been imposed. State v. Lamb, 213 Neb. 498, 330 N.W.2d 462 (1983).

Court refuses to reconsider constitutionality of death sentence statutes. State v. Harper, 208 Neb. 568, 304 N.W.2d 663 (1981).

The Nebraska death penalty statutes, sections 29-2519 to 29-2546, do not constitute cruel and unusual punishment and are not in violation of the Sixth, Eighth, and Fourteenth Amendments to the Constitution of the United States or the Bill of Rights of the Constitution of Nebraska. State v. Simants, 197 Neb. 549, 250 N.W.2d 881 (1977); State v. Rust, 197 Neb. 528, 250 N.W.2d 867 (1977); State v. Stewart, 197 Neb. 497, 250 N.W.2d 849 (1977).

29-2520 Aggravation hearing; procedure.

(1) Whenever any person is found guilty of a violation of section 28-303 and the information contains a notice of aggravation as provided in section 29-1603, the district court shall, as soon as practicable, fix a date for an aggravation hearing to determine the alleged aggravating circumstances. If no notice of aggravation has been filed, the district court shall enter a sentence of life imprisonment without parole.

(2) Unless the defendant waives his or her right to a jury determination of the alleged aggravating circumstances, such determination shall be made by:

(a) The jury which determined the defendant's guilt; or

(b) A jury impaneled for purposes of the determination of the alleged aggravating circumstances if:

(i) The defendant waived his or her right to a jury at the trial of guilt and either was convicted before a judge or was convicted on a plea of guilty or nolo contendere; or

(ii) The jury which determined the defendant's guilt has been discharged.

A jury required by subdivision (2)(b) of this section shall be impaneled in the manner provided in sections 29-2004 to 29-2010.

(3) The defendant may waive his or her right to a jury determination of the alleged aggravating circumstances. The court shall accept the waiver after determining that it is made freely, voluntarily, and knowingly. If the defendant waives his or her right to a jury determination of the alleged aggravating circumstances, such determination shall be made by a panel of judges as a part of the sentencing determination proceeding as provided in section 29-2521.

(4)(a) At an aggravation hearing before a jury for the determination of the alleged aggravating circumstances, the state may present evidence as to the existence of the aggravating circumstances alleged in the information. The Nebraska Evidence Rules shall apply at the aggravation hearing.

(b) Alternate jurors who would otherwise be discharged upon final submission of the cause to the jury shall be retained during the deliberation of the defendant's guilt but shall not participate in such deliberations. Such alternate jurors shall serve during the aggravation hearing as provided in section 29-2004 but shall not participate in the jury's deliberations under this subsection.

(c) If the jury serving at the aggravation hearing is the jury which determined the defendant's guilt, the jury may consider evidence received at the trial of guilt for purposes of reaching its verdict as to the existence or nonexistence of aggravating circumstances in addition to the evidence received at the aggravation hearing.

(d) After the presentation and receipt of evidence at the aggravation hearing, the state and the defendant or his or her counsel may present arguments before the jury as to the existence or nonexistence of the alleged aggravating circumstances.

(e) The court shall instruct the members of the jury as to their duty as jurors, the definitions of the aggravating circumstances alleged in the information, and the state's burden to prove the existence of each aggravating circumstance alleged in the information beyond a reasonable doubt.

(f) The jury at the aggravation hearing shall deliberate and return a verdict as to the existence or nonexistence of each alleged aggravating circumstance. Each aggravating circumstance shall be proved beyond a reasonable doubt. Each verdict with respect to each alleged aggravating circumstance shall be unanimous. If the jury is unable to reach a unanimous verdict with respect to an aggravating circumstance, such aggravating circumstance shall not be weighed in the sentencing determination proceeding as provided in section 29-2521.

(g) Upon rendering its verdict as to the determination of the aggravating circumstances, the jury shall be discharged.

(h) If no aggravating circumstance is found to exist, the court shall enter a sentence of life imprisonment without parole. If one or more aggravating circumstances are found to exist, the court shall convene a panel of three judges to hold a hearing to receive evidence of mitigation and sentence excessiveness or disproportionality as provided in subsection (3) of section 29-2521.

Source: Laws 1973, LB 268, § 5; Laws 1978, LB 748, § 22; Laws 2002, Third Spec. Sess., LB 1, § 11.

1. Aggravating or mitigating circumstances
2. Miscellaneous

1. Aggravating or mitigating circumstances

A change in the law providing that the existence of aggravating circumstances is to be determined by a jury unless waived by the defendant is procedural in nature. State v. Gales, 265 Neb. 598, 658 N.W.2d 604 (2003).

A person convicted of first degree murder in Nebraska is not eligible for the death penalty unless the State proves one or more of the statutory aggravators beyond a reasonable doubt. State v. Gales, 265 Neb. 598, 658 N.W.2d 604 (2003).

The requirement that a notice of aggravators be filed prior to trial is not applicable to cases in which the pretrial and trial litigation steps have already been completed. State v. Gales, 265 Neb. 598, 658 N.W.2d 604 (2003).

2. Miscellaneous

The Legislature lacked constitutional authority to amend the language of the statutory penalty for a Class IA felony by inserting the phrase ''without parole'' after ''life imprisonment'' during the 2002 special session. State v. Conover, 270 Neb. 446, 703 N.W.2d 898 (2005).

A three-judge panel designated under subsection (3) of this section must vote unanimously for a sentence of death before the death penalty can be properly imposed. State v. Hochstein and Anderson, 262 Neb. 311, 632 N.W.2d 273 (2001).

This section grants the trial judge discretion to conduct the sentencing with or without the assistance of two additional judges, and a defendant's request for a three-judge panel does not make such a panel mandatory. The sentencing procedure provided by this section provides appropriate standards for impaneling a three-judge panel. State v. Bjorklund, 258 Neb. 432, 604 N.W.2d 169 (2000).

This section does not violate the U.S. or Nebraska Constitution, and the decision whether to convene a three-judge panel under the statute is left to the discretion of the trial court. State v. Ryan, 233 Neb. 74, 444 N.W.2d 610 (1989).

In Nebraska, the judge rather than the jury is responsible for sentencing upon conviction in a capital case. State v. Burchett, 224 Neb. 444, 399 N.W.2d 258 (1986).

District court's failure to set hearing date on sentencing within statutory limit is not a ground for reversal where the error does not result in some demonstrative prejudice. State v. Benzel, 220 Neb. 466, 370 N.W.2d 501 (1985).

District court shall set date for hearing on determination of sentence within seven days of defendant's conviction of murder. State v. Rust, 197 Neb. 528, 250 N.W.2d 867 (1977); State v. Stewart, 197 Neb. 497, 250 N.W.2d 849 (1977).

29-2521 Sentencing determination proceeding.

(1) When a person has been found guilty of murder in the first degree and (a) a jury renders a verdict finding the existence of one or more aggravating circumstances as provided in section 29-2520 or (b)(i) the information contains a notice of aggravation as provided in section 29-1603 and (ii) such person waives his or her right to a jury determination of the alleged aggravating circumstances, the sentence of such person shall be determined by:

(a) A panel of three judges, including the judge who presided at the trial of guilt or who accepted the plea and two additional active district court judges named at random by the Chief Justice of the Supreme Court. The judge who presided at the trial of guilt or who accepted the plea shall act as the presiding judge for the sentencing determination proceeding under this section; or

(b) If the Chief Justice of the Supreme Court has determined that the judge who presided at the trial of guilt or who accepted the plea is disabled or disqualified after receiving a suggestion of such disability or disqualification from the clerk of the court in which the finding of guilty was entered, a panel of three active district court judges named at random by the Chief Justice of the Supreme Court. The Chief Justice of the Supreme Court shall name one member of the panel at random to act as the presiding judge for the sentencing determination proceeding under this section.

(2) In the sentencing determination proceeding before a panel of judges when the right to a jury determination of the alleged aggravating circumstances has been waived, the panel shall, as soon as practicable after receipt of the written report resulting from the presentence investigation ordered as provided in section 29-2261, hold a hearing. At such hearing, evidence may be presented as to any matter that the presiding judge deems relevant to sentence and shall include matters relating to the aggravating circumstances alleged in the information, to any of the mitigating circumstances set forth in section 29-2523, and to sentence excessiveness or disproportionality. The Nebraska Evidence Rules shall apply to evidence relating to aggravating circumstances. Each aggravating circumstance shall be proved beyond a reasonable doubt. Any evidence at the sentencing determination proceeding which the presiding judge deems to have probative value may be received. The state and the defendant or his or her counsel shall be permitted to present argument for or against sentence of death. The presiding judge shall set forth the general order of procedure at the outset of the sentencing determination proceeding. The panel shall make written findings of fact based upon the trial of guilt and the sentencing determination proceeding, identifying which, if any, of the alleged aggravating circumstances have been proven to exist beyond a reasonable doubt. Each finding of fact with respect to each alleged aggravating circumstance shall be unanimous. If the panel is unable to reach a unanimous finding of fact with respect to an aggravating circumstance, such aggravating circumstance shall not be weighed in the sentencing determination proceeding. After the presentation and receipt of evidence and argument, the panel shall determine an appropriate sentence as provided in section 29-2522.

(3) When a jury renders a verdict finding the existence of one or more aggravating circumstances as provided in section 29-2520, the panel of judges shall, as soon as practicable after receipt of the written report resulting from the presentence investigation ordered as provided in section 29-2261, hold a hearing to receive evidence of mitigation and sentence excessiveness or disproportionality. Evidence may be presented as to any matter that the presiding judge deems relevant to (a) mitigation, including, but not limited to, the mitigating circumstances set forth in section 29-2523, and (b) sentence excessiveness or disproportionality as provided in subdivision (3) of section 29-2522. Any such evidence which the presiding judge deems to have probative value may be received. The state and the defendant and his or her counsel shall be permitted to present argument for or against sentence of death. The presiding judge shall set forth the general order of procedure at the outset of the sentencing determination proceeding. After the presentation and receipt of evidence and argument, the panel shall determine an appropriate sentence as provided in section 29-2522.

Source: Laws 1973, LB 268, § 6; Laws 2002, Third Spec. Sess., LB 1, § 12.

A change in the law providing that the existence of aggravating circumstances is to be determined by a jury unless waived by the defendant is procedural in nature. State v. Gales, 265 Neb. 598, 658 N.W.2d 604 (2003).

A person convicted of first degree murder in Nebraska is not eligible for the death penalty unless the State proves one or more of the statutory aggravators beyond a reasonable doubt. State v. Gales, 265 Neb. 598, 658 N.W.2d 604 (2003).

This section applies equally to every court in the class to which it is intended to apply, and thus, it does not violate Neb. Const. art. V, section 19. State v. Lotter, 255 Neb. 456, 586 N.W.2d 591 (1998).

A sentencing court may consider information adduced at trial to support findings of aggravating and mitigating circumstances when exercising discretion in imposing sentence. State v. Ryan, 233 Neb. 74, 444 N.W.2d 610 (1989).

The sentencing court has broad discretion as to the source and type of evidence or information which may be used as assistance in determining the kind and extent of the punishment to be imposed. State v. Reeves, 216 Neb. 206, 344 N.W.2d 433 (1984).

Hearing on determination of sentence shall include written findings, proven beyond a reasonable doubt, identifying any aggravating and mitigating circumstances or other relevant facts. State v. Simants, 197 Neb. 549, 250 N.W.2d 881 (1977); State v. Rust, 197 Neb. 528, 250 N.W.2d 867 (1977); State v. Stewart, 197 Neb. 497, 250 N.W.2d 849 (1977).

29-2521.01 Legislative findings.

The Legislature hereby finds that:

(1) Life is the most valuable possession of a human being, and before taking it, the state should apply and follow the most scrupulous standards of fairness and uniformity;

(2) The death penalty, because of its enormity and finality, should never be imposed arbitrarily nor as a result of local prejudice or public hysteria;

(3) State law should be applied uniformly throughout the state and since the death penalty is a statewide law an offense which would not result in a death sentence in one portion of the state should not result in death in a different portion;

(4) Charges resulting from the same or similar circumstances have, in the past, not been uniform and have produced radically differing results; and

(5) In order to compensate for the lack of uniformity in charges which are filed as a result of similar circumstances it is necessary for the Supreme Court to review and analyze all criminal homicides committed under the existing law in order to insure that each case produces a result similar to that arrived at in other cases with the same or similar circumstances.

Source: Laws 1978, LB 711, § 1.

The proportionality review made under the requirements of this section and sections 29-2521.02 and 29-2521.03 is limited to a comparison of the facts and circumstances of the death penalty-imposed case under review with those of all applicable cases in which the death penalty was imposed. State v. Joubert, 224 Neb. 411, 399 N.W.2d 237 (1986).

Supreme Court's review includes only those cases in which the death penalty was imposed. State v. Palmer, 224 Neb. 282, 399 N.W.2d 706 (1986).

A literal interpretation of this section would unconstitutionally encroach upon the judicial function. This section will be restricted in application to a review of cases in which the defendant in the district court was convicted of murder in the first degree. State v. Moore, 210 Neb. 457, 316 N.W.2d 33 (1982).

In sentencing for a felony not involving the death penalty, there is no requirement that the judge conduct a case-by-case review of similar sentencings in that jurisdiction. State v. Glover, 207 Neb. 487, 299 N.W.2d 445 (1980).

Sections 29-2521.01, 29-2521.02, and 29-2521.03 only require the Supreme Court to review cases involving criminal homicides committed on or after April 20, 1973, in which the trial court has imposed a sentence of death. State v. Williams, 205 Neb. 56, 287 N.W.2d 18 (1979).

In adopting sections 29-2521.01 to 29-2522, the Legislature intended to establish a procedure whereby the death penalty would be applied uniformly throughout the state. The procedure does not come into play where the death penalty is not imposed. State v. Welsh, 202 Neb. 249, 275 N.W.2d 54 (1979).

29-2521.02 Criminal homicide cases; review and analysis by Supreme Court; manner; judicial notice.

(1) The Supreme Court shall within a reasonable time after July 22, 1978, review and analyze all cases involving criminal homicide committed on or after April 20, 1973. Such review and analysis shall examine (a) the facts including mitigating and aggravating circumstances, (b) the charges filed, (c) the crime for which defendant was convicted, and (d) the sentence imposed. Such review shall be updated as new criminal homicide cases occur.

(2) Following the transmittal of a report of the Nebraska Commission on Law Enforcement and Criminal Justice pursuant to subdivision (7) of section 81-1425 and subsequent reports updating such report, the Supreme Court may take judicial notice of such reports in undertaking the determinations required by sections 29-2521.01 to 29-2521.04.

Source: Laws 1978, LB 711, § 2; Laws 2000, LB 1008, § 2.

The proportionality review made under the requirements of this section and sections 29-2521.01 and 29-2521.03 is limited to a comparison of the facts and circumstances of the death penalty-imposed case under review with those of all applicable cases in which the death penalty was imposed. State v. Joubert, 224 Neb. 411, 399 N.W.2d 237 (1986).

Supreme Court's review includes only those cases in which the death penalty was imposed. State v. Palmer, 224 Neb. 282, 399 N.W.2d 706 (1986).

A literal interpretation of this section would unconstitutionally encroach upon the judicial function. This section will be restricted in application to a review of cases in which the defendant in the district court was convicted of murder in the first degree. State v. Moore, 210 Neb. 457, 316 N.W.2d 33 (1982).

Sections 29-2521.01 to 29-2521.03 require the Supreme Court to review cases involving criminal homicides committed on or after April 20, 1973, in which the trial court has imposed a sentence of death. State v. Williams, 205 Neb. 56, 287 N.W.2d 18 (1979).

In adopting sections 29-2521.01 to 29-2522, the Legislature intended to establish a procedure whereby the death penalty would be applied uniformly throughout the state. The procedure does not come into play where the death penalty is not imposed. State v. Welsh, 202 Neb. 249, 275 N.W.2d 54 (1979).

29-2521.03 Criminal homicide cases; appeal; sentence; Supreme Court review.

The Supreme Court shall, upon appeal, determine the propriety of the sentence in each case involving a criminal homicide by comparing such case with previous cases involving the same or similar circumstances. No sentence imposed shall be greater than those imposed in other cases with the same or similar circumstances. The Supreme Court may reduce any sentence which it finds not to be consistent with sections 29-2521.01 to 29-2521.04, 29-2522, and 29-2524.

Source: Laws 1978, LB 711, § 3.

A proportionality review under this section looks only to other cases in which the death penalty has been imposed. State v. Bjorklund, 258 Neb. 432, 604 N.W.2d 169 (2000).

The purpose of this section is to ensure that no sentence imposed shall be greater than those imposed in other cases with the same or similar circumstances, and review includes only those cases in which the death penalty was imposed. State v. Victor, 235 Neb. 770, 457 N.W.2d 431 (1990).

This section requires the Supreme Court to determine the propriety of the death sentence in a case in which it has been imposed by comparing the sentence with previous cases involving the same or similar circumstances. The proportionality review made under the requirements of this section and sections 29-2521.01 and 29-2521.02 is limited to a comparison of the facts and circumstances of the death penalty-imposed case under review with those of all applicable cases in which the death penalty was imposed. State v. Joubert, 224 Neb. 411, 399 N.W.2d 237 (1986).

Supreme Court's review includes only those cases in which the death penalty was imposed. State v. Palmer, 224 Neb. 282, 399 N.W.2d 706 (1986).

Statute does not apply to death sentences imposed before April 20, 1973. State v. Peery, 223 Neb. 556, 391 N.W.2d 566 (1986).

The comparative review required by this section does not apply to a death sentence which was imposed and became final prior to the effective date of the statute. State v. Rust, 223 Neb. 150, 388 N.W.2d 483 (1986).

The Supreme Court's review and analysis shall include all first degree murder convictions for offenses committed on or after April 20, 1973, including cases presently pending in this court on appeal. State v. Reeves, 216 Neb. 206, 344 N.W.2d 433 (1984).

Sections 29-2521.01 to 29-2521.03 require the Supreme Court to review cases involving criminal homicides committed on or after April 20, 1973, in which the trial court has imposed a sentence of death. State v. Williams, 205 Neb. 56, 287 N.W.2d 18 (1979).

In adopting sections 29-2521.01 to 29-2522, the Legislature intended to establish a procedure whereby the death penalty would be applied uniformly throughout the state. The procedure does not come into play where the death penalty is not imposed. State v. Welsh, 202 Neb. 249, 275 N.W.2d 54 (1979).

29-2521.04 Criminal homicide cases; Supreme Court review and analyze; district court; provide records.

Each district court shall provide all records required by the Supreme Court in order to conduct its review and analysis pursuant to sections 29-2521.01 to 29-2522 and 29-2524.

Source: Laws 1978, LB 711, § 4.

An appeal pursuant to section 29-2525 does not place the burden of creating the record upon either party to the appeal. Instead, pursuant to this section, the district court must provide all records required by the Nebraska Supreme Court in order to conduct its review and analysis. State v. Dunster, 262 Neb. 329, 631 N.W.2d 879 (2001).

In adopting sections 29-2521.01 to 29-2522, the Legislature intended to establish a procedure whereby the death penalty would be applied uniformly throughout the state. The procedure does not come into play where the death penalty is not imposed. State v. Welsh, 202 Neb. 249, 275 N.W.2d 54 (1979).

29-2521.05 Aggravating circumstances; interlocutory appeal prohibited.

The verdict of a jury as to the existence or nonexistence of the alleged aggravating circumstances or, when the right to a jury determination of the alleged aggravating circumstances has been waived, the determination of a panel of judges with respect thereto, shall not be an appealable order or judgment of the district court, and no appeal may be taken directly from such verdict or determination.

Source: Laws 2002, Third Spec. Sess., LB 1, § 13.

29-2522 Sentence; considerations; determination; contents.

The panel of judges for the sentencing determination proceeding shall either unanimously fix the sentence at death or, if the sentence of death was not unanimously agreed upon by the panel, fix the sentence at life imprisonment without parole. Such sentence determination shall be based upon the following considerations:

(1) Whether the aggravating circumstances as determined to exist justify imposition of a sentence of death;

(2) Whether sufficient mitigating circumstances exist which approach or exceed the weight given to the aggravating circumstances; or

(3) Whether the sentence of death is excessive or disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant.

In each case, the determination of the panel of judges shall be in writing and refer to the aggravating and mitigating circumstances weighed in the determination of the panel.

If an order is entered sentencing the defendant to death, a date for execution shall not be fixed until after the conclusion of the appeal provided for by section 29-2525.

Source: Laws 1973, LB 268, § 7; Laws 1978, LB 711, § 5; Laws 1982, LB 722, § 10; Laws 2002, Third Spec. Sess., LB 1, § 14.

1. Particular cases
2. Miscellaneous

1. Particular cases

Nebraska is a ''weighing'' state, in which a single judge or three-judge panel determines the aggravating and mitigating circumstances and decides whether to impose the death penalty by determining whether the aggravating circumstances outweigh the mitigating circumstances. In Nebraska, when an appellate court invalidates one or more of the aggravating circumstances found by the trial court, or finds as a matter of law that any mitigating circumstance exists not considered by the sentencing panel in its balancing, the appellate court may, consistent with the U.S. Constitution, reweigh the remaining circumstances or conduct a harmless error analysis. The Supreme Court's independent review of a death sentence where the trial court erred in its findings regarding aggravating or mitigating circumstances must henceforth include an independent examination of the trial record, the presentence investigation, and the findings of the sentencing panel in order to determine the existence or nonexistence of aggravating and mitigating circumstances, as well as a reweighing of all the factors. The balancing of aggravating circumstances against mitigating circumstances is not merely a matter of number counting, but, rather, requires a careful weighing and examination of the various factors to arrive at a reasoned judgment as to what factual situations require the imposition of death and which can be satisfied by life imprisonment in light of the totality of the circumstances present. The findings on which an aggravating circumstance is based must be proved beyond a reasonable doubt. Trial court's error in failing to consider defendant's intoxication as a mitigating factor did not constitute harmless error where it could not be determined that the trial court's weighing analysis would have been the same had the circumstance been factored into the balance. Evidence that defendant sexually assaulted or attempted to sexually assault and brutally stabbed to death a woman he had known all his life, then killed the woman's female houseguest to conceal the commission of the first murder, outweighed evidence of his remorse, amnesia, usual nonviolent nature, and intoxication

such that death penalty was the appropriate sentence for each murder. State v. Reeves, 239 Neb. 419, 476 N.W.2d 829 (1991).

Death sentence was not excessive where the sentencing court found four statutory aggravating circumstances present and no mitigating circumstances. State v. Harper, 208 Neb. 568, 304 N.W.2d 663 (1981).

Death sentence upheld where defendant murdered six family members, including children, and sexually molested female victims. State v. Simants, 197 Neb. 549, 250 N.W.2d 881 (1977).

Death sentence not excessive for defendant with history of multiple convictions for bank robbery, first-degree assault, and armed robbery, where defendant point-blank murdered and wounded unresisting robbery victims. State v. Holtan, 197 Neb. 544, 250 N.W.2d 876 (1977).

Death sentence imposed where twenty-three-year-old defendant with prior criminal convictions for aggravated assault and grand larceny killed civilian aiding police in the apprehension of defendant fleeing the scene of an armed robbery. State v. Rust, 197 Neb. 528, 250 N.W.2d 867 (1977).

District court's imposition of death sentence reduced to life imprisonment where sixteen-year-old defendant with no prior criminal record killed victim instantaneously, without torture. State v. Stewart, 197 Neb. 497, 250 N.W.2d 849 (1977).

2. Miscellaneous

A change in the law providing that the existence of aggravating circumstances is to be determined by a jury unless waived by the defendant is procedural in nature. State v. Gales, 265 Neb. 598, 658 N.W.2d 604 (2003).

A person convicted of first degree murder in Nebraska is not eligible for the death penalty unless the State proves one or more of the statutory aggravators beyond a reasonable doubt. State v. Gales, 265 Neb. 598, 658 N.W.2d 604 (2003).

The determination of mitigating circumstances, the balancing of aggravating circumstances against mitigating circumstances, and proportionality review are part of the selection decision in capital sentencing, which occurs only after eligibility for a death sentence has been determined. State v. Gales, 265 Neb. 598, 658 N.W.2d 604 (2003).

In reviewing a sentence of death on appeal, the Nebraska Supreme Court conducts a de novo review of the record to determine whether the aggravating and mitigating circumstances support the imposition of the death penalty. The court must also determine whether the imposition of the death penalty is excessive or disproportionate to the penalty imposed in similar cases. A criminal defendant in a capital case may lawfully waive his or her right to present mitigating evidence during sentencing. Where the record reveals that the sentence of death was the result of reasoned judgment and the careful weighing and examination of the various circumstances and factors in light of the totality of the circumstances present, one aggravating circumstance may be sufficient under Nebraska's statutory system for the sentencing court to conclude that imposition of the death penalty is appropriate. Under this section, the sentencing determination of the court shall be in writing and shall be supported by written findings of fact based upon the records of the trial and the sentencing proceeding, and referring to the aggravating and mitigating circumstances involved in its determination. The court in its sentencing order must specify the factors it relied upon in reaching its decision, and focus on the individual circumstances of each homicide and each defendant. State v. Dunster, 262 Neb. 329, 631 N.W.2d 879 (2001).

There is no conflict between section 29-2519 and this section. Only this section details the standards which govern the imposition of the death penalty. The word ''approach'' in subsection (2) of this section does not render this section vague. The ''proportionality review'' provided for in this section neither violates the Due Process Clause nor violates the prohibition against cruel and unusual punishment in the U.S. Constitution and article I, sections 3 and 9, of the Nebraska Constitution. State v. Moore, 250 Neb. 805, 553 N.W.2d 120 (1996).

This section is constitutional; there is no sixth amendment right to jury sentencing. A sentencing court may consider information adduced at trial to support findings of aggravating and mitigating circumstances when exercising discretion in imposing sentence under subsection (3) of this section. State v. Ryan, 233 Neb. 74, 444 N.W.2d 610 (1989).

Aggravating circumstances must be proved beyond a reasonable doubt. Once one or more aggravating circumstances have been found to exist, this section requires not a mere counting of aggravating and mitigating circumstances, but, rather, a reasoned judgment as to what factual situations require the imposition of death and which of those can be satisfied by life imprisonment in light of the totality of the circumstances present. State v. Joubert, 224 Neb. 411, 399 N.W.2d 237 (1986).

No jury determination of aggravating and mitigating circumstances or the application thereof is required by state or federal constitution. State v. Moore, 210 Neb. 457, 316 N.W.2d 33 (1982).

Amendments to this section by virtue of Laws 1978, L.B. 711, do not apply to a capital case in which a final sentence was imposed prior to the effective date of L.B. 711, and such case will not be reviewed in light of the act. State v. Rust, 208 Neb. 320, 303 N.W.2d 490 (1981).

In adopting sections 29-2521.01 to 29-2522, the Legislature intended to establish a procedure whereby the death penalty would be applied uniformly throughout the state. The procedure does not come into play where the death penalty is not imposed. State v. Welsh, 202 Neb. 249, 275 N.W.2d 54 (1979).

29-2523 Aggravating and mitigating circumstances.

The aggravating and mitigating circumstances referred to in sections 29-2519 to 29-2524 shall be as follows:

(1) Aggravating Circumstances:

(a) The offender was previously convicted of another murder or a crime involving the use or threat of violence to the person, or has a substantial prior history of serious assaultive or terrorizing criminal activity;

(b) The murder was committed in an effort to conceal the commission of a crime, or to conceal the identity of the perpetrator of such crime;

(c) The murder was committed for hire, or for pecuniary gain, or the defendant hired another to commit the murder for the defendant;

(d) The murder was especially heinous, atrocious, cruel, or manifested exceptional depravity by ordinary standards of morality and intelligence;

(e) At the time the murder was committed, the offender also committed another murder;

(f) The offender knowingly created a great risk of death to at least several persons;

(g) The victim was a public servant having lawful custody of the offender or another in the lawful performance of his or her official duties and the offender knew or should have known that the victim was a public servant performing his or her official duties;

(h) The murder was committed knowingly to disrupt or hinder the lawful exercise of any governmental function or the enforcement of the laws; or

(i) The victim was a law enforcement officer engaged in the lawful performance of his or her official duties as a law enforcement officer and the offender knew or reasonably should have known that the victim was a law enforcement officer.

(2) Mitigating Circumstances:

(a) The offender has no significant history of prior criminal activity;

(b) The offender acted under unusual pressures or influences or under the domination of another person;

(c) The crime was committed while the offender was under the influence of extreme mental or emotional disturbance;

(d) The age of the defendant at the time of the crime;

(e) The offender was an accomplice in the crime committed by another person and his or her participation was relatively minor;

(f) The victim was a participant in the defendant's conduct or consented to the act; or

(g) At the time of the crime, the capacity of the defendant to appreciate the wrongfulness of his or her conduct or to conform his or her conduct to the requirements of law was impaired as a result of mental illness, mental defect, or intoxication.

Source: Laws 1973, LB 268, § 8; Laws 1998, LB 422, § 1; Laws 2002, Third Spec. Sess., LB 1, § 15.

1. Aggravating circumstances
2. Mitigating circumstances
3. Miscellaneous

1. Aggravating circumstances

The term ''especially heinous, atrocious, or cruel,'' as used in subsection (1)(d) of this section, is limited to cases where torture, sadism, or the imposition of extreme suffering exists, or where the murder was preceded by acts performed for the satisfaction of inflicting either mental or physical pain or when such pain existed for any prolonged period of time. This class includes murders involving torture, sadism, or sexual abuse. This prong must be looked upon through the eyes of the victim. State v. Gales, 269 Neb. 443, 694 N.W.2d 124 (2005).

The two prongs of aggravating circumstance in subsection (1)(d) describe, in the disjunctive, two separate circumstances which may operate in conjunction with or independent of one another. State v. Gales, 269 Neb. 443, 694 N.W.2d 124 (2005).

A person convicted of first degree murder in Nebraska is not eligible for the death penalty unless the State proves one or more of the statutory aggravators beyond a reasonable doubt. State v. Gales, 265 Neb. 598, 658 N.W.2d 604 (2003).

Nebraska's death penalty statutes, which include subsection (1) of this section, are neither vague nor overbroad. The terms ''substantial history'', ''apparent effort'', and ''especially heinous, atrocious, cruel'', as used in subsection (1) of this section, are neither vague nor overbroad. Subsection (1)(d) of this section contains two separate disjunctive components which may operate together or independently of one another. State v. Bjorklund, 258 Neb. 432, 604 N.W.2d 169 (2000).

The word ''apparent'' in subsection (1)(b) of this section is neither vague nor causes subsection (1)(b) to be subject to arbitrary and capricious application. The word ''apparent'' in subsection (1)(b) of this section means readily perceptible. ''Apparent'' qualifies aggravating circumstance in subsection (1)(b) of this section to the extent that the provision cannot be applied in speculative situations or where a strained construction is necessary to fulfill it. The State must prove the existence of aggravating circumstance subsection (1)(b) of this section beyond a reasonable doubt. Aggravating circumstance subsection (1)(b) of this section is not overbroad. Aggravating circumstance subsection (1)(b) of this section does not apply only to murders

which were committed to hide the defendant's involvement in some crime unrelated to the killing for which the defendant is being sentenced. The two components of aggravating circumstance subsection (1)(d) of this section may operate together or independently of one another. The second component of aggravating circumstance subsection (1)(d) of this section, if a murder manifests exceptional depravity by ordinary standards of morality and intelligence, pertains to the state of mind of the actor and may be proved by or inferred from the defendant's conduct at or near the time of the offense. ''Exceptional depravity'' in aggravating circumstance subsection (1)(d) of this section means ''so coldly calculated as to indicate a state of mind totally and senselessly bereft of regard for human life''. ''Exceptional'' in aggravating circumstance subsection (1)(d) of this section confines this aggravating circumstance to only those situations where depravity is apparent to such an extent as to obviously offend all standards of morality and intelligence. ''Exceptional depravity'' exists when it is shown, beyond a reasonable doubt, that the following circumstances, either separately or collectively, exist in reference to a first degree murder: (1) apparent relishing of the murder by the killer, (2) infliction of gratuitous violence on the victim, (3) needless mutilation of the victim, (4) senselessness of the crime, or (5) helplessness of the victim. Aggravating circumstance subsection (1)(d) of this section is neither vague nor overbroad. State v. Moore, 250 Neb. 805, 553 N.W.2d 120 (1996).

The first prong of aggravating circumstance (1)(d) of this section, narrowed by Nebraska Supreme Court decisions defining the phrase ''especially heinous, atrocious, cruel'' to mean unnecessarily torturous to the victim, satisfies constitutional requirements. State v. Ryan, 248 Neb. 405, 534 N.W.2d 766 (1995).

Aggravating circumstances must be proved beyond a reasonable doubt. State v. Moore, 243 Neb. 679, 502 N.W.2d 227 (1993); State v. Reeves, 216 Neb. 206, 344 N.W.2d 433 (1984).

The first prong of aggravating circumstance (1)(d) includes pitiless crimes unnecessarily torturous to the victim and cases where torture, sadism, or the imposition of extreme suffering exists. This prong has been narrowed to include murders involving torture, sadism, or sexual abuse. Subsection (1)(d) of this section describes two separate disjunctive circumstances which may operate together or independently of one another. Thus, proof of the first prong is sufficient to establish the existence of this aggravating circumstance. State v. Reeves, 239 Neb. 419, 476 N.W.2d 829 (1991).

The aggravating circumstance found in subsection (1)(d) of this section literally, and as interpreted by this court, describes in the disjunctive two separate circumstances which may operate in conjunction with or independent of one another. The first circumstance is that the murder was especially heinous, atrocious, or cruel. The second circumstance pertains to the state of mind of the actor. The State needs to prove only the first prong of subsection (1)(d) for that aggravating circumstance to exist. To constitute an aggravating circumstance under the first prong of subsection (1)(d), the murder must be especially heinous, atrocious, or cruel. ''Especially heinous, atrocious, (or) cruel'' is limited to cases where torture, sadism, or the imposition of extreme suffering exists, or where the murder was preceded by acts performed for the satisfaction of inflicting either mental or physical pain or that pain existed for any prolonged period of time. State v. Otey, 236 Neb. 915, 464 N.W.2d 352 (1991).

The ''especially heinous, atrocious, or cruel'' language of subsection (1)(d) of this section is limited to cases where torture, sadism, or the imposition of extreme suffering exists, or where murder was preceded by acts performed for the satisfaction of inflicting either mental or physical pain or that pain existed for any prolonged period of time. In order for aggravating circumstance (1)(d) to be present, the method of killing must entail something more than the ordinary circumstances which attend any death-dealing violence. This limiting construction of (1)(d) saves it from violating the U.S. Constitution. State v. Victor, 235 Neb. 770, 457 N.W.2d 431 (1990); State v. Ryan, 233 Neb. 74, 444 N.W.2d 610 (1989).

Subsection (1)(b) of this section is not unconstitutionally vague. State v. Reeves, 234 Neb. 711, 453 N.W.2d 359 (1990).

The specific delineation of aggravating factors in this section constitutes sufficient notice to a defendant who is charged with first degree murder. The State is not constitutionally required to provide the defendant with notice as to which particular aggravating circumstance or circumstances upon which the State will rely in seeking the death penalty. This section exclusively lists the aggravating factors which may be relied upon in imposing the death penalty. State v. Reeves, 234 Neb. 711, 453 N.W.2d 359 (1990).

Under subsection (1)(a) of this section: (1) A sentencing court may not consider the same evidence to support different aggravating factors. However, a sentencing court may consider evidence of distinct incidents to support different aggravating factors; (2) the facts upon which the applicability of an aggravating factor depends must be proved beyond a reasonable doubt; and (3) the use of the term ''history'' refers to events prior to the acts out of which the charge arose. Under the court's narrow interpretation and application, subsection (1)(a) of this section is not unconstitutionally vague or overbroad. State v. Ryan, 233 Neb. 74, 444 N.W.2d 610 (1989).

Mere proof that an offender was previously convicted of two assaults of unspecified degree and of an attempted second degree assault does not in and of itself establish beyond a reasonable doubt the existence of the aggravating circumstance defined in subsection (1)(a) of this section. State v. Bird Head, 225 Neb. 822, 408 N.W.2d 309 (1987).

Any serious assaultive or terrorizing criminal activity committed by the accused prior to the time of the offense may properly be considered when deciding the applicability of subsection (1)(a) of this section. State v. Joubert, 224 Neb. 411, 399 N.W.2d 237 (1986).

''Exceptional depravity,'' as used in subsection (1)(d) of this section, refers and pertains to the state of mind of the actor and may be proved by or inferred from the defendant's conduct at or near the time of the offense. ''Exceptional depravity'' exists when the act is totally and senselessly bereft of any regard for human life as shown by the presence of the following circumstances, either separately or collectively: (1) apparent relishing of the murder; (2) infliction of gratuitous violence on the victim; (3) needless mutilation of the victim; (4) senselessness of the crime; or (5) helplessness of the victim. State v. Joubert, 224 Neb. 411, 399 N.W.2d 237 (1986).

Subsection (1)(d) of this section, that a murder be ''especially heinous, atrocious, cruel'' or manifest ''exceptional depravity by ordinary standards of morality and intelligence,'' describes in the disjunctive at least two distinct components of the aggravating circumstance which may operate in conjunction with or independent of one another. The presence of any of the components will sustain a finding that aggravating circumstance (1)(d) exists. State v. Joubert, 224 Neb. 411, 399 N.W.2d 237 (1986).

The words ''especially heinous, atrocious, cruel,'' as used in subsection (1)(d) of this section, mean a conscienceless or pitiless crime which is unnecessarily torturous to the victim, and a determination thereof must be looked upon through the eyes of the victim and should be applied where torture, sadism, or the imposition of extreme suffering exists. State v. Joubert, 224 Neb. 411, 399 N.W.2d 237 (1986).

What constitutes aggravating circumstances is not left to the discretion of either the sentencing court or the Supreme Court but, instead, is set out by statute in detail. Aggravating circumstances must be proved beyond a reasonable doubt. State v. Joubert, 224 Neb. 411, 399 N.W.2d 237 (1986).

For the purpose of subsection (1)(d) of this section as an aggravating circumstance in determining whether the death penalty may be imposed, ''exceptional depravity'' refers to the state of mind of the actor and exists when it is shown beyond a reasonable doubt that the following circumstances, either separately or collectively, exist in reference to a first degree murder: (1) apparent relishing of the murder by the killer; (2) infliction of gratuitous violence on the victim; (3) needless mutilation of the victim; (4) senselessness of the crime; or (5) helplessness of the victim. State v. Palmer, 224 Neb. 282, 399 N.W.2d 706 (1986).

Aggravating circumstance (1)(b) does not exist unless the murder was committed for the purpose of concealing the commission of a crime or for the purpose of concealing the identity of the perpetrator of a crime. Aggravating circumstance (1)(d) does not exist unless the method of killing itself entails something more than the ordinary circumstances which attend any death-dealing violence. A death sentence cannot be imposed absent the existence of at least one of the aggravating circumstances set forth in this section. State v. Hunt, 220 Neb. 707, 371 N.W.2d 708 (1985).

Subsection (1)(d) of this section is not unconstitutionally vague. State v. Reeves, 216 Neb. 206, 344 N.W.2d 433 (1984).

No jury determination of aggravating and mitigating circumstances or the application thereof is required by state or federal constitution. A state of mind which indicates a callous disposition to repeat the crime of murder manifests exceptional depravity by ordinary standards of morality and intelligence within the meaning of subsection (1)(d) of this section. An aggravating circumstance existed where the murder was committed to conceal the identity of the perpetrator of a robbery under subsection (1)(b) of this section. State v. Moore, 210 Neb. 457, 316 N.W.2d 33 (1982).

Circumstances of victim's death, found bound and gagged when killed, constituted effort to conceal identity of perpetrator. State v. Peery, 199 Neb. 656, 261 N.W.2d 95 (1977).

Murder committed during act of robbery held not a murder for pecuniary gain herein. State v. Peery, 199 Neb. 656, 261 N.W.2d 95 (1977).

Prior record of multiple crimes of violence constituted an aggravating circumstance. State v. Peery, 199 Neb. 656, 261 N.W.2d 95 (1977).

2. Mitigating circumstances

Under subsection (2) of this section, there is no burden of proof with regard to mitigating circumstances. The State may present evidence which is probative of the nonexistence of a statutory or nonstatutory mitigating circumstance, while the defendant may present evidence which is probative of the existence of a statutory or nonstatutory circumstance. However, because sections 29-2519 et seq. do not require the State to disprove the existence of mitigating circumstances, they do place the risk of nonproduction and nonpersuasion on the defendant. State v. Victor, 235 Neb. 770, 457 N.W.2d 431 (1990); State v. Reeves, 234 Neb. 711, 453 N.W.2d 359 (1990).

Subsection (2) of this section is not unconstitutional. The mitigating circumstance found in subsection (2)(c) of this section, which limits mental or emotional disturbance to cases which are extreme, is not constitutionally infirm where court decisions permit consideration of any aspects of mitigation. State v. Reeves, 234 Neb. 711, 453 N.W.2d 359 (1990).

Under subsection (2) of this section, it is constitutionally permissible to allow the sentencing judge or judges in a capital case to consider prior uncounseled convictions in determining the existence or nonexistence of a mitigating circumstance and it is constitutionally permissible to allow the sentencing judge or judges in a capital case to consider unadjudicated misconduct in determining the existence or nonexistence of a mitigating circumstance, provided the defendant is given an opportunity to rebut the charges. State v. Reeves, 234 Neb. 711, 453 N.W.2d 359 (1990).

A defendant may offer any evidence on the issue of mitigation, even though the mitigating factor is not specifically listed in this section. State v. Joubert, 224 Neb. 411, 399 N.W.2d 237 (1986).

This section does not in any way limit the mitigating circumstances a sentencing court may consider, and the sentencing court should be liberal in admitting evidence the defendant asserts is a mitigating factor. State v. Moore, 210 Neb. 457, 316 N.W.2d 33 (1982).

3. Miscellaneous

Under this section, the balancing of aggravating circumstances against mitigating circumstances is not merely a matter of number counting, but, rather, requires a careful weighing and examination of the various factors. State v. Dunster, 262 Neb. 329, 631 N.W.2d 879 (2001).

Pursuant to subsection (1)(h) of this section, there is no requirement under this section that the murder must be an immediate and direct attempt to disrupt or hinder the enforcement of the laws; the only requirement is that the defendant must do so knowingly. Subsection (2)(b) of this section contemplates only outside pressures, not those created by the defendant's own acts. Pursuant to subsection (2)(c) of this section, if the extreme mental or emotional disturbance is the result of a mental illness or defect, it falls within the broader purview of subsection (2)(g) of this section. Section 28-105.01 merely narrows the application of subsection (2)(d) of this section to persons of advanced years. State v. Lotter, 255 Neb. 456, 586 N.W.2d 591 (1998).

The facts establishing an aggravating circumstance must be proved beyond a reasonable doubt. Definitions of aggravating and mitigating circumstances discussed and interpreted. State v. Moore, 243 Neb. 679, 502 N.W.2d 227 (1993); State v. Reeves, 239 Neb. 419, 476 N.W.2d 829 (1991); State v. Otey, 236 Neb. 915, 464 N.W.2d 352 (1991); State v. Victor, 235 Neb. 770, 457 N.W.2d 431 (1990); State v. Reeves, 234 Neb. 711, 453 N.W.2d 359 (1990); State v. Ryan, 233 Neb. 74, 444 N.W.2d 610 (1989); State v. Simants, 197 Neb. 549, 250 N.W.2d 881 (1977); State v. Holtan, 197 Neb. 544, 250 N.W.2d 876 (1977); State v. Rust, 197 Neb. 528, 250 N.W.2d 867 (1977); State v. Stewart, 197 Neb. 497, 250 N.W.2d 849 (1977).

In certain circumstances, an appellate court may reweigh the aggravating and mitigating circumstances. A court is not limited to the statutory mitigating factors. State v. Otey, 236 Neb. 915, 464 N.W.2d 352 (1991).

The courts are required to consider any relevant evidence in mitigation. The balancing of aggravating circumstances against mitigating circumstances is not merely a matter of number counting but, rather, requires a careful weighing and examination of the various factors. State v. Victor, 235 Neb. 770, 457 N.W.2d 431 (1990).

In arriving at a sentence in a first degree murder case, the court is not limited in its consideration to the factors listed in this section but may consider any matter relevant to imposition of sentence and receive any evidence with probative value as to the character of the defendant. State v. Reeves, 234 Neb. 711, 453 N.W.2d 359 (1990); State v. Holtan, 205 Neb. 314, 287 N.W.2d 671 (1980).

Where a defendant has testified in a previous criminal case under a lawful grant of immunity, the sentencing court in a subsequent criminal case cannot consider such testimony or any information directly or indirectly derived from it in determining whether a death sentence should be imposed under the provisions of this section and related statutes. State v. Jones, 213 Neb. 1, 328 N.W.2d 166 (1982).

The definitions of aggravating and mitigating circumstances are not unconstitutionally vague. State v. Moore, 210 Neb. 457, 316 N.W.2d 33 (1982).

This section, as interpreted in State v. Holtan, 205 Neb. 314, 287 N.W.2d 671 (1980), meets the requirements of the Neb. Const. article 1, section 9, and of the U.S. Constitution. State v. Anderson and Hochstein, 207 Neb. 51, 296 N.W.2d 440 (1980).

29-2524 Sections; how construed.

Nothing in sections 25-1140.09, 28-303, 28-313, and 29-2519 to 29-2546 shall be in any way deemed to repeal or limit existing procedures for automatic review of capital cases, nor shall they in any way limit the right of the Supreme

Court to reduce a sentence of death to a sentence of life imprisonment without parole in accordance with the provisions of section 29-2308, nor shall they limit the right of the Board of Pardons to commute any sentence of death to a sentence of life imprisonment without parole.

Source: Laws 1973, LB 268, § 9; Laws 1978, LB 748, § 23; Laws 1978, LB 711, § 6; Laws 2002, Third Spec. Sess., LB 1, § 16.

Cross References

Constitutional provision:
Board of Pardons, see Article IV, section 13, Constitution of Nebraska.
Board of Pardons, see section 83-1,126.

A person convicted of first degree murder in Nebraska is not eligible for the death penalty unless the State proves one or more of the statutory aggravators beyond a reasonable doubt. State v. Gales, 265 Neb. 598, 658 N.W.2d 604 (2003).

29-2524.01 Criminal homicide; report filed by county attorney; contents; time of filing.

Each county attorney shall file a report with the State Court Administrator for each criminal homicide case filed by him. The report shall include (1) the initial charge filed, (2) any reduction in the initial charge and whether such reduction was the result of a plea bargain or some other reason, (3) dismissals prior to trial, (4) outcome of the trial including not guilty, guilty as charged, guilty of a lesser included offense, or dismissal, (5) the sentence imposed, (6) whether an appeal was taken, and (7) such other information as may be required by the State Court Administrator. Such report shall be filed not later than thirty days after ultimate disposition of the case by the court.

Source: Laws 1978, LB 749, § 1.

29-2524.02 State Court Administrator; criminal homicide report; provide forms.

The State Court Administrator shall provide all forms necessary to carry out sections 29-2524.01 and 29-2524.02.

Source: Laws 1978, LB 749, § 2.

29-2525 Capital punishment cases; appeal; procedure; expedited opinion.

In cases when the punishment is capital, no notice of appeal shall be required and within the time prescribed by section 25-1912 for the commencement of proceedings for the reversing, vacating, or modifying of judgments, the clerk of the district court in which the conviction was had shall notify the court reporter who shall prepare a bill of exceptions as in other cases and the clerk shall prepare and file with the Clerk of the Supreme Court a transcript of the record of the proceedings, for which no charge shall be made. The Clerk of the Supreme Court shall, upon receipt of the transcript, docket the appeal. No payment of a docket fee shall be required.

The Supreme Court shall expedite the rendering of its opinion on the appeal, giving the matter priority over civil and noncapital criminal matters.

Source: Laws 1973, LB 268, § 10; Laws 1982, LB 722, § 11; Laws 1995, LB 371, § 16; Laws 2000, LB 921, § 32.

Cross References

Bill of exceptions, see section 25-1140.09.

An appeal pursuant to this section does not place the burden of creating the record upon either party to the appeal. Instead, pursuant to section 29-2521.04, the district court must provide all records required by the Nebraska Supreme Court in order to conduct its review and analysis. The Nebraska Supreme Court has the authority and the obligation to enforce the requirement that all records for any automatic appeal under this section are filed with the Clerk of the Supreme Court. State v. Dunster, 262 Neb. 329, 631 N.W.2d 879 (2001).

This statute requires the Supreme Court to review all cases in which the death penalty has been imposed. State v. Victor, 235 Neb. 770, 457 N.W.2d 431 (1990); State v. Joubert, 224 Neb. 411, 399 N.W.2d 237 (1986).

A determination of whether a defendant is a sexual sociopath is of no importance where a death sentence has been imposed. The purpose of the sexual sociopath law is to provide confinement with treatment for those persons subject to the laws who are amenable to treatment and confinement without treatment for those subject to the law but not amenable to treatment. Sentencing is not to be delayed indefinitely where sexual sociopath proceedings have been instituted. Once the death penalty has been imposed, none of the defendant's contentions concerning the sexual sociopath law requires further consideration. State v. Otey, 205 Neb. 90, 287 N.W.2d 36 (1979).

Supreme Court automatically reviews each case where death penalty imposed, comparing all previous capital cases where death penalty has or has not been imposed under the new death penalty statute. State v. Simants, 197 Neb. 549, 250 N.W.2d 881 (1977); State v. Rust, 197 Neb. 528, 250 N.W.2d 867 (1977).

29-2526 Repealed. Laws 1982, LB 722, § 13.

29-2527 Briefs; payment for printing by county.

The cost of printing briefs on behalf of any person convicted of an offense for which the punishment adjudged is capital shall be paid by the county.

Source: Laws 1973, LB 268, § 12.

29-2528 Death penalty cases; Supreme Court; orders.

In all cases when the death penalty has been imposed by the district court, the Supreme Court shall, after consideration of the appeal, order the prisoner to be discharged, a new trial to be had, or appoint a day certain for the execution of the sentence.

Source: Laws 1973, LB 268, § 13; Laws 1982, LB 722, § 12.

29-2529 Repealed. Laws 1985, LB 41, § l.

29-2530 Repealed. Laws 1985, LB 41, § l.

29-2531 Repealed. Laws 1985, LB 41, § l.

29-2532 Mode of inflicting punishment for death.

The mode of inflicting the punishment of death, in all cases, shall be by causing to pass through the body of the convicted person a current of electricity of sufficient intensity to cause death; and the application of such current shall be continued until such convicted person is dead. The warden of the Nebraska Penal and Correctional Complex, and in case of his death, sickness, absence or inability to act, then the deputy warden, shall be the executioner; *Provided*, the warden may in writing specially designate and appoint a suitable and competent person to act for him, and under his direction, as executioner in any particular case. A crime punishable by death must be punished according to the provisions herein made and not otherwise.

Source: Laws 1973, LB 268, § 17.

29-2533 Punishment inflicted; exclude view of persons; exception.

When any person shall be sentenced to be electrocuted, such punishment shall be inflicted within the walls of the Department of Correctional Services adult correctional facility, or within the yard or enclosure adjacent thereto, under the supervision of the warden and in such a manner as to exclude the

view of all persons save those permitted to be present as provided in sections 29-2534 and 29-2535.

Source: Laws 1973, LB 268, § 18.

29-2534 Execution; persons permitted.

Besides the warden, the deputy warden, the executioner, in case one shall have been appointed by the warden, and his assistants, the following persons, and no others, except as provided in section 29-2535, may be present at the execution: The clergyman in attendance upon the prisoner, such other persons, not exceeding three in number as the prisoner may designate, and such other persons, not exceeding six in number, as the warden may designate.

Source: Laws 1973, LB 268, § 19.

29-2535 Warden; military force necessary to carry out punishment; inform Governor.

Whenever the warden shall deem the presence of a military force necessary to carry into effect the provisions of sections 29-2532 and 29-2533, he shall make the fact known to the Governor of the state, who is hereby authorized to call out so much of the military force of the state as in his judgment may be necessary for the purpose.

Source: Laws 1973, LB 268, § 20.

29-2536 Warden; inflict punishment; return of proceedings; clerk of court; duty.

Whenever the warden shall inflict the punishment of death upon a convict, in obedience to the command of the court, he shall make return of his proceedings as soon as may be to the clerk of the court where the conviction was had, and the clerk shall subjoin the return to the record of conviction and sentence.

Source: Laws 1973, LB 268, § 21.

29-2537 Convict; appears to be mentally incompetent; notice to judge; suspend sentence; commission appointed; findings; suspension of execution; when.

If any convict under sentence of death shall appear to be mentally incompetent, the warden or sheriff having him or her in custody shall forthwith give notice thereof to a judge of the district court of the judicial district in which the convict was tried and sentenced and such judge shall at once make such investigation as shall satisfy him or her as to whether a commission ought to be named to examine such convict.

If he or she shall determine that there is not sufficient reason for the appointment of a commission, he or she shall so find and refuse to suspend the execution of the convict. If the judge shall determine that a commission ought to be appointed to examine such convict, he or she shall make a finding to that effect and cause it to be entered upon the records of the district court in the county in which such convict was sentenced, and, if necessary, the judge shall suspend the execution and appoint the three superintendents of the state centers at Lincoln, Hastings, and Norfolk as a commission to examine such convict. The commission shall examine the convict to determine whether he or she is mentally competent or mentally incompetent and shall report its findings

in writing to such judge within ten days after its appointment. If for any reason any of such superintendents cannot serve in such capacity, the judge shall appoint in his or her place one of the assistant superintendents of such center. If two of the commission shall find the convict mentally incompetent, the judge shall suspend his or her execution until further order. Any time thereafter, when it shall be made to appear to the judge that the convict has become mentally competent, he or she shall appoint a commission in the manner provided in this section, who shall make another investigation as to the mental competency of the convict, and in case such convict is again declared mentally incompetent his or her execution shall be suspended by the judge until further order. Such proceedings may be had at such times as the judge shall order until it is either determined that the convict is mentally competent or incurably mentally incompetent.

Source: Laws 1973, LB 268, § 22; Laws 1986, LB 1177, § 8.

29-2538 Suspension of execution pending investigation; convict found sane; judge; appoint a day of execution.

In case such judge has suspended the execution of the convict pending an investigation as to his sanity, and the convict shall be found to be sane, the judge shall appoint a day for his execution, which shall be carried into effect in the same manner as provided in the original sentence, a certified copy of which shall be transmitted by mail to the executioner.

Source: Laws 1973, LB 268, § 23.

29-2539 Commission members; mileage; payment.

The members of such commission shall each receive mileage at the rate authorized in section 81-1176 for state employees for each mile actually and necessarily traveled in reaching and returning from the place where the convict is confined and examined, and it is hereby made the duty of the commission to act in this capacity without compensation other than that already provided for them by law. All of the findings and orders aforesaid shall be entered in the district court records of the county wherein the convict was originally tried and sentenced, and the costs therefor, including those providing for the mileage of the members of the commission, shall be allowed and paid in the usual manner by the county in which the convict was tried and sentenced to death.

Source: Laws 1973, LB 268, § 24; Laws 1981, LB 204, § 44.

29-2540 Female convict; pregnant; warden notify judge; procedures.

If a female convict under sentence of death shall appear to be pregnant, the warden or sheriff shall in like manner notify the judge of the district court of the county in which she was sentenced, who shall in all things proceed as in the case of a mentally incompetent convict.

Source: Laws 1973, LB 268, § 25; Laws 1986, LB 1177, § 9.

Cross References

Mentally incompetent convicts, see sections 29-2537 to 29-2539.

29-2541 Female convict; finding convict is pregnant; judge; duties; costs.

If the commission shall find that the female convict is pregnant, the judge shall suspend the execution of her sentence. At such time as it shall be

determined that such woman is no longer pregnant, the judge shall appoint a time for her execution, which shall be carried into effect in the same manner as provided in the original sentence. The costs and expenses thereof shall be the same as those provided for in the case of a mentally incompetent convict and shall be paid in the same manner.

Source: Laws 1973, LB 268, § 26; Laws 1986, LB 1177, § 10.

29-2542 Escaped convict; return; notify Governor; fix time of execution.

If any person who has been convicted of a crime punishable by death, and sentenced to be electrocuted, shall escape, and shall not be retaken before the time fixed for his execution, it shall be lawful for the warden, or any sheriff or other officer or person to rearrest such person and return him to the custody of the warden of the Nebraska Penal and Correctional Complex, who shall thereupon make return thereof to the Governor of the state, and the Governor shall thereupon issue a warrant, fixing and appointing a day for the execution, which shall be carried into effect by the warden in the same manner as herein provided for the execution of an original sentence of death.

Source: Laws 1973, LB 268, § 27.

29-2543 Person convicted of crime punishable by death; clerk of court; warrant; remove convicted person to Department of Correctional Services adult correctional facility.

Whenever any person has been tried and convicted before any district court in this state of a crime punishable by death and under the conviction has been sentenced by the court to suffer death, it shall be the duty of the clerk of the court before which the conviction was had to issue a warrant, under the seal of the court, reciting therein the conviction and sentence directed to the warden of the Nebraska Penal and Correctional Complex, commanding him or her to proceed at the time named in the sentence to carry the same into execution by causing the person so convicted and sentenced to be electrocuted by the passage of an electric current through the body until dead. The clerk shall deliver the warrant to the sheriff of the county in which conviction was had and such sheriff shall thereupon forthwith remove such convicted person to a Department of Correctional Services adult correctional facility of the state and there deliver him or her, together with the warrant, into the custody of the warden who shall receive and safely keep such convict within a Department of Correctional Services adult correctional facility until the time of execution or until otherwise ordered by competent authority.

Source: Laws 1973, LB 268, § 28; Laws 1993, LB 31, § 12.

Nebraska Supreme Court has jurisdiction to set successive execution dates and issue warrants as may be needed. State v. Joubert, 246 Neb. 287, 518 N.W.2d 887 (1994).

29-2544 Warden; duty.

It shall be the duty of the warden of the Nebraska Penal and Correctional Complex on receipt of such warrant, if the Supreme Court or a judge thereof shall not have ordered a suspension of the execution, and if the Board of Pardons shall not have commuted such sentence, or granted a reprieve or pardon to such convict, to proceed at the time named in the warrant to carry the sentence into execution in the manner herein provided; and of the manner

of his executing the warrant, and of his doings thereon, he shall forthwith make return to the clerk, who shall cause the warrant and return to be recorded as a part of the records of the case.

Source: Laws 1973, LB 268, § 29.

29-2545 Court; day certain for execution; notice to warden; duties.

In case the Supreme Court, or any judge thereof, shall allow a writ of error in any case and order a suspension of the execution of sentence, and, after having heard and determined the same, the court shall appoint a day certain for, and order the execution of the sentence, it shall be the duty of the clerk of the court to issue to the warden his warrant, under the seal of the court, commanding him to proceed to carry the sentence into execution at the time so appointed by the court, which time shall be stated in the warrant. Upon receipt of the warrant it shall be the duty of the warden to cause the sentence to be executed as herein provided, at the time so appointed by the court, and to make due return of the warrant, and of his proceedings thereunder, forthwith to the clerk of the district court before which the conviction was had, who shall cause the same to be recorded as a part of the records of the case.

Source: Laws 1973, LB 268, § 30.

This section grants court jurisdiction to set an execution date and issue a warrant upon completion of an appeal. Nebraska Supreme Court has jurisdiction to set successive execution dates and issue warrants as may be needed. State v. Joubert, 246 Neb. 287, 518 N.W.2d 887 (1994).

29-2546 Reversal of judgment of conviction; warden deliver convict to custody of sheriff; await further judgment and order of court.

Whenever the Supreme Court reverses the judgment of conviction in accordance with which any convict has been sentenced to death and is confined in a Department of Correctional Services adult correctional facility as herein provided, it shall be the duty of the warden, upon receipt of a copy of such judgment of reversal, duly certified by the clerk of the court and under the seal thereof, to forthwith deliver such convict into the custody of the sheriff of the county in which the conviction was had to be held in the jail of the county awaiting the further judgment and order of the court in the case.

Source: Laws 1973, LB 268, § 31; Laws 1993, LB 31, § 13.

ARTICLE 26

PARDONS AND PAROLES

Cross References

Board of Pardons, see Article IV, section 13, Constitution of Nebraska, and section 83-1,126.
Board of Parole, see Article IV, section 13, Constitution of Nebraska, and section 83-188.

(a) PARDONS AND PAROLES ACT

Section
29-2601. Repealed. Laws 1969, c. 817, § 87.
29-2602. Repealed. Laws 1969, c. 817, § 87.
29-2603. Repealed. Laws 1969, c. 817, § 87.
29-2604. Repealed. Laws 1969, c. 817, § 87.
29-2605. Repealed. Laws 1969, c. 817, § 87.
29-2606. Repealed. Laws 1969, c. 817, § 87.
29-2607. Repealed. Laws 1969, c. 817, § 87.
29-2608. Repealed. Laws 1969, c. 817, § 87.
29-2609. Repealed. Laws 1969, c. 817, § 87.

Section
29-2610. Repealed. Laws 1969, c. 817, § 87.
29-2611. Repealed. Laws 1969, c. 817, § 87.
29-2612. Repealed. Laws 1969, c. 817, § 87.
29-2613. Repealed. Laws 1969, c. 817, § 87.
29-2614. Repealed. Laws 1969, c. 817, § 87.
29-2615. Repealed. Laws 1969, c. 817, § 87.
29-2616. Repealed. Laws 1969, c. 817, § 87.
29-2617. Repealed. Laws 1969, c. 817, § 87.
29-2618. Repealed. Laws 1969, c. 817, § 87.
29-2619. Repealed. Laws 1969, c. 817, § 87.
29-2620. Repealed. Laws 1969, c. 817, § 87.
29-2621. Repealed. Laws 1969, c. 817, § 87.
29-2622. Repealed. Laws 1969, c. 817, § 87.
29-2623. Repealed. Laws 1969, c. 817, § 87.
29-2624. Repealed. Laws 1969, c. 817, § 87.
29-2625. Repealed. Laws 1969, c. 817, § 87.
29-2626. Repealed. Laws 1969, c. 817, § 87.
29-2627. Repealed. Laws 1959, c. 445, § 2.
29-2628. Repealed. Laws 1969, c. 817, § 87.
29-2629. Repealed. Laws 1969, c. 817, § 87.
29-2630. Repealed. Laws 1969, c. 817, § 87.
29-2631. Repealed. Laws 1969, c. 817, § 87.
29-2632. Repealed. Laws 1969, c. 817, § 87.
29-2633. Repealed. Laws 1969, c. 817, § 87.
29-2633.01. Repealed. Laws 1969, c. 817, § 87.
29-2634. Repealed. Laws 1969, c. 817, § 87.
29-2635. Repealed. Laws 1969, c. 817, § 87.
29-2636. Repealed. Laws 1969, c. 817, § 87.

(b) UNIFORM ACT FOR OUT-OF-STATE PAROLEE SUPERVISION

29-2637. Repealed. Laws 2003, LB 46, § 55.
29-2638. Repealed. Laws 2003, LB 46, § 55.

(c) INTERSTATE COMPACT FOR ADULT OFFENDER SUPERVISION

29-2639. Compact, how cited.
29-2640. Interstate Compact for Adult Offender Supervision.

(a) PARDONS AND PAROLES ACT

29-2601 Repealed. Laws 1969, c. 817, § 87.

29-2602 Repealed. Laws 1969, c. 817, § 87.

29-2603 Repealed. Laws 1969, c. 817, § 87.

29-2604 Repealed. Laws 1969, c. 817, § 87.

29-2605 Repealed. Laws 1969, c. 817, § 87.

29-2606 Repealed. Laws 1969, c. 817, § 87.

29-2607 Repealed. Laws 1969, c. 817, § 87.

29-2608 Repealed. Laws 1969, c. 817, § 87.

29-2609 Repealed. Laws 1969, c. 817, § 87.

29-2610 Repealed. Laws 1969, c. 817, § 87.

29-2611 Repealed. Laws 1969, c. 817, § 87.

29-2612 Repealed. Laws 1969, c. 817, § 87.

29-2613 Repealed. Laws 1969, c. 817, § 87.

29-2614 Repealed. Laws 1969, c. 817, § 87.

29-2615 Repealed. Laws 1969, c. 817, § 87.

29-2616 Repealed. Laws 1969, c. 817, § 87.

29-2617 Repealed. Laws 1969, c. 817, § 87.

29-2618 Repealed. Laws 1969, c. 817, § 87.

29-2619 Repealed. Laws 1969, c. 817, § 87.

29-2620 Repealed. Laws 1969, c. 817, § 87.

29-2621 Repealed. Laws 1969, c. 817, § 87.

29-2622 Repealed. Laws 1969, c. 817, § 87.

29-2623 Repealed. Laws 1969, c. 817, § 87.

29-2624 Repealed. Laws 1969, c. 817, § 87.

29-2625 Repealed. Laws 1969, c. 817, § 87.

29-2626 Repealed. Laws 1969, c. 817, § 87.

29-2627 Repealed. Laws 1959, c. 445, § 2.

29-2628 Repealed. Laws 1969, c. 817, § 87.

29-2629 Repealed. Laws 1969, c. 817, § 87.

29-2630 Repealed. Laws 1969, c. 817, § 87.

29-2631 Repealed. Laws 1969, c. 817, § 87.

29-2632 Repealed. Laws 1969, c. 817, § 87.

29-2633 Repealed. Laws 1969, c. 817, § 87.

29-2633.01 Repealed. Laws 1969, c. 817, § 87.

29-2634 Repealed. Laws 1969, c. 817, § 87.

29-2635 Repealed. Laws 1969, c. 817, § 87.

29-2636 Repealed. Laws 1969, c. 817, § 87.

(b) UNIFORM ACT FOR OUT-OF-STATE PAROLEE SUPERVISION

29-2637 Repealed. Laws 2003, LB 46, § 55.

Note: Laws 2003, LB 46, section 51, provided this section became operative ''when thirty-five states have adopted the Interstate Compact for Adult Offender Supervision''. By June 2002, the compact had reached this threshold. (see www.interstatecompact.org) LB 46 became effective May 24, 2003.

29-2638 Repealed. Laws 2003, LB 46, § 55.

Note: Laws 2003, LB 46, section 51, provided this section became operative ''when thirty-five states have adopted the Interstate Compact for Adult Offender Supervision''. By June 2002, the compact had reached this threshold. (see www.interstatecompact.org) LB 46 became effective May 24, 2003.

(c) INTERSTATE COMPACT FOR ADULT OFFENDER SUPERVISION

29-2639 Compact, how cited.

Sections 29-2639 and 29-2640 shall be known and may be cited as the Interstate Compact for Adult Offender Supervision.

Source: Laws 2003, LB 46, § 2.

Note: Laws 2003, LB 46, section 51, provided this section became operative ''when thirty-five states have adopted the Interstate Compact for Adult Offender Supervision''. By June 2002, the compact had reached this threshold. (see www.interstate compact.org) LB 46 became effective May 24, 2003.

29-2640 Interstate Compact for Adult Offender Supervision.

The Governor is hereby authorized and directed to execute a compact on behalf of this state with any other state or states legally joining therein in the form substantially as follows:

The compacting states solemnly agree:

ARTICLE I PURPOSE

The compacting states to this interstate compact recognize that each state is responsible for the supervision of adult offenders in the community who are authorized pursuant to the bylaws and rules of this compact to travel across state lines both to and from each compacting state in such a manner as to track the location of offenders, transfer supervision authority in an orderly and efficient manner, and when necessary return offenders to the originating jurisdictions. The compacting states also recognize that Congress, by enacting the Crime Control Act, 4 U.S.C. section 112 (1965), has authorized and encouraged compacts for cooperative efforts and mutual assistance in the prevention of crime. It is the purpose of this compact and the interstate commission created hereunder, through means of joint and cooperative action among the compacting states: To provide the framework for the promotion of public safety and protect the rights of victims through the control and regulation of the interstate movement of offenders in the community; to provide for the effective tracking, supervision, and rehabilitation of these offenders by the sending and receiving states; and to equitably distribute the costs, benefits, and obligations of the compact among the compacting states. In addition, this compact will: Create an interstate commission which will establish uniform procedures to manage the movement between states of adults placed under community supervision and released to the community under the jurisdiction of courts, paroling authorities, or corrections or other criminal justice agencies which will promulgate rules to achieve the purposes of this compact; ensure an opportunity for input and timely notice to victims and to jurisdictions where defined offenders are authorized to travel or to relocate across state lines; establish a system of uniform data collection, access to information on active cases by authorized criminal justice officials, and regular reporting of compact activities to heads of state councils, state executive, judicial, and legislative branches of government, and state criminal justice administrators; monitor compliance with rules governing interstate movement of offenders and initiate interventions to address and correct noncompliance; and coordinate training and education regarding regulation of interstate movement of offenders for officials involved in such activity. The compacting states recognize that there is no ''right'' of any offender to live in another state and that duly accredited officers of a sending state may at all times enter a receiving state and there apprehend and retake any offender under supervision subject to the provisions

of this compact and bylaws and rules promulgated hereunder. It is the policy of the compacting states that the activities conducted by the interstate commission created herein are the formation of public policies and are therefor public business.

ARTICLE II DEFINITIONS

As used in this compact, unless the context clearly requires a different construction:

Adult means both individuals legally classified as adults and juveniles treated as adults by court order, statute, or operation of law;

Bylaws means those bylaws established by the interstate commission for its governance or for directing or controlling the interstate commission's actions or conduct;

Compact administrator means the individual in each compacting state appointed pursuant to the terms of this compact responsible for the administration and management of the state's supervision and transfer of offenders subject to the terms of this compact, the rules adopted by the interstate commission, and the policies adopted by the state council under this compact;

Compacting state means any state which has enacted the enabling legislation for this compact;

Commissioner means the voting representative of each compacting state appointed pursuant to Article III of this compact;

Interstate commission means the Interstate Commission for Adult Offender Supervision established by this compact;

Member means the commissioner of a compacting state or designee, who shall be a person officially connected with the commissioner;

Noncompacting state means any state which has not enacted the enabling legislation for this compact;

Offender means an adult placed under, or subject to, supervision as the result of the commission of a criminal offense and released to the community under the jurisdiction of courts, paroling authorities, corrections, or other criminal justice agencies;

Person means any individual, corporation, business enterprise, or other legal entity, either public or private;

Rules means acts of the interstate commission, duly promulgated pursuant to Article VIII of this compact, substantially affecting interested parties in addition to the interstate commission, which shall have the force and effect of law in the compacting states;

State means a state of the United States, the District of Columbia, and any other territorial possessions of the United States; and

State Council means the resident members of the State Council for Interstate Adult Offender Supervision created by each state under Article IV of this compact.

ARTICLE III THE COMPACT COMMISSION

The compacting states hereby create the Interstate Commission for Adult Offender Supervision. The interstate commission shall be a body corporate and joint agency of the compacting states. The interstate commission shall have all the responsibilities, powers, and duties set forth herein, including the power to

sue and be sued, and such additional powers as may be conferred upon it by subsequent action of the respective legislatures of the compacting states in accordance with the terms of this compact.

The interstate commission shall consist of commissioners selected and appointed by resident members of a State Council for Interstate Adult Offender Supervision for each state. In addition to the commissioners who are the voting representatives of each state, the interstate commission shall include individuals who are not commissioners but who are members of interested organizations. Such noncommissioner members shall include a member of national organizations of governors, legislators, state chief justices, attorneys general, and crime victims. All noncommissioner members of the interstate commission shall be ex officio, nonvoting members. The interstate commission may provide in its bylaws for such additional ex officio, nonvoting members as it deems necessary.

Each compacting state represented at any meeting of the interstate commission is entitled to one vote. A majority of the compacting states shall constitute a quorum for the transaction of business unless a larger quorum is required by the bylaws of the interstate commission. The interstate commission shall meet at least once each calendar year. The chairperson may call additional meetings and, upon the request of twenty-seven or more compacting states, shall call additional meetings. Public notice shall be given of all meetings, and meetings shall be open to the public.

The interstate commission shall establish an executive committee which shall include commission officers, commission members, and others as shall be determined by the bylaws. The executive committee shall have the power to act on behalf of the interstate commission during periods when the interstate commission is not in session, with the exception of rulemaking or amendment to the compact. The executive committee oversees the day-to-day activities managed by the executive director and interstate commission staff, administers enforcement and compliance with the provisions of the compact and bylaws, as directed by the interstate commission, and performs other duties as directed by the interstate commission or as set forth in the bylaws.

ARTICLE IV THE STATE COUNCIL

Each member state shall create a State Council for Interstate Adult Offender Supervision which shall be responsible for the appointment of the commissioner who shall serve on the interstate commission from that state. Each state council shall appoint as its commissioner the compact administrator from that state to serve on the interstate commission in such capacity under or pursuant to applicable law of the member state. While each member state may determine the membership of its own state council, its membership must include at least one representative from the legislative, judicial, and executive branches of government, victims groups, and compact administrators. Each compacting state retains the right to determine the qualifications of the compact administrator who shall be appointed by the state council or by the Governor in consultation with the Legislature and the judiciary. In addition to appointment of its commissioner to the interstate commission, each state council shall exercise oversight and advocacy concerning its participation in interstate commission activities and other duties as may be determined by each member state, including, but not limited to, development of policy concerning operations and procedures of the compact within that state.

ARTICLE V POWERS AND DUTIES OF THE INTERSTATE COMMISSION

The interstate commission shall have the following powers:

To adopt a seal and suitable bylaws governing the management and operation of the interstate commission;

To promulgate rules which shall have the force and effect of statutory law and shall be binding in the compacting states to the extent and in the manner provided in this compact;

To oversee, supervise, and coordinate the interstate movement of offenders subject to the terms of this compact and any bylaws adopted and rules promulgated by the interstate commission;

To enforce compliance with compact provisions, interstate commission rules, and bylaws, using all necessary and proper means, including, but not limited to, the use of judicial process;

To establish and maintain offices;

To purchase and maintain insurance and bonds;

To borrow, accept, or contract for services of personnel, including, but not limited to, members and their staffs;

To establish and appoint committees and hire staff which it deems necessary for the carrying out of its functions, including, but not limited to, an executive committee as required by Article III which shall have the power to act on behalf of the interstate commission in carrying out its powers and duties hereunder;

To elect or appoint such officers, attorneys, employees, agents, or consultants and to fix their compensation, define their duties, and determine their qualifications and to establish the interstate commission's personnel policies and programs relating to, among other things, conflicts of interest, rates of compensation, and qualifications of personnel;

To accept any and all donations and grants of money, equipment, supplies, materials, and services and to receive, utilize, and dispose of same;

To lease, purchase, accept contributions or donations of, or otherwise to own, hold, improve, or use any property, real, personal, or mixed;

To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal, or mixed;

To establish a budget, make expenditures, and levy assessments as provided in Article X of this compact;

To sue and be sued;

To provide for dispute resolution among compacting states;

To perform such functions as may be necessary or appropriate to achieve the purposes of this compact;

To report annually to the legislatures, governors, judiciary, and state councils of the compacting states concerning the activities of the interstate commission during the preceding year. Such reports shall also include any recommendations that may have been adopted by the interstate commission;

To coordinate education, training, and public awareness regarding the interstate movement of offenders for officials involved in such activity; and

To establish uniform standards for the reporting, collecting, and exchanging of data.

ARTICLE VI ORGANIZATION AND OPERATION OF THE INTERSTATE COMMISSION

Section A. Bylaws

The interstate commission shall, by a majority of the members, within twelve months of the first interstate commission meeting, adopt bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes of the compact, including, but not limited to:

Establishing the fiscal year of the interstate commission;

Establishing an executive committee and such other committees as may be necessary;

Providing reasonable standards and procedures:

(i) For the establishment of committees; and

(ii) Governing any general or specific delegation of any authority or function of the interstate commission;

Providing reasonable procedures for calling and conducting meetings of the interstate commission and ensuring reasonable notice of each such meeting;

Establishing the titles and responsibilities of the officers of the interstate commission;

Providing reasonable standards and procedures for the establishment of the personnel policies and programs of the interstate commission. Notwithstanding any civil service or other similar laws of any compacting state, the bylaws shall exclusively govern the personnel policies and programs of the interstate commission;

Providing a mechanism for winding up the operations of the interstate commission and the equitable return of any surplus funds that may exist upon the termination of the compact after the payment or reserving of all of its debts and obligations;

Providing transition rules for startup administration of the compact; and

Establishing standards and procedures for compliance and technical assistance in carrying out the compact.

Section B. Officers and Staff

The interstate commission shall, by a majority of the members, elect from among its members a chairperson and a vice-chairperson, each of whom shall have such authorities and duties as may be specified in the bylaws. The chairperson or, in his or her absence or disability, the vice-chairperson, shall preside at all meetings of the interstate commission. The officers so elected shall serve without compensation or remuneration from the interstate commission; *Provided*, that subject to the availability of budgeted funds, the officers shall be reimbursed for any actual and necessary costs and expenses incurred by them in the performance of their duties and responsibilities as officers of the interstate commission.

The interstate commission shall, through its executive committee, appoint or retain an executive director for such period, upon such terms and conditions, and for such compensation as the interstate commission may deem appropriate. The executive director shall serve as secretary to the interstate commission and hire and supervise such other staff as may be authorized by the interstate commission but shall not be a member.

Section C. Corporate Records of the Interstate Commission

The interstate commission shall maintain its corporate books and records in accordance with the bylaws.

Section D. Qualified Immunity, Defense, and Indemnification

The members, officers, executive director, and employees of the interstate commission shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property, personal injury, or other civil liability caused or arising out of any actual or alleged act, error, or omission that occurred within the scope of interstate commission employment, duties, or responsibilities; *Provided*, that nothing in this paragraph shall be construed to protect any such person from suit or liability for any damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of any such person.

The interstate commission shall defend the commissioner of a compacting state, his or her representatives or employees, or the interstate commission's representatives or employees in any civil action seeking to impose liability arising out of any actual or alleged act, error, or omission that occurred within the scope of interstate commission employment, duties, or responsibilities or that the defendant had a reasonable basis for believing occurred within the scope of interstate commission employment, duties, or responsibilities; *Provided*, that the actual or alleged act, error, or omission did not result from intentional wrongdoing on the part of such person.

The interstate commission shall indemnify and hold the commissioner of a compacting state, the appointed designee or employees, or the interstate commission's representatives or employees harmless in the amount of any settlement or judgement obtained against such persons arising out of any actual or alleged act, error, or omission that occurred within the scope of interstate commission employment, duties, or responsibilities or that such persons had a reasonable basis for believing occurred within the scope of interstate commission employment, duties, or responsibilities; *Provided*, that the actual or alleged act, error, or omission did not result from gross negligence or intentional wrongdoing on the part of such person.

ARTICLE VII ACTIVITIES OF THE INTERSTATE COMMISSION

The interstate commission shall meet and take such actions as are consistent with the provisions of this compact.

Except as otherwise provided in this compact and unless a greater percentage is required by the bylaws, in order to constitute an act of the interstate commission, such act shall have been taken at a meeting of the interstate commission and shall have received an affirmative vote of a majority of the members present.

Each member of the interstate commission shall have the right and power to cast a vote to which that compacting state is entitled and to participate in the business and affairs of the interstate commission. A member shall vote in person on behalf of the state and shall not delegate a vote to another member state. However, a state council shall appoint another authorized representative, in the absence of the commissioner from that state, to cast a vote on behalf of the member state at a specified meeting. The bylaws may provide for members' participation in meetings by telephone or other means of telecommunication or electronic communication. Any voting conducted by telephone or other means

of telecommunication or electronic communication shall be subject to the same quorum requirements of meetings where members are present in person.

The interstate commission shall meet at least once during each calendar year. The chairperson of the interstate commission may call additional meetings at any time and, upon the request of a majority of the members, shall call additional meetings.

The interstate commission's bylaws shall establish conditions and procedures under which the interstate commission shall make its information and official records available to the public for inspection or copying. The interstate commission may exempt from disclosure any information or official records to the extent they would adversely affect personal privacy rights or proprietary interests. In promulgating such rules, the interstate commission may make available to law enforcement agencies records and information otherwise exempt from disclosure and may enter into agreements with law enforcement agencies to receive or exchange information or records subject to nondisclosure and confidentiality provisions.

Public notice shall be given of all meetings and all meetings shall be open to the public, except as set forth in the rules or as otherwise provided in the compact. The interstate commission shall promulgate rules consistent with the principles contained in the Freedom of Information Reform Act of 1986, 5 U.S.C. section 552b, as may be amended. The interstate commission and any of its committees may close a meeting to the public where it determines by two-thirds vote that an open meeting would be likely to:

Relate solely to the interstate commission's internal personnel practices and procedures;

Disclose matters specifically exempted from disclosure by statute;

Disclose trade secrets or commercial or financial information which is privileged or confidential;

Involve accusing any person of a crime or formally censuring any person;

Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

Disclose investigatory records compiled for law enforcement purposes;

Disclose information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of the interstate commission with respect to a regulated entity for the purpose of regulation or supervision of such entity;

Disclose information, the premature disclosure of which would significantly endanger the life of a person or the stability of a regulated entity; or

Specifically relate to the interstate commission's issuance of a subpoena or its participation in a civil action or proceeding.

For every meeting closed pursuant to this provision, the interstate commission's chief legal officer shall publicly certify that, in his or her opinion, the meeting may be closed to the public and shall reference each relevant exemptive provision. The interstate commission shall keep minutes which shall fully and clearly describe all matters discussed in any meeting and shall provide a full and accurate summary of any actions taken, and the reasons therefor, including a description of each of the views expressed on any item and the record of any roll call vote, reflected in the vote of each member on the

question. All documents considered in connection with any action shall be identified in such minutes.

The interstate commission shall collect standardized data concerning the interstate movement of offenders as directed through its bylaws and rules which shall specify the data to be collected, the means of collection, and data exchange and reporting requirements.

ARTICLE VIII RULEMAKING FUNCTIONS OF THE INTERSTATE COMMISSION

The interstate commission shall promulgate rules in order to effectively and efficiently achieve the purposes of the compact, including transition rules governing administration of the compact during the period in which it is being considered and enacted by the states.

Rulemaking shall occur pursuant to the criteria set forth in this article and the bylaws and rules adopted pursuant thereto. Such rulemaking shall substantially conform to the principles of the federal Administrative Procedure Act, 5 U.S.C. section 551 et seq., and the Federal Advisory Committee Act, 5 U.S.C. App. 2, section 1 et seq., as may be amended (hereinafter APA). All rules and amendments shall become binding as of the date specified in each rule or amendment.

If a majority of the legislatures of the compacting states rejects a rule, by enactment of a statute or resolution in the same manner used to adopt the compact, then such rule shall have no further force and effect in any compacting state.

When promulgating a rule, the interstate commission shall:

Publish the proposed rule stating with particularity the text of the rule which is proposed and the reason for the proposed rule;

Allow persons to submit written data, facts, opinions, and arguments, which information shall be publicly available;

Provide an opportunity for an informal hearing; and

Promulgate a final rule and its effective date, if appropriate, based on the rulemaking record.

Not later than sixty days after a rule is promulgated, any interested person may file a petition in the United States District Court for the District of Columbia or in the federal district court where the interstate commission's principal office is located for judicial review of such rule. If the court finds that the interstate commission's action is not supported by substantial evidence, as defined in the APA, in the rulemaking record, the court shall hold the rule unlawful and set it aside.

Subjects to be addressed within twelve months after the first meeting must at a minimum include:

Notice to victims and opportunity to be heard;

Offender registration and compliance;

Violations/returns;

Transfer procedures and forms;

Eligibility for transfer;

Collection of restitution and fees from offenders;

Data collection and reporting;

The level of supervision to be provided by the receiving state;

Transition rules governing the operation of the compact and the interstate commission during all or part of the period between the effective date of the compact and the date on which the last eligible state adopts the compact; and

Mediation, arbitration, and dispute resolution.

The existing rules governing the operation of the previous compact superseded by this act shall be null and void twelve months after the first meeting of the interstate commission created hereunder.

Upon determination by the interstate commission that an emergency exists, it may promulgate an emergency rule which shall become effective immediately upon adoption; *Provided*, that the usual rulemaking procedures provided hereunder shall be retroactively applied to said rule as soon as reasonably possible, in no event later than ninety days after the effective date of the rule.

ARTICLE IX OVERSIGHT, ENFORCEMENT, AND DISPUTE RESOLUTION BY THE INTERSTATE COMMISSION

Section A. Oversight

The interstate commission shall oversee the interstate movement of adult offenders in the compacting states and shall monitor such activities being administered in noncompacting states which may significantly affect compacting states.

The courts and executive agencies in each compacting state shall enforce this compact and shall take all actions necessary and appropriate to effectuate the compact's purposes and intent. In any judicial or administrative proceeding in a compacting state pertaining to the subject matter of this compact which may affect the powers, responsibilities, or actions of the interstate commission, the interstate commission shall be entitled to receive all service of process in any such proceeding and shall have standing to intervene in the proceeding for all purposes.

Section B. Dispute Resolution

The compacting states shall report to the interstate commission on issues or activities of concern to them and cooperate with and support the interstate commission in the discharge of its duties and responsibilities.

The interstate commission shall attempt to resolve any disputes or other issues which are subject to the compact and which may arise among compacting states and noncompacting states.

The interstate commission shall enact a bylaw or promulgate a rule providing for both mediation and binding dispute resolution for disputes among the compacting states.

Section C. Enforcement

The interstate commission, in the reasonable exercise of its discretion, shall enforce the provisions of this compact using any or all means set forth in Article XII, Section B, of this compact.

ARTICLE X FINANCE

The interstate commission shall pay or provide for the payment of the reasonable expenses of its establishment, organization, and ongoing activities.

The interstate commission shall levy on and collect an annual assessment from each compacting state to cover the cost of the internal operations and activities of the interstate commission and its staff which must be in a total

amount sufficient to cover the interstate commission's annual budget as approved each year. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the interstate commission, taking into consideration the population of the state and the volume of interstate movement of offenders in each compacting state and shall promulgate a rule binding upon all compacting states which governs such assessment.

The interstate commission shall not incur any obligations of any kind prior to securing the funds adequate to meet the same, nor shall the interstate commission pledge the credit of any of the compacting states, except by and with the authority of the compacting state.

The interstate commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the interstate commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the interstate commission shall be audited yearly by a certified or licensed public accountant, and the report of the audit shall be included in and become part of the annual report of the interstate commission.

ARTICLE XI COMPACTING STATES, EFFECTIVE DATE AND AMENDMENT

Any state, as defined in Article II of this compact, is eligible to become a compacting state. The compact shall become effective and binding upon legislative enactment of the compact into law by no less than thirty-five of the states. The initial effective date shall be the later of July 1, 2001, or upon enactment into law by the thirty-fifth jurisdiction. Thereafter it shall become effective and binding, as to any other compacting state, upon enactment of the compact into law by that state. The governors of nonmember states or their designees will be invited to participate in interstate commission activities on a nonvoting basis prior to adoption of the compact by all states and territories of the United States.

Amendments to the compact may be proposed by the interstate commission for enactment by the compacting states. No amendment shall become effective and binding upon the interstate commission and the compacting states unless and until it is enacted into law by unanimous consent of the compacting states.

ARTICLE XII WITHDRAWAL, DEFAULT, TERMINATION, AND JUDICIAL ENFORCEMENT

Section A. Withdrawal

Once effective, the compact shall continue in force and remain binding upon each and every compacting state; *Provided*, that a compacting state may withdraw from the compact (withdrawing state) by enacting a statute specifically repealing the statute which enacted the compact into law.

The effective date of withdrawal is the effective date of the repeal.

The withdrawing state shall immediately notify the chairperson of the interstate commission in writing upon the introduction of legislation repealing this compact in the withdrawing state. The interstate commission shall notify the other compacting states of the withdrawing state's intent to withdraw within sixty days of its receipt thereof.

The withdrawing state is responsible for all assessments, obligations, and liabilities incurred through the effective date of withdrawal, including any

obligations the performance of which extend beyond the effective date of withdrawal.

Reinstatement following withdrawal of any compacting state shall occur upon the withdrawing state reenacting the compact or upon such later date as determined by the interstate commission.

Section B. Default

If the interstate commission determines that any compacting state has at any time defaulted (defaulting state) in the performance of any of its obligations or responsibilities under this compact, the bylaws, or any duly promulgated rules the interstate commission may impose any or all of the following penalties:

Fines, fees, and costs in such amounts as are deemed to be reasonable as fixed by the interstate commission;

Remedial training and technical assistance as directed by the interstate commission;

Suspension and termination of membership in the compact. Suspension shall be imposed only after all other reasonable means of securing compliance under the bylaws and rules have been exhausted. Immediate notice of suspension shall be given by the interstate commission to the Governor, the Chief Justice or Chief Judicial Officer of the state, the majority and minority leaders of the defaulting state's legislature, and the state council.

The grounds for default include, but are not limited to, failure of a compacting state to perform such obligations or responsibilities imposed upon it by this compact, interstate commission bylaws, or duly promulgated rules. The interstate commission shall immediately notify the defaulting state in writing of the penalty imposed by the interstate commission on the defaulting state pending a cure of the default. The interstate commission shall stipulate the conditions and the time period within which the defaulting state must cure its default. If the defaulting state fails to cure the default within the time period specified by the interstate commission, in addition to any other penalties imposed herein, the defaulting state may be terminated from the compact upon an affirmative vote of a majority of the compacting states and all rights, privileges, and benefits conferred by this compact shall be terminated from the effective date of suspension. Within sixty days of the effective date of termination of a defaulting state, the interstate commission shall notify the Governor, the Chief Justice or Chief Judicial Officer, the majority and minority leaders of the defaulting state's legislature, and the state council of such termination.

The defaulting state is responsible for all assessments, obligations, and liabilities incurred through the effective date of termination, including any obligations, the performance of which extends beyond the effective date of termination.

The interstate commission shall not bear any costs relating to the defaulting state unless otherwise mutually agreed upon between the interstate commission and the defaulting state. Reinstatement following termination of any compacting state requires both a reenactment of the compact by the defaulting state and the approval of the interstate commission pursuant to the rules.

Section C. Judicial Enforcement

The interstate commission may, by majority vote of the members, initiate legal action in the United States District Court for the District of Columbia or, at the discretion of the interstate commission, in the federal court district

where the interstate commission has its offices, to enforce compliance with the provisions of the compact or its duly promulgated rules and bylaws against any compacting state in default. In the event judicial enforcement is necessary, the prevailing party shall be awarded all costs of such litigation, including reasonable attorney's fees.

Section D. Dissolution of Compact

The compact dissolves effective upon the date of the withdrawal or default of the compacting state which reduces membership in the compact to one compacting state. Upon the dissolution of this compact, the compact becomes null and void and shall be of no further force or effect, and the business and affairs of the interstate commission shall be wound up and any surplus funds shall be distributed in accordance with the bylaws.

ARTICLE XIII SEVERABILITY AND CONSTRUCTION

The provisions of this compact shall be severable, and if any phrase, clause, sentence, or provision is deemed unenforceable, the remaining provisions of the compact shall be enforceable.

The provisions of this compact shall be liberally constructed to effectuate its purposes.

ARTICLE XIV BINDING EFFECT OF COMPACT AND OTHER LAWS

Section A. Other Laws

Nothing herein prevents the enforcement of any other law of a compacting state that is not inconsistent with this compact.

All compacting states' laws conflicting with this compact are superseded to the extent of the conflict.

Section B. Binding Effect of the Compact

All lawful actions of the interstate commission, including all rules and bylaws promulgated by the interstate commission, are binding upon the compacting states.

All agreements between the interstate commission and the compacting states are binding in accordance with their terms.

Upon the request of a party to a conflict over meaning or interpretation of interstate commission actions, and upon a majority vote of the compacting states, the interstate commission may issue advisory opinions regarding such meaning or interpretation.

In the event any provision of this compact exceeds the constitutional limits imposed on the legislature of any compacting state, the obligations, duties, powers, or jurisdiction sought to be conferred by such provision upon the interstate commission shall be ineffective and such obligations, duties, powers, or jurisdiction shall remain in the compacting state and shall be exercised by the agency thereof to which such obligations, duties, powers, or jurisdiction are delegated by law in effect at the time this compact becomes effective.

Source: Laws 2003, LB 46, § 3.

Note: Laws 2003, LB 46, section 51, provided this section became operative "when thirty-five states have adopted the Interstate Compact for Adult Offender Supervision". By June 2002, the compact had reached this threshold. (see www.interstatecompact.org) LB 46 became effective May 24, 2003.

Cross References

Adult offender received for parole supervision, monthly programming fee, see section 83-1,107.01.
Adult offender received for probation supervision, monthly programming fee, see section 29-2262.06.
Office of Parole Administration, duties, see section 83-933.

Office of Probation Administration, duties, see sections 29-2250 and 29-2254.
Warrant or detainer, duties of parole administrator, see section 83-1,125.

ARTICLE 27

RECEIPTS AND DISBURSEMENTS OF MONEY IN CRIMINAL CAUSES

Cross References

Fines and penalties, allocation, see Article VII, section 5, Constitution of Nebraska.

Section
29-2701. Fines, costs, forfeited recognizances; to whom paid.
29-2702. Money received; disposition.
29-2703. Costs; county not liable; exception.
29-2704. Preliminary examinations for felony; transcript of costs; audit; allowance; payment.
29-2705. Clerk of district court; cost bill in felony cases; payment.
29-2706. Conviction in felony cases; fines and costs; collection from defendant; disposition of amount collected.
29-2707. Repealed. Laws 1973, LB 226, § 34.
29-2708. Receipts; to what funds credited; disbursement of costs in criminal cases.
29-2709. Uncollectible costs; certification; payment; conditions.
29-2710. Witness fees; criminal cases in district court; by whom paid.

29-2701 Fines, costs, forfeited recognizances; to whom paid.

All money due upon any judgment for fines, costs, or forfeited recognizances shall be paid to the judge or clerk of the court where the judgment is pending, if paid before execution is issued therefor, otherwise to the officer holding the execution, or such money may be paid to the sheriff of the county if the judgment debtor is in jail. Every sheriff, marshal, or other ministerial officer who shall receive any such money shall pay the same to the proper clerk of the court within ten days from the time of receiving the same.

Source: G.S.1873, c. 58, § 533, p. 840; R.S.1913, § 9237; C.S.1922, § 10266; C.S.1929, § 29-2701; R.S.1943, § 29-2701; Laws 1973, LB 226, § 18; Laws 1988, LB 1030, § 28.

Fines and penalties collected by clerk of the district court are public money. State ex rel. Broatch v. Moores, 52 Neb. 770, 73 N.W. 299 (1897).

29-2702 Money received; disposition.

Every judge or clerk of court, upon receiving any money on account of forfeited recognizances, fines, or costs accruing or due to the county or state, shall pay the same to the treasurer of the proper county, except as may be otherwise expressly provided, within ten days from the time of receiving the same. When any money is paid to a judge or clerk of court on account of costs due to individual persons, the same shall be paid to the persons to whom the same are due upon demand therefor.

Source: G.S.1873, c. 58, § 534, p. 840; R.S.1913, § 9238; C.S.1922, § 10267; Laws 1927, c. 62, § 1, p. 223; C.S.1929, § 29-2702; R.S.1943, § 29-2702; Laws 1973, LB 226, § 19; Laws 1988, LB 370, § 8.

This section recognizes the constitutional requirement for disposition of fines, penalties, and license money. School Dist. No. 54 v. School Dist. of Omaha, 171 Neb. 769, 107 N.W.2d 744 (1961).

Where clerk of district court deposits money received from payment of fines in bank to his own individual credit, he thereby converts money to his own use. State ex rel. Broatch v. Moores, 56 Neb. 1, 76 N.W. 530 (1898).

29-2703 Costs; county not liable; exception.

No costs shall be paid from the county treasury in any case of prosecution for a misdemeanor except as provided in section 29-2709.

Source: G.S.1873, c. 58, § 535, p. 840; R.S.1913, § 9239; C.S.1922, § 10268; C.S.1929, § 29-2703; R.S.1943, § 29-2703; Laws 1965, c. 125, § 2, p. 462; Laws 1973, LB 226, § 19; Laws 1987, LB 665, § 1.

Taxation of jury costs to defendant under this section requires finding by district court supported by evidence that appeal was frivolous or capricious. State v. Stanosheck, 186 Neb. 17, 180 N.W.2d 226 (1970).

Taxing as costs of meals, lodging, and mileage of jurors is not authorized. State v. Jungclaus, 176 Neb. 641, 126 N.W.2d 858 (1964).

Costs cannot be paid by county unless approval of prosecution by county attorney is obtained. Conkling v. DeLany, 167 Neb. 4, 91 N.W.2d 250 (1958).

29-2704 Preliminary examinations for felony; transcript of costs; audit; allowance; payment.

Upon examination in county court on complaint of a felony, whether the accused is held to answer in court or discharged, the court may file with the county clerk a certified transcript of the costs as assessed under section 29-2709, giving the items of the same, and to whom each is due, and on what account. As early as may be after the filing of such bill, but without assembling for the special purpose, the county board of the proper county shall examine into such bill of costs as to its correctness, justice, and legality and may, if need be, examine under oath any person upon the subject, which oath may be administered by the county clerk.

It shall be the duty of the board to disallow any item, in whole or in part, of such bill that is found to be unlawful or needlessly incurred, or if it appears that the complaint was made for a felony when it should have been for a misdemeanor only, it may in its discretion disallow the entire bill or any part thereof.

The board may order that such bill, or so much thereof as it finds to be lawful and just, be paid from the county treasury, whereupon the county clerk shall draw warrants upon the county treasurer for the sums respectively due to each person upon such bill so allowed, which warrants the treasurer shall pay from the county general fund. The amount of costs so allowed shall be certified by the county clerk, and the certificate filed with the papers in the cause, in the office of the clerk of the district court. If the defendant shall be convicted, judgment shall be rendered against him or her for the costs so allowed, in addition to the costs made in the district court.

Source: G.S.1873, c. 58, § 536, p. 840; R.S.1913, § 9240; C.S.1922, § 10269; C.S.1929, § 29-2704; R.S.1943, § 29-2704; Laws 1973, LB 226, § 21; Laws 1984, LB 13, § 72; Laws 2001, LB 83, § 1.

Section does not fix liability on county for fees of defendant's witnesses. Worthen v. Johnson County, 62 Neb. 754, 87 N.W. 909 (1901).

County is liable for costs on felony charge whether accused was held to answer in court or not. If charge should have been for misdemeanor, board may disallow. Dodge County v. Gregg, 14 Neb. 305, 15 N.W. 741 (1883).

Section is constitutional. Costs in misdemeanor cases may be disallowed by county board. Boggs v. Washington County, 10 Neb. 297, 4 N.W. 984 (1880).

29-2705 Clerk of district court; cost bill in felony cases; payment.

Upon the discharge or conviction of the defendant in any case of felony in the district court, it shall be lawful for the clerk of such court to file in the office of

the county clerk a bill of the costs not previously allowed by the county board, whereupon the same shall be examined into, audited and allowed, and paid in the manner specified in section 29-2704; *Provided,* nothing in this section or section 29-2704 shall preclude any court or clerk, in any case, from delaying the filing of such cost bill for allowance as aforesaid, until it shall be determined whether the same will be collected from the defendant; and no cost bill shall be filed for allowance as aforesaid under the provisions of this section, while there is pending in the cause any proceeding in error, or any unexpired recognizance for replevy of the judgment.

Source: G.S.1873, c. 58, § 537, p. 841; R.S.1913, § 9241; C.S.1922, § 10270; C.S.1929, § 29-2705; R.S.1943, § 29-2705; Laws 1973, LB 226, § 22.

Exemption of certain type or class of offense from the imposition of costs is not an unconstitutional classification. State ex rel. Douglas v. Gradwohl, 194 Neb. 745, 235 N.W.2d 854 (1975).

29-2706 Conviction in felony cases; fines and costs; collection from defendant; disposition of amount collected.

In any case of indictment for felony, where the defendant shall be convicted, it shall be the duty of the county attorney, clerk of the court, and sheriff of the county to use all lawful means within the scope of their respective powers, if need be, for the collection of the costs from the defendant, and the fine also, if any shall have been adjudged against him. When the costs shall have been collected, if the same shall have been allowed for payment from the county treasurer as provided in section 29-2705, it shall be the duty of the clerk of the court to certify and pay the same immediately to the county treasurer, together with any fine that may have been collected in the case.

Source: G.S.1873, c. 58, § 538, p. 841; R.S.1913, § 9242; C.S.1922, § 10271; C.S.1929, § 29-2706.

29-2707 Repealed. Laws 1973, LB 226, § 34.

29-2708 Receipts; to what funds credited; disbursement of costs in criminal cases.

All money arising from fines and recognizances shall be credited by the county treasurer to the county school fund except as provided by Article VII, section 5, Constitution of Nebraska, and the costs and proceeds of jail labor shall be credited to the county general fund. Whenever any costs in any criminal case are paid from the county treasury, such payment shall be made from the county general fund; and when any warrant is drawn by the county clerk upon the treasurer of the county for the payment of such costs, a true record of the same and the definite purpose of every such warrant shall be recorded in the clerk's office showing the cause in which such costs are paid.

Source: G.S.1873, c. 58, § 540, p. 842; R.S.1913, § 9244; C.S.1922, § 10273; C.S.1929, § 29-2708; R.S.1943, § 29-2708; Laws 1959, c. 125, § 1, p. 459; Laws 1988, LB 370, § 9.

This section recognizes the constitutional requirement for disposition of fines, penalties, and license money. School Dist. No. 54 v. School Dist. of Omaha, 171 Neb. 769, 107 N.W.2d 744 (1961).

29-2709 Uncollectible costs; certification; payment; conditions.

When any costs in misdemeanor, traffic, felony preliminary, or juvenile cases in county court, except for those costs provided for in subsection (3) of section

24-703, two dollars of the fee provided in section 33-107.01, the court automation fee provided in section 33-107.03, and the uniform data analysis fee provided in section 47-633, are found by a county judge to be uncollectible for any reason, including the dismissal of the case, such costs shall be deemed waived unless the judge, in his or her discretion, enters an order assessing such portion of the costs as by law would be paid over by the court to the State Treasurer as follows:

(1) In all cases brought by or with the consent of the county attorney, all such uncollectible costs shall be certified by the clerk of the court to the county clerk who shall present the bills therefor to the county board. The county board shall pay from the county general fund all such bills found by the board to be lawful; and

(2) In all cases brought under city or village ordinance, all such uncollectible costs shall be certified to the appropriate city or village officer authorized to receive claims who shall present the bills therefor to the governing body of the city or village in the same manner as other claims. Such governing body shall pay from the general fund of the city or village all such bills as are found to be lawful.

Source: G.S.1873, c. 58, § 541, p. 842; Laws 1905, c. 207, § 1, p. 700; Laws 1913, c. 132, § 1, p. 320; R.S.1913, § 9245; C.S.1922, § 10274; C.S.1929, § 29-2709; R.S.1943, § 29-2709; Laws 1973, LB 226, § 23; Laws 1975, LB 286, § 3; Laws 1987, LB 665, § 2; Laws 1988, LB 370, § 10; Laws 2001, LB 83, § 2; Laws 2002, LB 876, § 63; Laws 2002, Second Spec. Sess., LB 13, § 3; Laws 2003, LB 46, § 15.

Cross References

Law Enforcement Improvement Fund, fee, see section 81-1429.
Nebraska Retirement Fund for Judges, fee, see section 24-703.

Exemption of certain type or class of offense from the imposition of costs is not an unconstitutional classification. State ex rel. Douglas v. Gradwohl, 194 Neb. 745, 235 N.W.2d 854 (1975).

Counties are obligated to pay costs and expenses of prosecutions, including fees and expenses of attorneys appointed to represent indigent defendants in criminal cases, and there is no requirement that a property tax be levied therefor. Kovarik v. County of Banner, 192 Neb. 816, 224 N.W.2d 761 (1975).

Costs are not allowed in misdemeanor cases unless the suit is instituted with the consent of the county attorney or approved by him in writing. State v. Jungclaus, 176 Neb. 641, 126 N.W.2d 858 (1964).

To authorize payment of costs by county, consent or approval of county attorney to prosecution must be obtained. Conkling v. DeLany, 167 Neb. 4, 91 N.W.2d 250 (1958).

Provisions of this section are for the benefit of officers and witnesses earning fees in misdemeanor and peace warrant causes. Dodge County v. Gregg, 14 Neb. 305, 15 N.W. 741 (1883); Boggs v. Washington County, 10 Neb. 297, 4 N.W. 984 (1880).

29-2710 Witness fees; criminal cases in district court; by whom paid.

The fees of all witnesses in criminal cases in the district court shall be paid by the county where the indictment is found.

Source: Laws 1875, § 1, p. 33; R.S.1913, § 9246; C.S.1922, § 10275; C.S.1929, § 29-2710.

Section does not create new liability on county. Hewerkle v. Gage County, 14 Neb. 18, 14 N.W. 549 (1883).

ARTICLE 28

HABEAS CORPUS

Cross References

Constitutional provision, writ of habeas corpus, see Article I, section 8, Constitution of Nebraska.

Uniform Criminal Extradition Act, see section 29-758.

Section
29-2801. Habeas corpus; writ; when allowed.
29-2802. Writ; applicant; to be taken before judge; return.
29-2803. Habeas corpus; applicant; subpoena for witnesses.
29-2804. Subpoena; duty of witness; noncompliance; penalty.
29-2805. Habeas corpus; hearing by court or judge; procedure.
29-2806. Habeas corpus; disposition of cause.
29-2807. Writ; failure to obey; penalty.
29-2808. Writ; failure to issue; penalty.
29-2809. Applicant discharged; rearrest for same offense prohibited; penalty; exceptions.
29-2810. Person in custody of officer; delivery to another officer prohibited; penalty; exceptions.
29-2811. Accessories before the fact in capital cases; not bailable.
29-2812. Extradition of citizens of Nebraska for prosecution in sister state; imprisonment for; general prohibition; penalty; exception.
29-2813. False imprisonment; penalties; action for; limitation.
29-2814. Warrant or commitment; defects; when harmless.
29-2815. Applicant in custody of person not an officer; form of writ.
29-2816. Writ; service and return.
29-2817. Writ; return by person detaining; contents.
29-2818. Writ; return by person detaining; signature and verification.
29-2819. Writ; return of person detaining; prima facie evidence of cause of detention, when; order for costs.
29-2820. Writ; person detaining; how designated.
29-2821. Writ; person detained; how designated.
29-2822. Writ; order for safekeeping of person detained.
29-2823. Habeas corpus proceedings; review; procedure; bail pending appeal.
29-2824. Habeas corpus proceedings; fees; taxation as costs; payment by county; payment in advance not demandable.

29-2801 Habeas corpus; writ; when allowed.

If any person, except persons convicted of some crime or offense for which they stand committed, or persons committed for treason or felony, the punishment whereof is capital, plainly and specially expressed in the warrant of commitment, now is or shall be confined in any jail of this state, or shall be unlawfully deprived of his or her liberty, and shall make application, either by him or herself or by any person on his or her behalf, to any one of the judges of the district court, or to any county judge, and does at the same time produce to such judge a copy of the commitment or cause of detention of such person, or if the person so imprisoned or detained is imprisoned or detained without any legal authority, upon making the same appear to such judge, by oath or affirmation, it shall be his duty forthwith to allow a writ of habeas corpus, which writ shall be issued forthwith by the clerk of the district court, or by the county judge, as the case may require, under the seal of the court whereof the person allowing such writ is a judge, directed to the proper officer, person or persons who detains such prisoner.

Source: G.S.1873, c. 58, § 353, p. 804; R.S.1913, § 9247; C.S.1922, § 10276; C.S.1929, § 29-2801.

1. Jurisdiction
2. Requirement in petition
3. When allowed
4. When denied

1. Jurisdiction

An application for a writ of habeas corpus to release a prisoner confined under sentence of court must be brought in the county where the prisoner is confined. Where proceedings are instituted in another county, it is the duty of the court, on objection to its jurisdiction, to dismiss the proceedings. Addison v. Parratt, 204 Neb. 656, 284 N.W.2d 574 (1979); Gillard v. Clark, 105 Neb. 84, 179 N.W. 396 (1920).

County court does not have jurisdiction in habeas corpus proceedings to release an accused person held for trial in district court. McFarland v. State, 172 Neb. 251, 109 N.W.2d 397 (1961).

Rules governing allowance of writ of habeas corpus are restated and clarified. Jackson v. Olson, 146 Neb. 885, 22 N.W.2d 124 (1946); Hawk v. Olson, 146 Neb. 875, 22 N.W.2d 136 (1946).

Original jurisdiction in habeas corpus has been conferred upon the county court in certain cases. Williams v. Olson, 143 Neb. 115, 8 N.W.2d 830 (1943).

Where application is made for a writ of habeas corpus to the district court of a county other than the one in which the prisoner is confined, and the officer in whose custody the prisoner is held brings the latter into court and submits to jurisdiction without objection, the prisoner is then under confinement in the county where the action was brought. In such case, the court has the authority to inquire into the legality of his or her restraint. Gillard v. Clark, 105 Neb. 84, 179 N.W. 396 (1920).

Application for writ by parent to recover possession of minor child may be brought in district court of county where unlawful detention takes place. State ex rel. Gunnarson v. Nebraska Children's Home Society, 94 Neb. 255, 143 N.W. 203 (1913).

County court does not have authority to issue writ of habeas corpus to be served in adjoining county to bring before court a nonresident child. Johnson v. Terry, 85 Neb. 267, 122 N.W. 984 (1909).

Issue of writ by district judge to county outside district is discretionary. State ex rel. Thompson v. Porter, 78 Neb. 811, 112 N.W. 286 (1907).

Habeas corpus involving custody of child is a proceeding in rem. Terry v. State, 77 Neb. 612, 110 N.W. 733 (1906).

Procedure for review is same as in civil actions. State v. Decker, 77 Neb. 33, 108 N.W. 157 (1906).

United States commissioner has no authority to issue writ. State ex rel. Atty. Gen. v. Burr, 19 Neb. 593, 28 N.W. 261 (1886).

Under Nebraska law, scope of remedy of writ of habeas corpus is limited. Shupe v. Sigler, 230 F.Supp. 601 (D. Neb. 1964).

Writ of habeas corpus is not available in federal court until relief has been sought in state court by writ of error coram nobis without avail. Schwein v. Olson, 56 F.Supp. 993 (D. Neb. 1944).

2. Requirement in petition

Failing to present the statutorily required copy of the commitment and detention order prevents a district court from proceeding to the relief sought by a defendant's habeas corpus action. Gallion v. Zinn, 236 Neb. 98, 459 N.W.2d 214 (1990).

Habeas corpus is not demandable of right but legal cause must be shown to entitle petitioner to its benefit. Swanson v. Jones, 151 Neb. 767, 39 N.W.2d 557 (1949).

Habeas corpus is a writ of right, but not a writ of course. Probable cause for issuance thereof must be shown. In re Application of Tail, Tail v. Olson, 145 Neb. 268, 16 N.W.2d 161 (1944).

Failure to set out copy of process in application is excused when facts alleged indicate nonexistence of warrant. Urban v. Brailey, 85 Neb. 796, 124 N.W. 467 (1910).

Petition based upon alleged want of probable cause should set out testimony; evidence may justify commitment though insufficient to convict. Rhea v. State, 61 Neb. 15, 84 N.W. 414 (1900).

Petition for writ must state facts which constitute illegal restraint. State ex rel. Distin v. Ensign, 13 Neb. 250, 13 N.W. 216 (1882).

3. When allowed

Under Nebraska law, the availability of habeas corpus is restricted to situations where the sentence imposed is absolutely void. Piercy v. Parratt, 202 Neb. 102, 273 N.W.2d 689 (1979).

Habeas corpus proceeding is a proper remedy to determine the right to the custody of a child. In re Application of Schwartzkopf, 149 Neb. 460, 31 N.W.2d 294 (1948).

Habeas corpus is a special civil proceeding providing summary remedy open to persons illegally detained. In re Application of Tail, Tail v. Olson, 144 Neb. 820, 14 N.W.2d 840 (1944).

To obtain release by habeas corpus, judgment must be absolutely void. In re James Carbino, 117 Neb. 107, 219 N.W. 846 (1928); Hulbert v. Fenton, 115 Neb. 818, 215 N.W. 104 (1927); Michaelson v. Beemer, 72 Neb. 761, 101 N.W. 1007 (1904); Keller v. Davis, 69 Neb. 494, 95 N.W. 1028 (1903).

Writ of habeas corpus is proper remedy where one is deprived of his liberty by reason of void judgment. In re Resler, 115 Neb. 335, 212 N.W. 765 (1927).

Writ lies where defendant has been arrested under void city ordinance. In re Application of McMonies, 75 Neb. 702, 106 N.W. 456 (1906).

Where detention is had under void sentence in contempt proceedings, habeas corpus is proper remedy. In re Havlik, 45 Neb. 747, 64 N.W. 234 (1895).

4. When denied

To release a person from a sentence of imprisonment by habeas corpus, it must appear that the sentence was absolutely void. Habeas corpus will not lie to discharge a person from a sentence of penal servitude where the court imposing the sentence had jurisdiction of the offense and had jurisdiction of the person of the defendant, and the sentence was within the power of the court to impose. Anderson v. Gunter, 235 Neb. 560, 456 N.W.2d 286 (1990).

Habeas corpus is not the proper action to challenge the validity of a detainer based upon an untried complaint, where the state filing the detainer has not requested transfer of the prisoner. Wickline v. Gunter, 233 Neb. 878, 448 N.W.2d 584 (1989).

Writ of habeas corpus is not available to persons lawfully convicted or merely to challenge conditions of incarceration. Pruitt v. Parratt, 197 Neb. 854, 251 N.W.2d 179 (1977).

Habeas corpus is not available to discharge a prisoner from a sentence of penal servitude if the court imposing it has jurisdiction of the offense and of the person charged with the crime, and if the sentence was within the power of the court. Case v. State, 177 Neb. 404, 129 N.W.2d 107 (1964).

After conviction, release pending hearing is not demandable of course. Sedlacek v. Hann, 156 Neb. 340, 56 N.W.2d 138 (1952).

Courts may not by habeas corpus deprive parents of the custody of their children unless parents are shown to be unfit. Boucher v. Dittmer, 151 Neb. 580, 38 N.W.2d 401 (1949).

Habeas corpus is never allowed as substitute for appeal or proceedings in error. Hulbert v. Fenton, 115 Neb. 818, 215 N.W. 104 (1927); Michaelson v. Beemer, 72 Neb. 761, 101 N.W. 1007 (1904); In re Langston, 55 Neb. 310, 75 N.W. 828 (1898).

Upon habeas corpus to discharge person held under warrant of extradition, if return to writ shows facts sufficient to justify detention of accused, it is sufficient. In re Willard, 93 Neb. 298, 140 N.W. 170 (1913).

Irregularities in commitment for contempt by justice of peace are not reviewable on habeas corpus. In re Hammond, 83 Neb. 636, 120 N.W. 203 (1909).

Insufficiency of complaint to state crime cannot ordinarily be raised by habeas corpus. Rhyn v. McDonald, 82 Neb. 552, 118 N.W. 136 (1908).

There is no provision for motion for new trial in county court on application for writ. Writ may not be allowed though complaint is subject to successful attack by demurrer. State ex rel. Gardiner v. Shrader, 73 Neb. 618, 103 N.W. 276 (1905).

Decision of Governor that party held under extradition warrant is a fugitive from justice cannot be reviewed on habeas corpus. Dennison v. Christian, 72 Neb. 703, 101 N.W. 1045 (1904).

Sentence in excess of statutory period is not ground for writ. In re Fanton, 55 Neb. 703, 76 N.W. 447 (1898).

On arrest on extradition warrant, evidence on preliminary hearing in other state will not be examined. In re Van Sciever, 42 Neb. 772, 60 N.W. 1037 (1894).

Irregularities before grand jury cannot be considered on habeas corpus. In re Betts, 36 Neb. 282, 54 N.W. 524 (1893).

Defendant out on bail is not entitled to writ, but should surrender himself. Spring v. Dahlman, 34 Neb. 692, 52 N.W. 567 (1892).

Commitment to reform school is not reviewable on habeas corpus. Buchanan v. Mallalieu, 25 Neb. 201, 41 N.W. 152 (1888).

Where defendant is committed to jail in default of fine, writ will not issue until fine is paid. Ex parte Johnson, 15 Neb. 512, 19 N.W. 594 (1884).

Supreme Court will not weigh evidence if testimony shows commission of offense. In re Balcom, 12 Neb. 316, 11 N.W. 312 (1882).

29-2802 Writ; applicant; to be taken before judge; return.

It shall be the duty of the officer or person to whom such writ shall be directed to convey the person or persons so imprisoned or detained and named in such writ, before the judge allowing the same, or, in case of his absence or disability, before some other judge of the same court, on the day specified in such writ, and to make due return of the writ, together with the day and cause of caption and detention of such person, according to the command thereof.

Source: G.S.1873, c. 58, § 354, p. 804; R.S.1913, § 9248; C.S.1922, § 10277; C.S.1929, § 29-2802.

A person to whom a writ of habeas corpus is directed makes response to the writ, not to petition therefor. In re Application of Tail, Tail v. Olson, 144 Neb. 820, 14 N.W.2d 840 (1944).

When a child of age of 21 months is the subject of habeas corpus proceeding, it is not necessary that the child remain in the courtroom at all times, but the court may direct on what occasions, during the trial, it shall be brought into court. Kaufmann v. Kaufmann, 140 Neb. 299, 299 N.W. 617 (1941).

29-2803 Habeas corpus; applicant; subpoena for witnesses.

Whenever a habeas corpus shall be issued to bring the body of any prisoner committed as aforesaid, unless the court or judge issuing the same shall deem it wholly unnecessary and useless, the court or judge shall issue a subpoena to the sheriff of the county where such person shall be confined, commanding him to summon the witness or witnesses therein named to appear before such judge or court, at the time and place when and where such habeas corpus shall be returnable. It shall be the duty of such sheriff to serve the subpoena, if possible, in time to enable such witness or witnesses to attend.

Source: G.S.1873, c. 58, § 355, p. 804; R.S.1913, § 9249; C.S.1922, § 10278; C.S.1929, § 29-2803.

29-2804 Subpoena; duty of witness; noncompliance; penalty.

It shall be the duty of the witness or witnesses thus served with subpoena to attend and give evidence before the judge or court issuing the same, on pain of being guilty of a contempt, in which event he or they shall be proceeded against accordingly by the judge or court.

Source: G.S.1873, c. 58, § 356, p. 805; R.S.1913, § 9250; C.S.1922, § 10279; C.S.1929, § 29-2804.

29-2805 Habeas corpus; hearing by court or judge; procedure.

On the hearing of any habeas corpus issued as aforesaid, it shall be the duty of the judge or court who shall hear the same to examine the witness or witnesses aforesaid, and such other witnesses as the prisoner may request, touching any offense mentioned in the warrant of commitment, whether the offense be technically set out in the commitment or not. Upon the hearing the judge or court may either recommit, bail or discharge the prisoner, according to the facts of the case.

Source: G.S.1873, c. 58, § 357, p. 805; R.S.1913, § 9251; C.S.1922, § 10280; C.S.1929, § 29-2805.

29-2806 Habeas corpus; disposition of cause.

When the judge shall have examined into the cause of the capture and detention of the person so brought before him, and shall be satisfied that the person is unlawfully imprisoned or detained, he shall forthwith discharge such prisoner from confinement. In case the person or persons applying for such writ shall be confined or detained in a legal manner, on a charge of having committed any crime or offense, the judge shall, at his discretion, commit, discharge or let to bail such person or persons, and if the judge shall deem the offense bailable, on the principles of law, he shall cause the person charged as aforesaid to enter into recognizance, with one or more sufficient securities, in such sum as the judge shall think reasonable, the circumstances of the prisoner and the nature of the offense charged considered, conditioned for his appearance at the next court where the offense is cognizable. The judge shall certify his proceedings, together with the recognizance, forthwith, to the proper court; and if the person or persons charged as aforesaid shall fail to enter into such recognizance, he or they shall be committed to prison by such judge.

Source: G.S.1873, c. 58, § 358, p. 805; R.S.1913, § 9252; C.S.1922, § 10281; C.S.1929, § 29-2806.

The appropriate form of relief from denial of a motion to reduce excessive bail is by habeas corpus. State v. Harig, 192 Neb. 49, 218 N.W.2d 884 (1974).

Statute contemplates that relator shall be discharged, committed, or let to bail. Rhodes v. Houston, 172 Neb. 177, 108 N.W.2d 807 (1961).

Resort may be had to habeas corpus to review discretion of district court in fixing the amount of bail. Kennedy v. Corrigan, 169 Neb. 586, 100 N.W.2d 550 (1960).

Principles governing issuance of writ of habeas corpus stated. Lingo v. Hann, 161 Neb. 67, 71 N.W.2d 716 (1955).

Court should require prisoner to enter into recognizance for appearance where order of discharge from bailable offense is appealed. Hulbert v. Fenton, 115 Neb. 818, 215 N.W. 104 (1927).

When it appears that petitioner stands charged with bailable offense and his sureties are for any cause released from liability, he will be remanded to district court. State ex rel. Emerson v. Bauman, 87 Neb. 273, 126 N.W. 857 (1910).

If commitment on which prisoner is detained is insufficient, but information against him charges a crime, court will recommit him to the court having jurisdiction of offense. Michaelson v. Beemer, 72 Neb. 761, 101 N.W. 1007 (1904).

Order fixing amount of bail will not be disturbed upon habeas corpus unless amount is unreasonably great and disproportionate to the offense charged. In re Scott, 38 Neb. 502, 56 N.W. 1009 (1893).

29-2807 Writ; failure to obey; penalty.

If any person to whom such writ of habeas corpus shall be directed as aforesaid, shall neglect or refuse to obey or make return of the same according to the command thereof, or shall make a false return of the writ, or upon demand made by the prisoner, or any person in his or her behalf, shall refuse to deliver to the person demanding, within six hours after the demand therefor, a true copy of the warrant or commitment or detainer of such prisoner, every person so offending shall, for the first offense, forfeit to the party aggrieved the sum of two hundred dollars, and for the second offense, the sum of four hundred dollars, and shall, if an officer, be incapable to hold his office.

Source: G.S.1873, c. 58, § 359, p. 805; R.S.1913, § 9253; C.S.1922, § 10282; C.S.1929, § 29-2807.

29-2808 Writ; failure to issue; penalty.

If any clerk of the district court shall refuse to issue such writ after allowance and demand made as aforesaid, he shall forfeit to the party aggrieved the sum of five hundred dollars.

Source: G.S.1873, c. 58, § 360, p. 806; R.S.1913, § 9254; C.S.1922, § 10283; C.S.1929, § 29-2808.

29-2809 Applicant discharged; rearrest for same offense prohibited; penalty; exceptions.

Any person who shall be set at large upon any habeas corpus, shall not be again imprisoned for the same offense, unless by the legal order or process of the court wherein he or she shall be bound by recognizance to appear, or other court having jurisdiction of the cause or offense. If any person shall knowingly, contrary to sections 29-2801 to 29-2824, recommit or imprison, or cause to be recommitted or imprisoned for the same offense or pretended offense, any person so set at large, or shall knowingly aid or assist therein, he shall forfeit to the party aggrieved five hundred dollars, any colorable pretense or variation in the warrant or commitment notwithstanding.

Source: G.S.1873, c. 58, § 361, p. 806; R.S.1913, § 9255; C.S.1922, § 10284; C.S.1929, § 29-2809.

Principle of res judicata does not apply in cases of habeas corpus to judgment discharging prisoner when discharge was not upon merits but for defect of proof. State ex rel. Flippin v. Sievers, 102 Neb. 611, 168 N.W. 99 (1918).

To recover penalty, plaintiff must show statutory conditions exist. Hier v. Hutchings, 58 Neb. 334, 78 N.W. 638 (1899).

29-2810 Person in custody of officer; delivery to another officer prohibited; penalty; exceptions.

If any person of this state shall be committed to prison, or be in custody of any officer for any criminal matter, such prisoner shall not be removed therefrom into the custody of any other officer, unless by legal process, or when the prisoner shall be delivered to some inferior officer to carry to jail, or shall, by order of the proper court, be removed from one place to another within the state for trial, or in case of fire, infection or other necessity; and if any person, after such commitment, shall make out or sign or countersign any warrant for such removal, contrary to this section, he or she shall for every such offense forfeit to the party aggrieved five hundred dollars.

Source: G.S.1873, c. 58, § 362, p. 806; R.S.1913, § 9256; C.S.1922, § 10285; C.S.1929, § 29-2810.

29-2811 Accessories before the fact in capital cases; not bailable.

When any person shall appear to be committed by any judge or magistrate, and charged as accessory before the fact to any felony, the punishment whereof is capital, which felony shall be plainly and especially charged in the warrant of commitment, such person shall not be removed or bailed by virtue of sections 29-2801 to 29-2824, or in any other manner than as if said sections had not been enacted.

Source: G.S.1873, c. 58, § 363, p. 806; R.S.1913, § 9257; C.S.1922, § 10286; C.S.1929, § 29-2811.

29-2812 Extradition of citizens of Nebraska for prosecution in sister state; imprisonment for; general prohibition; penalty; exception.

No citizen of this state, being an inhabitant or resident of the same, shall be sent a prisoner to any place whatever out of the state, for any crime or offense committed within this state, except in cases specially authorized by law, and every such imprisonment is hereby declared to be illegal. If any such citizen shall be so imprisoned, he may for every such imprisonment maintain an action of false imprisonment, in any court having cognizance thereof, against the person or persons by whom he shall be so imprisoned or transported contrary to law, and against any person who shall contrive, write, seal, sign or countersign any writing for such imprisonment or transportation, or shall be aiding and assisting in the same or any of them, and shall recover triple costs besides damages, which damages, so to be given, shall not be less than five hundred dollars; and every person knowingly concerned in any manner as aforesaid in such illegal imprisonment or transportation, contrary to this section, and being thereof lawfully convicted, shall be disabled from henceforth to bear any office of trust or profit within this state; *Provided*, if any citizen of this state, or any person or persons at any time resident in the same, shall have committed or shall be charged with having committed any treason, felony or misdemeanor in any other part of the United States or territories where he or she ought to be tried for such offense, he, she or they may be sent to the state or territory having jurisdiction of the offense as provided by the Uniform Criminal Extradition Act of this state.

Source: G.S.1873, c. 58, § 364, p. 806; R.S.1913, § 9258; C.S.1922, § 10287; C.S.1929, § 29-2812; Laws 1935, c. 66, § 28, p. 231; C.S.Supp.,1941, § 29-2812.

Cross References

Uniform Criminal Extradition Act, see section 29-758.

Courts are bound by construction of extradition laws adopted by Supreme Court of United States and will not review questions of evidence decided by Governor. In re Willard, 93 Neb. 298, 140 N.W. 170 (1913).

This section does not authorize extradition without proof that accused is fugitive. Dennison v. Christian, 72 Neb. 703, 101 N.W. 1045 (1904).

29-2813 False imprisonment; penalties; action for; limitation.

The penalties recoverable pursuant to sections 29-2801 to 29-2824 shall be recovered by the party aggrieved, his or her executors or administrators, by civil action in any court having cognizance of the same; *Provided*, no person shall be sued or molested for any offense against the provisions of said sections, unless within two years after the time when such offense shall have been committed; but if the party aggrieved shall then be in prison, then within two years after the decease of the person imprisoned, or his or her delivery out of prison. In every such action it shall be lawful for the defendant to plead the general issue, and give the special matter in evidence.

Source: G.S.1873, c. 58, § 365, p. 807; R.S.1913, § 9259; C.S.1922, § 10288; C.S.1929, § 29-2813.

29-2814 Warrant or commitment; defects; when harmless.

If any person shall be committed to prison, or be in custody of any officer for any criminal matter, by virtue of any warrant or commitment of any magistrate of this state having jurisdiction of such criminal matter, such person shall not be discharged from such imprisonment or custody by reason of any informality

or defect of such warrant or commitment; *Provided*, such warrant or commitment shall show substantially a criminal matter for which such magistrate had jurisdiction so to arrest or commit.

Source: G.S.1873, c. 58, § 366, p. 807; R.S.1913, § 9260; C.S.1922, § 10289; C.S.1929, § 29-2814.

This section does not apply where a person is imprisoned in the state penitentiary under sentence imposed by a court of record. Dunham v. O'Grady, 137 Neb. 649, 290 N.W. 723 (1940).

29-2815 Applicant in custody of person not an officer; form of writ.

In case of confinement, imprisonment, or detention by any person not a sheriff, deputy sheriff, coroner, jailer, or marshal of this state, nor a marshal or other like officer of the courts of the United States, the writ of habeas corpus shall be in the form following:

The State of Nebraska,

ss

.............County,

The People of the State of Nebraska to the Sheriff of such county, greeting:

We command you, that the body of ...., of ...., by .... of .... imprisoned and restrained of his or her liberty, as it is said, you take and have before ...., a judge of our .... court ...., or, in case of his or her absence or disability, before some other judge of the same court at ...., to do and receive what our judge shall then and there consider .... concerning him or her in his or her behalf, and summon .... then and there to appear before our judge to show the cause of the taking and detaining ....; and have you there this writ, with your doings thereon.

Witness ...., at ...., this .... day of ...., in the year ....

Source: G.S.1873, c. 58, § 367, p. 807; R.S.1913, § 9261; C.S.1922, § 10290; C.S.1929, § 29-2815; R.S.1943, § 29-2815; Laws 1988, LB 1030, § 29.

Court may require person who is shown to have control of prisoner to produce him. Nebraska Children's Home Society v. State, 57 Neb. 765, 78 N.W. 267 (1899).

29-2816 Writ; service and return.

Such writ may be served in any county by any sheriff of the same or of any other county. When such writ shall be issued by a court in session, if such court shall have adjourned when the same is returned, it shall be returned before any judge of the same court, and if such writ is returned before one judge at a time when the court is in session, he may adjourn the case into the court, there to be heard and determined.

Source: G.S.1873, c. 58, § 368, p. 808; R.S.1913, § 9262; C.S.1922, § 10291; C.S.1929, § 29-2816.

29-2817 Writ; return by person detaining; contents.

In every case in which a writ of habeas corpus has been allowed, the person to whom the writ is directed shall file a return in which he shall plainly and unequivocally state the following: (1) Whether he has or has not the party in his custody or power, or under restraint; (2) if he has the party in his custody

or power, or under restraint, he shall set forth at large the authority and the true and whole cause of such imprisonment and restraint, with a copy of the writ, warrant, or other process, if any, upon which the party is detained; and (3) if he has had the party in his custody or power, or under restraint, and has transferred such custody or restraint to another, he shall state particularly to whom, at what time, for what cause and by what authority such transfer was made.

Source: G.S.1873, c. 58, § 371, p. 808; R.S.1913, § 9263; C.S.1922, § 10292; C.S.1929, § 29-2817.

Sufficiency of return raised but not decided. Rhodes v. Houston, 172 Neb. 177, 108 N.W.2d 807 (1961).

Where failure to comply with this section was not challenged in trial court, objection thereto could not be raised on appeal. In re Application of Bruno, 153 Neb. 445, 45 N.W.2d 178 (1950).

Party to whom writ is directed must set forth in return authority to hold and detain applicant for writ. In re Application of Robinson, 150 Neb. 443, 34 N.W.2d 887 (1948).

A person to whom a writ of habeas corpus is directed makes response to the writ, not to the petition therefor. In re Application of Tail, Tail v. Olson, 144 Neb. 820, 14 N.W.2d 840 (1944).

In the return to writ of habeas corpus, facts must appear which warrant restraint of party detained. In re Application of Niklaus, Niklaus v. Holloway, 144 Neb. 503, 13 N.W.2d 655 (1944).

When return to writ shows relator to be in custody of officer against whom it is directed and no facts appear warrant restraint of respondent, it is duty of court to order his discharge. Rose v. Vosburg, 107 Neb. 847, 187 N.W. 46 (1922).

In making return to writ of habeas corpus, officer detaining petitioner is required to set out copy of warrant of arrest and detention. Chandler v. Sipes, 103 Neb. 111, 170 N.W. 604 (1919).

In making return by officer, copy of process should be set out or sufficient reason assigned for failure. Urban v. Brailey, 86 Neb. 217, 125 N.W. 543 (1910), affirming 85 Neb. 796, 124 N.W. 467 (1910).

29-2818 Writ; return by person detaining; signature and verification.

The return or statement shall be signed by the person making it, and it shall be sworn to by him, unless he is a public officer and makes the return in his official capacity.

Source: G.S.1873, c. 58, § 372, p. 808; R.S.1913, § 9264; C.S.1922, § 10293; C.S.1929, § 29-2818.

29-2819 Writ; return of person detaining; prima facie evidence of cause of detention, when; order for costs.

Upon the return of any writ of habeas corpus, issued as aforesaid, if it shall appear that the person detained or imprisoned is in custody under any warrant or commitment in pursuance of law, the return shall be considered as prima facie evidence of the cause of detention; but if the person so imprisoned or detained is restrained of liberty by any alleged private authority, the return of the writ shall be considered only as a plea of the facts therein set forth, and the party claiming the custody shall be held to make proof of such facts. Upon the final disposition of any case arising upon a writ of habeas corpus, the court or judge determining the same shall make such order as to costs as the case may require.

Source: G.S.1873, c. 58, § 373, p. 809; R.S.1913, § 9265; C.S.1922, § 10294; C.S.1929, § 29-2819.

In habeas corpus proceeding against the warden of the state penitentiary, seeking the release of a prisoner, the return to the writ is prima facie evidence of the cause of detention. Goodman v. O'Grady, 135 Neb. 612, 283 N.W. 213 (1939); Sanclaer v. State, 111 Neb. 473, 196 N.W. 686 (1923).

Warrant of arrest and detention in hands of officer executing it is prima facie evidence of cause of detention. Chandler v. Sipes, 103 Neb. 111, 170 N.W. 604 (1919).

Return of officer is prima facie evidence of facts therein stated. McIntyre v. Mote, 77 Neb. 418, 109 N.W. 763 (1906).

Respondent is bound to establish, by evidence, facts set up in return. In re Application of Thomsen, 1 Neb. Unof. 751, 95 N.W. 805 (1901).

29-2820 Writ; person detaining; how designated.

The person having the custody of the prisoner may, in all writs of habeas corpus issued under sections 29-2801 to 29-2824, be designated by his name of

office, if he has any, or by his own name; or if both such names are unknown or uncertain, he may be described by an assumed appellation, and any person who is served with the writ shall be deemed the person intended thereby.

Source: G.S.1873, c. 58, § 369, p. 808; R.S.1913, § 9266; C.S.1922, § 10295; C.S.1929, § 29-2820.

29-2821 Writ; person detained; how designated.

The person to be produced shall be designated by his name, if known, and if that is unknown or uncertain, he may be described in any other way so as to make known who is intended.

Source: G.S.1873, c. 58, § 370, p. 808; R.S.1913, § 9267; C.S.1922, § 10296; C.S.1929, § 29-2821.

29-2822 Writ; order for safekeeping of person detained.

When any writ of habeas corpus shall have been allowed, the court or judge to which the same shall be returned, or into which it shall be adjourned, shall, for good cause shown, continue the cause and shall make order for the safekeeping of the person imprisoned, or detain him, as the nature of the case may require.

Source: G.S.1873, c. 58, § 374, p. 809; R.S.1913, § 9268; C.S.1922, § 10297; C.S.1929, § 29-2822.

29-2823 Habeas corpus proceedings; review; procedure; bail pending appeal.

The proceedings upon any writ of habeas corpus shall be recorded by the clerk and judges respectively, and may be reviewed as provided by law for appeal in civil cases. If the state shall appeal from a final order of a district court made upon the return of a writ of habeas corpus discharging a defendant in a criminal case, the defendant shall not be discharged from custody pending final decision upon appeal; *Provided*, said defendant may be admitted to bail pending disposition of said appeal as is otherwise provided by law.

Source: G.S.1873, c. 58, § 375, p. 809; R.S.1913, § 9269; Laws 1921, c. 168, § 1, p. 660; C.S.1922, § 10298; C.S.1929, § 29-2823; R.S. 1943, § 29-2823; Laws 1947, c. 106, § 1, p. 296.

Cross References

For appeals in civil cases, see sections 25-2728 to 25-2738.

Procedure on appeal in habeas corpus proceedings is the same as in civil cases. Neudeck v. Buettow, 166 Neb. 649, 90 N.W.2d 254 (1958).

Proceedings may be reviewed as provided by law in civil actions. State ex rel. Miller v. Cavett, 163 Neb. 584, 80 N.W.2d 692 (1957).

The doctrine of res judicata may be applied in habeas corpus proceedings. Williams v. Olson, 145 Neb. 282, 16 N.W.2d 178 (1944).

Final orders in habeas corpus proceedings may be reviewed on appeal. The test of finality of order for purpose of appeal is whether particular proceeding or action is terminated by judgment. In re Application of Tail, Tail v. Olson, 144 Neb. 820, 14 N.W.2d 840 (1944).

Proceedings for writ are civil in nature and under present statute can be brought to Supreme Court only by appeal. Writ is not allowed to correct errors of inferior tribunals. In re Application of Selicow, 100 Neb. 615, 160 N.W. 991 (1916).

State has right to bring error to reverse order discharging prisoner after conviction. Atwood v. Atwater, 34 Neb. 402, 51 N.W. 1073 (1892).

An appeal in a habeas corpus case is the same as that provided in a civil case. Graminea v. State, 206 F.Supp. 308 (D. Neb. 1962).

29-2824 Habeas corpus proceedings; fees; taxation as costs; payment by county; payment in advance not demandable.

The county judge shall be allowed the sum of five dollars for every allowance of the writ of habeas corpus and the hearing and determining of the case upon

the return of the writ, which sum, together with the fees of the clerk, sheriff, and witnesses in the case, shall be taxed by the judge on his or her return of proceedings on the writ, and the same shall be taxed and collected as part of the original costs in the case whenever the person brought before the judge on the writ was in custody by virtue of the proceedings in any case in which such person is charged or attempted to be charged with the commission of any criminal offense, and when such person shall either be held to bail, or shall be remanded to custody by the judge, but when such person shall be wholly discharged by the judge the costs shall be taxed to the state, and paid out of the county treasury of the proper county, upon the order of the county board; *Provided*, no person or officer shall have the right to demand the payment in advance of any fees which such person or officer may be entitled to by virtue of such proceedings on habeas corpus, when the writ shall have been issued or demanded for the discharge from custody of any person confined under color of proceedings in any criminal case.

Source: G.S.1873, c. 58, § 376, p. 809; R.S.1913, § 9270; C.S.1922, § 10299; C.S.1929, § 29-2824; R.S.1943, § 29-2824; Laws 1982, LB 928, § 25.

Under former law Post Conviction Act did not provide for allowance of attorney's fees. State v. Konvalin, 181 Neb. 554, 149 N.W.2d 755 (1967).

ARTICLE 29

CONVICTED SEX OFFENDER

Section
29-2901. Repealed. Laws 1979, LB 378, § 13.
29-2902. Repealed. Laws 1979, LB 378, § 13.
29-2903. Repealed. Laws 1979, LB 378, § 13.
29-2903.01. Repealed. Laws 1979, LB 378, § 13.
29-2904. Repealed. Laws 1979, LB 378, § 13.
29-2905. Repealed. Laws 1979, LB 378, § 13.
29-2906. Repealed. Laws 1979, LB 378, § 13.
29-2907. Repealed. Laws 1979, LB 378, § 13.
29-2908. Repealed. Laws 1979, LB 378, § 13.
29-2909. Repealed. Laws 1979, LB 378, § 13.
29-2910. Repealed. Laws 1979, LB 378, § 13.
29-2911. Repealed. Laws 1992, LB 523, § 18.
29-2912. Repealed. Laws 1992, LB 523, § 18.
29-2913. Repealed. Laws 1992, LB 523, § 18.
29-2914. Repealed. Laws 1992, LB 523, § 18.
29-2915. Repealed. Laws 1992, LB 523, § 18.
29-2916. Repealed. Laws 1992, LB 523, § 18.
29-2917. Repealed. Laws 1992, LB 523, § 18.
29-2918. Repealed. Laws 1992, LB 523, § 18.
29-2919. Repealed. Laws 1992, LB 523, § 18.
29-2920. Repealed. Laws 1992, LB 523, § 18.
29-2921. Repealed. Laws 1992, LB 523, § 18.
29-2922. Act, how cited.
29-2923. Terms, defined.
29-2924. Sentences authorized.
29-2925. Department of Correctional Services; Department of Health and Human Services; duties; evaluation of offender.
29-2926. Determination that treatment is not appropriate; review; procedure; no appeal.
29-2927. Repealed. Laws 1996, LB 645, § 22.

Section
29-2928. Treatment in inpatient treatment program; determination; procedure; departments; duties.
29-2929. Inpatient treatment program; annual review and progress reports; uncooperative offender; transfer; credit for time in treatment.
29-2930. Inpatient treatment program; aftercare treatment program; individual discharge plan.
29-2931. Repealed. Laws 1996, LB 645, § 22.
29-2932. Repealed. Laws 1996, LB 645, § 22.
29-2933. Repealed. Laws 1996, LB 645, § 22.
29-2934. Person committed under prior law; procedures.
29-2935. Department of Health and Human Services; access to data and information for evaluation; authorized.
29-2936. Rules and regulations.

29-2901 Repealed. Laws 1979, LB 378, § 13.

29-2902 Repealed. Laws 1979, LB 378, § 13.

29-2903 Repealed. Laws 1979, LB 378, § 13.

29-2903.01 Repealed. Laws 1979, LB 378, § 13.

29-2904 Repealed. Laws 1979, LB 378, § 13.

29-2905 Repealed. Laws 1979, LB 378, § 13.

29-2906 Repealed. Laws 1979, LB 378, § 13.

29-2907 Repealed. Laws 1979, LB 378, § 13.

29-2908 Repealed. Laws 1979, LB 378, § 13.

29-2909 Repealed. Laws 1979, LB 378, § 13.

29-2910 Repealed. Laws 1979, LB 378, § 13.

29-2911 Repealed. Laws 1992, LB 523, § 18.

29-2912 Repealed. Laws 1992, LB 523, § 18.

29-2913 Repealed. Laws 1992, LB 523, § 18.

29-2914 Repealed. Laws 1992, LB 523, § 18.

29-2915 Repealed. Laws 1992, LB 523, § 18.

29-2916 Repealed. Laws 1992, LB 523, § 18.

29-2917 Repealed. Laws 1992, LB 523, § 18.

29-2918 Repealed. Laws 1992, LB 523, § 18.

29-2919 Repealed. Laws 1992, LB 523, § 18.

29-2920 Repealed. Laws 1992, LB 523, § 18.

29-2921 Repealed. Laws 1992, LB 523, § 18.

29-2922 Act, how cited.

Sections 29-2922 to 29-2936 shall be known and may be cited as the Convicted Sex Offender Act.

Source: Laws 1992, LB 523, § 1.

The Convicted Sex Offender Act does not apply to persons previously convicted of a sexual offense but determined not to be mentally disordered under the prior mentally disordered sex offender act. State v. Wragge, 246 Neb. 864, 524 N.W.2d 54 (1994).

The Convicted Sex Offender Act does not apply to persons classified as untreatable or presently untreatable. State v. Sell, 244 Neb. 618, 508 N.W.2d 273 (1993).

29-2923 Terms, defined.

For purposes of the Convicted Sex Offender Act:

(1) Aftercare treatment program shall mean any public or private facility or service which offers treatment on an outpatient basis or in a minimally restricted setting, which treatment is appropriate for a convicted sex offender after he or she has successfully completed an inpatient treatment program operated by the Department of Health and Human Services; and

(2) Convicted sex offender shall mean a person who is convicted of sexual assault in the first degree as provided in section 28-319, sexual assault in the second degree as provided in section 28-320, sexual assault of a child in the second or third degree as provided in section 28-320.01, sexual assault of a child in the first degree as provided in section 28-319.01, incest as provided in section 28-703, or attempt to commit sexual assault in the first degree pursuant to section 28-201 and sentenced to a term of imprisonment in a Department of Correctional Services adult correctional facility.

Source: Laws 1992, LB 523, § 2; Laws 1996, LB 1044, § 78; Laws 2006, LB 1199, § 16.

29-2924 Sentences authorized.

Nothing in the Convicted Sex Offender Act shall be construed to prohibit a court from sentencing a person convicted of a crime identified in subdivision (2) of section 29-2923 to probation or community service or imposing any other sentence or condition allowed by law.

Source: Laws 1992, LB 523, § 3.

29-2925 Department of Correctional Services; Department of Health and Human Services; duties; evaluation of offender.

Within sixty days of the date of commitment to the Department of Correctional Services of a convicted sex offender to serve his or her sentence, the Department of Health and Human Services shall conduct an evaluation of the offender for purposes of determining whether treatment in a treatment program operated by the Department of Health and Human Services is appropriate for the offender. The evaluation process shall be based upon criteria and procedures established by the Department of Health and Human Services. The Department of Correctional Services shall provide the Department of Health and Human Services access to all correctional and presentence records determined by the Department of Health and Human Services to be relevant to the evaluation process.

Source: Laws 1992, LB 523, § 4; Laws 1996, LB 1044, § 79.

29-2926 Determination that treatment is not appropriate; review; procedure; no appeal.

(1) If the Department of Health and Human Services determines that treatment in an inpatient treatment program operated by the department is not appropriate for a convicted sex offender, the offender may request the sentencing judge to review the determination in accordance with subsection (2) of this section.

(2) Within thirty days of the determination of the Department of Health and Human Services that the treatment in an inpatient treatment program operated by the department is not appropriate for a convicted sex offender, the offender may apply to the sentencing judge for a review of the denial of treatment. The review shall be conducted under the following rules of procedure:

(a) The court may allow each party to call witnesses on its behalf at such party's expense. Witnesses may be subpoenaed at the expense of the party calling the witness;

(b) Each party shall be allowed to be represented by counsel at such party's expense;

(c) Each party may be allowed to cross-examine adverse witnesses;

(d) The Nebraska Evidence Rules shall not apply unless expressly provided for by law, and the court may consider all evidence which in its discretion is relevant to whether the determination of the department is appropriate;

(e) The court may affirm the determination of the department, remand the matter for further proceedings, or reverse or modify the determination if such determination is unsupported by competent, material, and substantial evidence in view of the entire record as made on review or if the determination is arbitrary and capricious; and

(f) The review pursuant to this section shall not be subject to appeal.

Source: Laws 1992, LB 523, § 5; Laws 1996, LB 1044, § 80.

Cross References

Nebraska Evidence Rules, see section 27-1103.

29-2927 Repealed. Laws 1996, LB 645, § 22.

29-2928 Treatment in inpatient treatment program; determination; procedure; departments; duties.

(1) If the Department of Health and Human Services determines that treatment in an inpatient treatment program operated by the Department of Health and Human Services is appropriate for a convicted sex offender, that the offender will enter the treatment program voluntarily, and that space is available in the program, the Director of Correctional Services shall transfer the offender to the treatment program designated by the Department of Health and Human Services for treatment. The Department of Correctional Services shall be responsible for physical transfer of the offender to the treatment facility.

(2) If the Department of Health and Human Services determines that treatment in an inpatient treatment program operated by the Department of Health and Human Services is not appropriate for a convicted sex offender, the offender shall serve the sentence in a facility operated by the Department of Correctional Services and may participate in treatment offered by the Department of Correctional Services if the Department of Correctional Services

determines that such treatment is appropriate for the offender. The Department of Correctional Services may make a recommendation concerning treatment as provided in subsection (4) of this section.

(3) If the Department of Health and Human Services determines that treatment in an inpatient treatment program operated by the Department of Health and Human Services is not initially appropriate for a convicted sex offender but may be appropriate at a later time, a treatment decision may be deferred until a designated time, no later than two and one-half years prior to the offender's earliest parole eligibility date, when the offender will be reevaluated.

(4) If the Department of Correctional Services determines that an offender participating in treatment offered by the Department of Correctional Services will benefit from a treatment program operated by the Department of Health and Human Services, the Department of Correctional Services shall notify the Department of Health and Human Services and recommend admission of the offender to the treatment program. The evaluation process to determine whether such offender is to be admitted into a treatment program operated by the Department of Health and Human Services pursuant to this subsection shall be based upon criteria and procedures established by the Department of Health and Human Services and shall not be subject to appeal or review.

Source: Laws 1992, LB 523, § 7; Laws 1996, LB 1044, § 82; Laws 2007, LB296, § 46.

29-2929 Inpatient treatment program; annual review and progress reports; uncooperative offender; transfer; credit for time in treatment.

(1) The inpatient treatment program operated by the Department of Health and Human Services shall conduct annual reviews of each convicted sex offender in the program and submit annual progress reports to the Department of Correctional Services.

(2) If the offender is uncooperative while in the inpatient treatment program or is found not to be amenable to treatment, the Department of Health and Human Services shall cause the offender to be returned to the Department of Correctional Services in accordance with procedures established by the Department of Health and Human Services. The Department of Correctional Services shall be responsible for physical transfer of the offender from the inpatient treatment facility to the Department of Correctional Services. The Department of Health and Human Services shall, at the time of the transfer, provide the Department of Correctional Services a report summarizing the offender's response to and progress while in treatment and the reasons for the transfer and shall provide access to the treatment records as requested by the Department of Correctional Services.

(3) All days of confinement in a treatment program operated by the Department of Health and Human Services shall be credited to the offender's term of imprisonment.

Source: Laws 1992, LB 523, § 8; Laws 1996, LB 645, § 16; Laws 1996, LB 1044, § 83; Laws 2007, LB296, § 47.

29-2930 Inpatient treatment program; aftercare treatment program; individual discharge plan.

If the Department of Health and Human Services determines that the convicted sex offender has received the maximum benefit of the inpatient treatment program operated by the Department of Health and Human Services and is ready for treatment in an aftercare treatment program, the person in charge of the inpatient treatment program shall develop an individual discharge plan documenting the findings and recommendations of the program and a designated aftercare treatment program. The individual discharge plan shall be provided to the Department of Correctional Services, the Board of Parole, and the designated aftercare treatment program.

Source: Laws 1992, LB 523, § 9; Laws 1996, LB 645, § 17; Laws 1996, LB 1044, § 84.

29-2931 Repealed. Laws 1996, LB 645, § 22.

29-2932 Repealed. Laws 1996, LB 645, § 22.

29-2933 Repealed. Laws 1996, LB 645, § 22.

29-2934 Person committed under prior law; procedures.

(1) Each person committed as a mentally disordered sex offender pursuant to sections 29-2911 to 29-2921 as such sections existed prior to July 15, 1992, who is being treated in a regional center or other secure public institution operated by the Department of Health and Human Services and has at least one year remaining on his or her sentence as of such date shall, within one hundred eighty days after such date, be returned to the district court which committed him or her for review and disposition consistent with the terms of this section.

(2) Each person committed to a regional center or other secure public institution operated by the Department of Health and Human Services as a mentally disordered sex offender by a court pursuant to sections 29-2911 to 29-2921 as such sections existed prior to July 15, 1992, who is in a facility operated by the Department of Correctional Services awaiting treatment as of such date shall be placed in a treatment facility operated by the Department of Health and Human Services for evaluation and treatment as soon as practical after space and staff become available. Within thirty days of such placement, the Department of Health and Human Services shall determine, based on criteria and procedures established by the Department of Health and Human Services, whether the offender will remain in the treatment program or be returned to the Department of Correctional Services to await court review or the end of his or her sentence. Within thirty days after the evaluation-and-treatment period, if the offender has at least one hundred eighty days remaining on his or her sentence, he or she shall be returned to the committing district court for review and disposition consistent with the terms of this section.

(3) The Department of Health and Human Services shall prepare and present a report and recommendations for each offender to be reviewed by the district court under subsection (1) or (2) of this section.

(4) Each person identified in subsections (1) and (2) of this section who was committed as a mentally disordered sex offender by a court after having entered a plea of guilty or nolo contendere shall, upon return to the district court, elect whether to be resentenced under the Convicted Sex Offender Act or continue his or her commitment pursuant to sections 29-2911 to 29-2921 as such sections existed prior to July 15, 1992.

(5) For each person identified in subsections (1) and (2) of this section who was committed as a mentally disordered sex offender by a court after having entered a plea of not guilty and for each person identified in subsection (4) of this section who elected to be resentenced under the act, subsections (6) and (7) of this section shall apply.

(6) If the court finds that the offender is treatable in an inpatient treatment program operated by the Department of Health and Human Services, the offender shall be returned to or placed in such a treatment program and sections 29-2929 and 29-2930 shall apply.

(7) If the court finds that the offender is not amenable to treatment, is uncooperative in treatment, or has reached the maximum benefit of treatment in an inpatient treatment program operated by the Department of Health and Human Services but cannot be placed in an aftercare treatment program under conditions set by the court consistent with public safety, the offender shall be placed in a facility operated by the Department of Correctional Services to serve the remainder of his or her original sentence.

Source: Laws 1992, LB 523, § 13; Laws 1996, LB 645, § 18; Laws 1996, LB 1044, § 87.

29-2935 Department of Health and Human Services; access to data and information for evaluation; authorized.

For purposes of evaluating the treatment process, the Office of Parole Administration, the Department of Correctional Services, the Board of Parole, and the designated aftercare treatment programs shall allow appropriate access to data and information as requested by the Department of Health and Human Services.

Source: Laws 1992, LB 523, § 14; Laws 1996, LB 645, § 19; Laws 1996, LB 1044, § 88.

29-2936 Rules and regulations.

The Department of Health and Human Services shall adopt and promulgate rules and regulations as necessary to carry out the Convicted Sex Offender Act.

Source: Laws 1992, LB 523, § 15; Laws 1996, LB 1044, § 89.

ARTICLE 30

POSTCONVICTION PROCEEDINGS

Section

29-3001. Postconviction relief; motion; procedure; costs.
29-3002. Postconviction relief; order; appeal; recognizance.
29-3003. Postconviction remedy; cumulative; dismissal; when.
29-3004. Appointment of counsel; competency and effectiveness; compensation.

29-3001 Postconviction relief; motion; procedure; costs.

A prisoner in custody under sentence and claiming a right to be released on the ground that there was such a denial or infringement of the rights of the prisoner as to render the judgment void or voidable under the Constitution of this state or the Constitution of the United States, may file a verified motion at any time in the court which imposed such sentence, stating the grounds relied upon, and asking the court to vacate or set aside the sentence.

Unless the motion and the files and records of the case show to the satisfaction of the court that the prisoner is entitled to no relief, the court shall cause notice thereof to be served on the county attorney, grant a prompt hearing thereon, determine the issues and make findings of fact and conclusions of law with respect thereto. If the court finds that there was such a denial or infringement of the rights of the prisoner as to render the judgment void or voidable under the Constitution of this state or the Constitution of the United States, the court shall vacate and set aside the judgment and shall discharge the prisoner or resentence him or grant a new trial as may appear appropriate. Proceedings under the provisions of sections 29-3001 to 29-3004 shall be civil in nature. Costs shall be taxed as in habeas corpus cases.

A court may entertain and determine such motion without requiring the production of the prisoner, whether or not a hearing is held. Testimony of the prisoner or other witnesses may be offered by deposition. The court need not entertain a second motion or successive motions for similar relief on behalf of the same prisoner.

Source: Laws 1965, c. 145, § 1, p. 486.

1. Scope
2. Basis for relief
3. Successive motions
4. Procedure
5. Miscellaneous

1. Scope

The postconviction act specifically provides a procedure in which to file a motion seeking to vacate a sentence based on allegations that it is void. State v. Dunster, 270 Neb. 773, 707 N.W.2d 412 (2005).

The postconviction remedy of a new direct appeal is not appropriate where the claim of ineffective assistance of counsel is based upon acts or omissions occurring in the pretrial or trial stages of a criminal prosecution. State v. Meers, 267 Neb. 27, 671 N.W.2d 234 (2003).

A motion for postconviction relief cannot be used to secure review of issues which were known to the defendant and which were or could have been litigated on direct appeal. State v. Ortiz, 266 Neb. 959, 670 N.W.2d 788 (2003).

Failure to litigate a known issue on direct appeal results in the movant's being procedurally barred from raising the issue in a motion for postconviction relief. State v. Ortiz, 266 Neb. 959, 670 N.W.2d 788 (2003).

A motion for postconviction relief cannot be used to secure review of issues which were known to the defendant and could have been litigated on direct appeal, no matter how the issues may be phrased or rephrased. State v. Gamez-Lira, 264 Neb. 96, 645 N.W.2d 562 (2002).

The power to grant a new direct appeal is implicit in this section, and the district court has jurisdiction to exercise such power where the evidence establishes a denial or infringement of the right to effective assistance of counsel at the direct appeal stage of the criminal proceedings. State v. McCracken, 260 Neb. 234, 615 N.W.2d 902 (2000).

A request to compel state-funded DNA testing cannot be brought under this section. State v. El-Tabech, 259 Neb. 509, 610 N.W.2d 737 (2000).

The Nebraska postconviction act, section 29-3001 et seq., is available to a criminal defendant to show that his or her conviction was obtained in violation of his or her constitutional rights. State v. Trotter, 259 Neb. 212, 609 N.W.2d 33 (2000).

Postconviction relief is a very narrow category of relief, available only to remedy prejudicial constitutional violations. State v. Ryan, 257 Neb. 635, 601 N.W.2d 473 (1999).

The Nebraska Postconviction Act requires that a prisoner seeking relief under the act must be in actual custody in Nebraska under a Nebraska sentence. State v. Eutzy, 242 Neb. 851, 496 N.W.2d 529 (1993); State v. Whitmore, 234 Neb. 557, 452 N.W.2d 31 (1990).

A prisoner who has been discharged from parole is no longer in actual custody in Nebraska under a Nebraska sentence for the purpose of the Nebraska Postconviction Act. State v. Costanzo, 242 Neb. 478, 495 N.W.2d 904 (1993).

Under a broad reading of this section, court-ordered probation constitutes ''custody under sentence'' for postconviction relief remedies. State v. Styskal, 242 Neb. 26, 495 N.W.2d 313 (1992).

Excessive sentence is not a proper subject for postconviction relief. A court is not required to grant an evidential hearing on a motion for postconviction relief which alleges only conclusions of law or fact; nor is an evidential hearing required under the Nebraska Postconviction Act when (1) the motion for postconviction relief does not contain sufficient factual allegations concerning a denial or violation of constitutional rights affecting the judgment against the movant; or (2) notwithstanding proper pleading of facts in a motion for postconviction relief, the files and records in a movant's case do not show a denial or violation of the movant's constitutional rights causing the judgment against the movant to be void or voidable. In an appeal of a postconviction proceeding, the findings of the district court will not be disturbed unless they are clearly erroneous. State v. Russell, 239 Neb. 979, 479 N.W.2d 798 (1992).

Alleged conflict of interest at trial and at sentencing could have been presented on direct appeal, and failure to do so is procedural default which barred review in postconviction proceeding. For postconviction purposes, issues raised in a prior proceeding but disposed of procedurally are not already litigated. State v. Whitmore, 238 Neb. 125, 469 N.W.2d 527 (1991).

A motion for postconviction relief under this section cannot be used to secure review of issues which were or could have been litigated on direct appeal, no matter how these issues may be phrased or rephrased. State v. Otey, 236 Neb. 915, 464 N.W.2d 352 (1991); State v. Kern, 232 Neb. 799, 442 N.W.2d 381 (1989).

A prisoner who has been paroled is ''in custody under sentence'' for purposes of this section of the Postconviction Act. State v. Thomas, 236 Neb. 553, 462 N.W.2d 862 (1990).

The phrase ''in custody under sentence,'' as used in the Nebraska Postconviction Act, requires that a prisoner seeking relief be in actual custody in Nebraska under a Nebraska sentence. State v. Harper, 233 Neb. 841, 448 N.W.2d 407 (1989).

A motion for postconviction relief may not be used to obtain a further review of issues already litigated, and the mere fact that the issues are rephrased does not change that rule. State v. Luna, 230 Neb. 966, 434 N.W.2d 526 (1989).

This provision applies only where the prisoner has sustained such a denial or infringement of constitutional rights that the judgment is void or voidable. State v. Ferrell, 230 Neb. 958, 434 N.W.2d 331 (1989).

Except for the specific provisions set out in the Postconviction Act, a motion for postconviction relief cannot be used to secure review of issues which were known to the defendant at the time of his trial, plea, sentencing, or commitment. State v. Blankenfeld, 228 Neb. 611, 423 N.W.2d 479 (1988).

A motion for postconviction relief cannot be used to secure review of issues which have already been litigated on direct appeal, or which were known to the defendant and counsel at the time of trial and which were capable of being raised, but were not raised, in the defendant's direct appeal. State v. Petitte, 228 Neb. 144, 421 N.W.2d 460 (1988); State v. Hurlburt, 221 Neb. 364, 377 N.W.2d 108 (1985).

A motion for postconviction relief cannot be used as a substitute for an appeal or to secure a further review of issues already litigated. State v. Pratt, 224 Neb. 507, 398 N.W.2d 721 (1987); State v. Hochstein, 216 Neb. 515, 344 N.W.2d 469 (1984); State v. Nokes, 209 Neb. 293, 307 N.W.2d 521 (1981); State v. Weiland, 190 Neb. 111, 206 N.W.2d 336 (1973); State v. Losieau, 182 Neb. 367, 154 N.W.2d 762 (1967).

Any matter which can be determined from the record on direct appeal, and which was considered by the Supreme Court when ruling on a motion filed pursuant to Neb. Ct. R. of Prac. 3B (rev. 1986), is not subject to relitigation in an action brought pursuant to the Nebraska Postconviction Act. State v. Bean, 224 Neb. 278, 398 N.W.2d 104 (1986).

Conclusory allegations will not support a motion for postconviction relief, nor do they require the court to grant an evidentiary hearing. State v. Galvan, 222 Neb. 104, 382 N.W.2d 337 (1986).

Only errors which would make a conviction void or voidable under either the state or federal constitutions are cognizable in a post conviction relief action. Therefore, defendant could raise neither prejudice from remarks by a prosecution witness nor the sufficiency of evidence offered to establish his identity at the habitual criminal hearing on post conviction review. Nor could he challenge the voluntariness of a guilty plea which led to one of the prior convictions offered at the habitual criminal hearing where he failed to challenge it at the trial level. State v. Cole, 207 Neb. 318, 298 N.W.2d 776 (1980).

Where case records are silent on questions of possible constitutional rights violations, district court must grant evidentiary hearing. State v. Svoboda, 199 Neb. 452, 259 N.W.2d 609 (1977).

Post conviction procedure may not be used to secure review for defendant dissatisfied with his sentence, and after one motion has been determined, later motion upon grounds available at time of earlier motion may be dismissed. State v. Niemann, 195 Neb. 675, 240 N.W.2d 38 (1976).

The Post Conviction Act extends relief to persons in custody only. State v. Moore, 190 Neb. 271, 207 N.W.2d 518 (1973).

One may not pursue post conviction remedy while he has direct appeal pending. State v. Moore, 187 Neb. 507, 192 N.W.2d 157 (1971).

Motion for hearing under Post Conviction Act is not a substitute for an appeal. State v. Riley, 183 Neb. 616, 163 N.W.2d 104 (1968); State v. Erving, 180 Neb. 680, 144 N.W.2d 424 (1966).

Post Conviction Act cannot be used for the purpose of securing a new trial on the grounds of newly discovered evidence. State v. Dabney, 183 Neb. 316, 160 N.W.2d 163 (1968).

Remedy to determine rights of defendant relative to filing notice of appeal after statutory time had expired may be determined under Post Conviction Act. State v. Blunt, 182 Neb. 477, 155 N.W.2d 443 (1968).

Post Conviction Act provides procedure for review of rights of defendant in criminal case. State v. Livingston, 182 Neb. 257, 153 N.W.2d 925 (1967).

Unless a miscarriage of justice is shown, post conviction remedy is not available for consideration of matters that were determined by the court. State v. Sheldon, 181 Neb. 360, 148 N.W.2d 301 (1967).

In the absence of a showing of a real miscarriage of justice, Post Conviction Act cannot be used to relitigate the question of whether a confession was voluntary when the same question was the subject of and decided in a former appeal to the Supreme Court. State v. Parker, 180 Neb. 707, 144 N.W.2d 525 (1966).

Post Conviction Act was intended to provide relief in those cases where a miscarriage of justice may have occurred. State v. Clingerman, 180 Neb. 344, 142 N.W.2d 765 (1966).

Intent of Post Conviction Act is not to provide a procedural quagmire to individual who attempts to point out constitutional infirmities. Barry v. Sigler, 373 F.2d 835 (8th Cir. 1967).

Post conviction review of sentence imposed by state court, claimed to be in violation of federal or state Constitution, is provided. Dabney v. Sigler, 345 F.2d 710 (8th Cir. 1965).

2. Basis for relief

When the alleged ineffective assistance of counsel is a failure to timely appeal from a final pretrial order, the critical issue is whether a timely appeal would have resulted in a reversal and prevented a subsequent trial and conviction. State v. Meers, 267 Neb. 27, 671 N.W.2d 234 (2003).

When the defendant has entered a guilty plea, counsel's deficient performance constitutes prejudice if there is a reasonable probability that, but for counsel's errors, the defendant would have insisted on going to trial rather than pleading guilty. A defendant seeking postconviction relief based on ineffective assistance of counsel must show (1) that counsel's performance was deficient and (2) that the deficient performance prejudiced the defendant's case. State v. Johnson, 243 Neb. 758, 502 N.W.2d 477 (1993).

A prisoner cannot claim constitutionally ineffective assistance of counsel as a result of an attorney's service in a postconviction proceeding. State v. Stewart, 242 Neb. 712, 496 N.W.2d 524 (1993).

In a proceeding under the Nebraska Postconviction Act, the movant, in custody under sentence, must allege facts which, if proved, constitute a denial or violation of the movant's rights under the Nebraska or federal Constitution, causing the judgment against the movant to be void or voidable. State v. Dixon, 237 Neb. 630, 467 N.W.2d 397 (1991); State v. Start, 229 Neb. 575, 427 N.W.2d 800 (1988).

To establish a violation of the sixth amendment, a defendant who raised no objection at trial must demonstrate that an actual conflict of interest adversely affected his lawyer's performance. State v. Schneckloth, 235 Neb. 853, 458 N.W.2d 185 (1990).

In a proceeding under the Postconviction Act, the applicant is required to allege facts which, if proved, constitute a violation or infringement of rights, and the pleading of mere conclusions of fact or law is not sufficient to require the court to grant an evidentiary hearing. State v. Threet, 231 Neb. 809, 438 N.W.2d 746 (1989).

In a post conviction proceeding, petitioner has the burden of establishing a basis for relief. State v. Luna, 230 Neb. 966, 434 N.W.2d 526 (1989); State v. Rapp, 186 Neb. 785, 186 N.W.2d 482 (1971); State v. Coffen, 184 Neb. 254, 166 N.W.2d 593 (1969); State v. Raue, 182 Neb. 735, 157 N.W.2d 380 (1968).

In an appeal involving a proceeding for postconviction relief, the lower court's findings will be upheld unless clearly erroneous. When the defendant in a postconviction motion alleges a violation of his constitutional right to Effective assistance of counsel, the standard for determining the propriety of the claim is whether the attorney, in representing the accused, performed at least as well as a lawyer with ordinary training and skill in the criminal law in the area. The defendant must make a showing of how he was prejudiced in the defense of his case as a result of his attorney's actions or inactions and that, but for the ineffective assistance of counsel, there is a reasonable probability that the result would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome. State v. Rubek, 225 Neb. 477, 406 N.W.2d 130 (1987).

Defendant was not entitled to an evidentiary hearing to determine whether his plea was made knowingly, intelligently, and voluntarily, nor was he entitled to postconviction relief on grounds that he was denied effective assistance of counsel because of counsel's failure to raise the issue of the defendant's mental competency. State v. Bradford, 223 Neb. 908, 395 N.W.2d 495 (1986).

To establish a right to statutory postconviction relief on the basis of ineffective counsel, the defendant must prove that counsel failed to perform at least as well as a lawyer of ordinary training and skill in the criminal law or that he failed to conscientiously protect his client's interest. State v. Anderson, 216 Neb. 521, 344 N.W.2d 473 (1984).

One seeking postconviction relief has the burden of establishing the basis for such relief, and the findings of the district court will not be disturbed on appeal unless they are clearly erroneous. State v. Hochstein, 216 Neb. 515, 344 N.W.2d 469 (1984); Marteney v. State, 210 Neb. 172, 313 N.W.2d 449 (1981).

For relief on ground of ineffective counsel the petitioner has the burden of establishing a basis for relief. The district court is the trier of disputed questions of fact, and it is not ordinarily for the Supreme Court to determine questions of credibility. State v. Tiff, 212 Neb. 565, 324 N.W.2d 393 (1982).

A claim of error on the ground of ineffective assistance of counsel is unsupported if counsel performs as well as a lawyer with ordinary training and skill in the criminal law in his area and conscientiously protects the interests of his client. Marteney v. State, 210 Neb. 172, 313 N.W.2d 449 (1981).

When one seeks post conviction relief based on a claim that his counsel was inadequate, one must likewise show how or in what manner the alleged inadequacy prejudiced him; and when one is unable to do so, denial of the requested relief is required. State v. Holloman, 209 Neb. 828, 311 N.W.2d 914 (1981), affirming prior conviction 197 Neb. 139, 248 N.W.2d 15 (1976).

An issue of constitutional dimension does not constitute grounds for post conviction relief unless it also constitutes grounds for setting aside the sentence. State v. Cole, 207 Neb. 318, 298 N.W.2d 776 (1980).

Under the facts of this case, defense counsel did not have a conflict of interest that would allow relief under this section. State v. Bishop, Davis, and Yates, 207 Neb. 10, 295 N.W.2d 698 (1980).

Matters relating to sentences imposed with statutory limits are not a basis for post conviction relief. State v. Walker, 197 Neb. 381, 248 N.W.2d 784 (1977); State v. DeLoa, 194 Neb. 270, 231 N.W.2d 357 (1975); State v. Birdwell, 188 Neb. 116, 195 N.W.2d 502 (1972).

Where sole issue was inadequacy of counsel for failure to appeal from conviction, and prisoner did not prove failure was due to negligence of counsel, post conviction relief was properly denied. State v. Halsey, 195 Neb. 432, 238 N.W.2d 249 (1976).

Where defendant filed unbased application for writ of error coram nobis which was considered as petition for post conviction relief, court examined files and records and properly denied relief without a hearing because records showed alleged error had been waived. State v. Turner, 194 Neb. 252, 231 N.W.2d 345 (1975).

Relief hereunder is limited to cases in which there was a denial or infringement of the prisoner's rights such as to render the judgment void or voidable under the Constitution of Nebraska or of the United States. State v. Miles, 194 Neb. 128, 230 N.W.2d 227 (1975); State v. Bullard, 187 Neb. 334, 190 N.W.2d 628 (1971); State v. Carpenter, 186 Neb. 605, 185 N.W.2d 663 (1971).

Defendant claimed conviction for rape was void because at time of trial he was incompetent and his counsel was ineffective because he did not request a hearing as to his competency, but after an evidentiary hearing both claims were properly denied. State v. Campbell, 192 Neb. 629, 223 N.W.2d 662 (1974).

One who relies upon advice of counsel and pleads guilty may not collaterally attack the voluntariness of the plea even if motivated by the existence of a coerced confession so long as counsel's advice was within the range of competence demanded of attorneys in criminal cases. State v. Hall, 188 Neb. 130, 195 N.W.2d 201 (1972).

Witness' known conflicting statement before trial and revealed in testimony of another witness is no basis for relief hereunder. State v. Ford, 187 Neb. 353, 190 N.W.2d 787 (1971).

Unless the motion, files, and records of the case show petitioner is not entitled to relief, the court shall grant a prompt evidentiary hearing. State v. Virgilito, 187 Neb. 328, 190 N.W.2d 781 (1971).

The burden is on defendant to prove his allegation that prosecution used perjured or false testimony in securing his conviction. State v. Huffman, 186 Neb. 809, 186 N.W.2d 715 (1971).

Where the facts and issues which are the grounds of a motion for post conviction relief were known to the defendant and his counsel and were raised, heard, and determined at the time of the trial resulting in his conviction, but were not raised in his direct appeal, those issues will not ordinarily be considered in post conviction review. State v. Lincoln, 186 Neb. 783, 186 N.W.2d 490 (1971).

Where a plea of guilty was obviously entered without knowledge that defense of statute of limitation was available, failure to appoint an attorney requested by defendant at sentencing was prejudicial to his rights. State v. Journey, 186 Neb. 556, 184 N.W.2d 616 (1971).

A claim of error on the ground of ineffective assistance of counsel must be supported by a record showing that counsel assistance was so grossly inept as to jeopardize that rights of the defendant and shock the court by its inadequacy. State v. Oziah, 186 Neb. 541, 184 N.W.2d 725 (1971).

Defendant's constitutional rights not violated by in-court identification made on a basis independent of an unlawful lineup. State v. Oziah, 186 Neb. 541, 184 N.W.2d 725 (1971).

In a post conviction action after a plea of guilty if the record of an in-court examination of defendant shows that his plea was voluntary and that he was fairly advised by effective counsel, a contention that his plea was coerced and his counsel ineffective will not be entertained. State v. Sargent, 186 Neb. 155, 181 N.W.2d 449 (1970).

Proceeding under this section cannot be used as substitute for appeal or to secure further review of issues already litigated; court authorized to examine files and records and determine issue without evidentiary hearing. State v. LaPlante, 185 Neb. 816, 179 N.W.2d 110 (1970).

Voluntary guilty plea intelligently made in light of then applicable law does not become vulnerable because later judicial decisions indicate that plea rested on faulty premise. State v. Alvarez, 185 Neb. 557, 177 N.W.2d 591 (1970).

For relief hereunder on ground of ineffective counsel, must appear that assistance so grossly inept as to shock conscience of court. State v. Moss, 185 Neb. 536, 177 N.W.2d 284 (1970).

In absence of a violation or infringement of a constitutional right, no relief may be had under this act. State v. Reizenstein, 183 Neb. 376, 160 N.W.2d 208 (1968).

Statements by defendant were voluntarily made and she is not entitled to relief under Post Conviction Act. State v. Fugate, 182 Neb. 325, 154 N.W.2d 514 (1967).

For postconviction relief to be granted under this section, the defendant must allege facts which, if proved, constitute a denial or violation of his or her rights under the U. S. or Nebraska Constitution. State v. Davlin, 10 Neb. App. 866, 639 N.W.2d 168 (2002).

3. Successive motions

An appellate court will not entertain a successive motion for postconviction relief unless the motion affirmatively shows on its face that the basis relied upon for relief was not available at the time the movant filed the prior motion. State v. Ortiz, 266 Neb. 959, 670 N.W.2d 788 (2003).

Even if a movant could not have raised an issue upon which relief is sought until his or her second motion for postconviction relief, he or she is clearly barred from raising the claim in the third motion. State v. Ortiz, 266 Neb. 959, 670 N.W.2d 788 (2003).

A defendant is entitled to bring a second proceeding for postconviction relief only if the grounds relied upon did not exist at the time the first motion was filed. State v. Otey, 236 Neb. 915, 464 N.W.2d 352 (1991); State v. Luna, 230 Neb. 966, 434 N.W.2d 526 (1989); State v. Ohler, 219 Neb. 840, 366 N.W.2d 771 (1985).

A defendant is entitled to bring a second proceeding for postconviction relief only if the grounds relied upon did not exist at the time the first motion was filed. State v. Luna, 230 Neb. 966, 434 N.W.2d 526 (1989); State v. Ohler, 219 Neb. 840, 366 N.W.2d 771 (1985).

Once a motion for postconviction relief has been judicially determined, any subsequent motion for such relief from the same conviction and sentence may be dismissed unless the motion affirmatively shows on its face that the basis relied upon for relief was not available at the time the prior motion was filed. State v. Luna, 230 Neb. 966, 434 N.W.2d 526 (1989); State v. Evans, 224 Neb. 64, 395 N.W.2d 563 (1986); State v. Reichel, 187 Neb. 464, 191 N.W.2d 826 (1971).

The trial court is not required to entertain successive motions under the Post Conviction Act for similar relief from the same prisoner. State v. Huffman, 190 Neb. 319, 207 N.W.2d 696 (1973).

Repetitive applications for post conviction relief may be deemed an abuse of judicial process. State v. Pilgrim, 188 Neb. 213, 196 N.W.2d 162 (1972).

After appeal, defendant cannot secure second review hereunder of identical issues. State v. Franklin, 187 Neb. 363, 190 N.W.2d 780 (1971); State v. Newman, 181 Neb. 588, 150 N.W.2d 113 (1967).

Court not required to consider motion under this section when questions raised were raised and determined in prior evidentiary hearing under this act. State v. Cole, 184 Neb. 864, 173 N.W.2d 39 (1969).

4. Procedure

A defendant's failure to diligently prosecute an appeal from a denial of a prior motion for postconviction relief results in a procedural default that bars later action on the claim. State v. Ortiz, 266 Neb. 959, 670 N.W.2d 788 (2003).

The need for finality in the criminal process requires that a defendant bring all claims for relief at the first opportunity. State v. Ortiz, 266 Neb. 959, 670 N.W.2d 788 (2003).

Under this section, the district court has discretion to adopt reasonable procedures for determining what the motion and the files and records show, and whether any substantial issues are raised, before granting a full evidentiary hearing. This section allows for the denial of an evidentiary hearing if the court determines from the files and records of the case that the prisoner is not entitled to relief. It is not unusual for a court to hold a hearing to determine which files and records the court may review prior to considering the State's motion to deny a prisoner an evidentiary hearing. State v. Dean, 264 Neb. 42, 645 N.W.2d 528 (2002).

A defendant obtaining postconviction relief of a new direct appeal must properly appeal from his or her original conviction and sentence based on the grant of such postconviction relief. The 30-day limit within which the defendant must file his or her new direct appeal commences on the day that such postconviction relief is granted in the district court. State v. McCracken, 260 Neb. 234, 615 N.W.2d 902 (2000).

The district court need not conduct an evidentiary hearing on a motion for postconviction relief when the motion alleges only conclusions of fact or law or when the files and records affirmatively show that the criminal defendant is not entitled to any relief. State v. Gray, 259 Neb. 897, 612 N.W.2d 507 (2000).

If a defendant is denied his right to appeal because of counsel's failure to timely file notice of appeal, the proper means to attach such denial is a motion for postconviction relief and not a motion for writ of error coram nobis. State v. Johnson, 243 Neb. 758, 502 N.W.2d 477 (1993).

An evidentiary hearing may properly be denied on a motion for postconviction relief when the records and files in the case affirmatively establish that the defendant is entitled to no relief. State v. Victor, 242 Neb. 306, 494 N.W.2d 565 (1993); State v. Threet, 231 Neb. 809, 438 N.W.2d 746 (1989); State v. Luna, 230 Neb. 966, 434 N.W.2d 526 (1989); State v. Sowell, 227 Neb. 865, 420 N.W.2d 704 (1988); State v. Schaeffer, 218 Neb. 786, 359 N.W.2d 106 (1984); State v. Williams, 218 Neb. 618, 358 N.W.2d 195 (1984); State v. Meredith, 212 Neb. 109, 321 N.W.2d 456 (1982); State v. Miles, 202 Neb. 126, 274 N.W.2d 153 (1979); State v. Fincher, 189 Neb. 746, 204 N.W.2d 927 (1973); State v. Gero, 186 Neb. 379, 183 N.W.2d 274 (1971); State v. Ronzzo, 181 Neb. 16, 146 N.W.2d 576 (1966).

Although a prisoner could not be prevented from testifying in support of his motion, he had no right to be personally present at an evidentiary hearing on the motion. State v. Dixon, 237 Neb. 630, 467 N.W.2d 397 (1991).

In an evidentiary hearing, as a bench trial provided by this section for postconviction relief, the trial judge, as the ''trier of fact,'' resolves conflicts in evidence and questions of fact, including witness credibility and weight to be given a witness' testimony. State v. Dixon, 237 Neb. 630, 467 N.W.2d 397 (1991); State v. Sobieszczyk, 2 Neb. App. 116, 507 N.W.2d 660 (1993).

If a defendant is denied his or her right to appeal because his or her lawyer fails, when requested, to timely file a notice of appeal, the proper means to attack that denial is by a postconviction relief action. State v. Carter, 236 Neb. 656, 463 N.W.2d 332 (1990).

In an evidentiary hearing as a bench trial, provided by this section for postconviction relief, the trial judge sitting as the trier of fact resolves conflicts in the evidence and questions of fact. State v. Wiley, 232 Neb. 642, 441 N.W.2d 629 (1989).

An evidentiary hearing on a postconviction motion is required upon an appropriate motion containing factual allegations which, if proved, constitute an infringement of a constitutional right. State v. Jackson, 226 Neb. 857, 415 N.W.2d 465 (1987); State v. Malek, 219 Neb. 680, 365 N.W.2d 475 (1985); State v. Williams, 218 Neb. 618, 358 N.W.2d 195 (1984).

The evidentiary hearing provided in this section is a vehicle for a confined defendant to meet his or her burden of proof, and although an evidentiary hearing is not always necessary on an application for postconviction relief, such a hearing is usually advisable to avoid protracted litigation. State v. Rivers, 226 Neb. 353, 411 N.W.2d 350 (1987).

Any matter which can be determined from the record on direct appeal is considered by the Supreme Court when granting relief pursuant to Neb. Ct. R. of Prac. 3B (rev. 1986), and is not available for further relief pursuant to the Nebraska Postconviction Act. State v. Wilson, 224 Neb. 721, 400 N.W.2d 869 (1987).

In postconviction proceedings under this section, the district court is the trier of disputed questions of fact and it is not ordinarily for the Supreme Court to determine questions of

credibility. State v. Terrell, 220 Neb. 137, 368 N.W.2d 499 (1985); State v. Davis, 203 Neb. 284, 278 N.W.2d 351 (1979).

The Supreme Court will not consider a question, as an assignment of error, not presented to the district court for disposition through a defendant's motion for postconviction relief. State v. Casper, 219 Neb. 641, 365 N.W.2d 451 (1985).

A defendant in a postconviction proceeding may not raise questions which could have been raised on direct appeal unless the questions are such that they would make the judgment of conviction void or voidable under the state or federal Constitution. State v. Hochstein, 216 Neb. 515, 344 N.W.2d 469 (1984); State v. Paulson, 211 Neb. 711, 320 N.W.2d 115 (1982); State v. Huffman, 186 Neb. 809, 186 N.W.2d 715 (1971).

A motion for postconviction relief must allege facts which, if proved, constitute an infringement of the prisoner's constitutional rights. State v. Robinson, 215 Neb. 449, 339 N.W.2d 76 (1983); State v. Fitzgerald, 182 Neb. 823, 157 N.W.2d 415 (1968); State v. Warner, 181 Neb. 538, 149 N.W.2d 438 (1967).

In an action for post conviction relief, the trial judge is not automatically disqualified from presiding at the post conviction proceedings. The petitioner bears the burden of establishing bias and prejudice. State v. Herren, 212 Neb. 706, 325 N.W.2d 151 (1982).

Trial court did not err in requiring that defendant's testimony at hearing under this section be presented by deposition. State v. Otey, 212 Neb. 103, 321 N.W.2d 453 (1982).

This section of the Nebraska Post Conviction Act requires that a motion to vacate a verdict be verified. State v. Ditter, 209 Neb. 452, 308 N.W.2d 350 (1981).

Evidentiary hearing may be denied if the trial court finds, on examination of its files and records, that proceeding under this section is without foundation. State v. Nokes, 209 Neb. 293, 307 N.W.2d 521 (1981).

Any constitutional infirmity in the judgment and conviction in proceedings had with respect to trial and sentencing may be appropriately raised under this statute, but not in a motion for an order nunc pro tunc. State v. Al-Hafeez, 208 Neb. 681, 305 N.W.2d 379 (1981).

The ordering of a new trial by the trial court is an appropriate discretionary method of granting post-conviction relief under this section. Addison v. Parratt, 208 Neb. 459, 303 N.W.2d 785 (1981).

Defendant in a post conviction proceeding may not raise questions which could have been raised on direct appeal, which do not involve questions making the judgment of conviction void or voidable under the state or federal constitutions, or which concern sentences imposed within statutory limits. State v. Shepard, 208 Neb. 188, 302 N.W.2d 703 (1981).

The validity of a prior conviction offered to enhance punishment must be challenged at the habitual criminal hearing and failure to challenge it at that time waives the issue. Thus, the prior conviction may not be attacked in a petition under the Post Conviction Act. State v. Cole, 207 Neb. 318, 298 N.W.2d 776 (1980).

A motion to vacate a judgment and sentence under this act cannot be used to secure a further review of issues already litigated. State v. Lacy, 198 Neb. 567, 254 N.W.2d 83 (1977).

Where denial or infringement of right to counsel occurred at appeal stage of former criminal proceedings, the district court may grant a new direct appeal without granting a new trial or setting aside original sentence. State v. Blunt, 197 Neb. 82, 246 N.W.2d 727 (1976).

Assignments of error on grounds available in the district court must first have been presented to that court. State v. Taylor, 193 Neb. 388, 227 N.W.2d 26 (1975).

In absence of a violation or infringement of a constitutional right, no relief may be had hereunder. State v. Whited, 187 Neb. 592, 193 N.W.2d 268 (1971).

In a post conviction proceeding, the petitioner has the burden of proof. State v. Hatten, 187 Neb. 237, 188 N.W.2d 846 (1971); State v. Sagaser, 181 Neb. 329, 148 N.W.2d 206 (1967).

Standards established by Miranda v. Arizona, 384 U.S. 436, do not have retroactive application and an attorney is not to be deemed ineffective to the point of impairment of constitutional rights of client by viewing his advice retrospectively. A defendant may waive a constitutional right provided he has done so knowingly and voluntarily; the burden of proof in a post conviction hearing is on the petitioner. State v. Hatten, 187 Neb. 237, 188 N.W.2d 846 (1971).

An indigent defendant has a right to appeal at public expense, but he has the burden of alleging and establishing a basis for relief. When he seeks to appeal the original proceedings and fails to show that he is acting in good faith and that his appeal is not merely frivolous, he has not met his burden. State v. Myles, 187 Neb. 105, 187 N.W.2d 584 (1971).

No requirement that allegations be in technical form nor that grammar be more than substantially understandable, but allegations must set forth facts. Harris v. Sigler, 185 Neb. 483, 176 N.W.2d 733 (1970).

Court specifically entitled to examine files and records and if such shows person entitled to no relief motion to vacate sentence may be overruled without hearing. State v. Pilgrim, 184 Neb. 457, 168 N.W.2d 368 (1969).

Evidentiary hearing may properly be denied if trial court finds on examination of its files and records that the proceeding is without foundation. State v. Nicholson, 183 Neb. 834, 164 N.W.2d 652 (1969).

Motion for hearing under Post Conviction Act is not a substitute for an appeal. State v. Riley, 183 Neb. 616, 163 N.W.2d 104 (1968).

A hearing is not required when motions, pleadings, and briefs do not indicate any facts whatever which would entitle prisoner to relief. State v. Duncan, 182 Neb. 598, 156 N.W.2d 165 (1968).

Trial court has discretion to adopt reasonable procedures to determine sufficiency of evidence before granting evidentiary hearing. State v. Fowler, 182 Neb. 333, 154 N.W.2d 766 (1967).

Statements by defendant were voluntarily made and she is not entitled to relief under Post Conviction Act. State v. Fugate, 182 Neb. 325, 154 N.W.2d 514 (1967).

Post Conviction Act authorizes the trial court to examine the files and records to determine propriety of evidentiary hearing. State v. Carreau, 182 Neb. 295, 154 N.W.2d 215 (1967).

A plea of guilty, if understandingly and voluntarily made, is conclusive. State v. Decker, 181 Neb. 859, 152 N.W.2d 5 (1967).

Failure to appoint counsel for indigent upon appeal justified filing of appeal out of time. State v. Williams, 181 Neb. 692, 150 N.W.2d 260 (1967).

Post Conviction Act specifically authorizes trial court to examine files and records to see if prisoner may be entitled to relief. State v. Hizel, 181 Neb. 680, 150 N.W.2d 217 (1967).

Failure to appoint counsel for defendant at preliminary hearing was not a denial of procedural due process of law. State v. Konvalin, 181 Neb. 554, 149 N.W.2d 755 (1967).

Where a single question of law is involved, and is groundless, counsel need not be appointed on appeal. State v. Craig, 181 Neb. 8, 146 N.W.2d 744 (1966).

A defendant is not entitled to the presence of his counsel during a psychiatric examination. State v. Snyder, 180 Neb. 787, 146 N.W.2d 67 (1966).

Under Post Conviction Act, sentencing court has discretion to adopt reasonable procedure for determining questions presented. State v. Silvacarvalho, 180 Neb. 755, 145 N.W.2d 447 (1966).

District court may adopt reasonable procedures for carrying out provisions of Post Conviction Act. State v. Fugate, 180 Neb. 701, 144 N.W.2d 412 (1966).

A defendant may challenge a second conviction and sentence which he has not yet started to serve. State v. Losieau, 180 Neb. 696, 144 N.W.2d 435 (1966).

Where a motion is made to set aside or correct a sentence, movant must set forth facts and not merely conclusions. State v. Losieau, 180 Neb. 671, 144 N.W.2d 406 (1966).

At hearing under Post Conviction Act, personal presence of a petitioning prisoner is not always required. State v. Woods, 180 Neb. 282, 142 N.W.2d 339 (1966).

In postconviction proceedings where a defendant alleges that his or her plea was induced by some promise, the court must hold an evidentiary hearing on the issue unless the record conclusively shows that the plea was not induced by any promises, except those included in the plea bargain. State v. Jefferson, 5 Neb. App. 646, 562 N.W.2d 77 (1997).

The files and records reviewed by the district court in making its determination regarding a motion for postconviction relief must accompany the transcript, and the transcript must contain a certificate by the district judge identifying the files and records as those which were considered when the case is appealed. State v. Caton, 2 Neb. App. 908, 518 N.W.2d 160 (1994).

Postconviction proceedings can be brought in Nebraska only if the defendant has been deprived of a constitutional right. The right of a prisoner to be tried within 120 days of being brought into the state under section 29-759, Article IV(c) of the Agreement on Detainers, is a statutory right and not a constitutional right; therefore, the defendant cannot maintain a postconviction proceeding based upon violation of a right provided under Article IV(c). State v. Harper, 2 Neb. App. 220, 508 N.W.2d 584 (1993).

Where state prisoner had petitioned for habeas corpus in forum of his custody but not for post conviction relief in forum of his sentence he had not exhausted state remedies. Robinson v. Wolff, 468 F.2d 438 (8th Cir. 1972), affirming 349 F.Supp. 514 (D. Neb. 1972).

The Nebraska Post Conviction Act provides an adequate post conviction remedy to raise contention of illegal incarceration and state prisoner who had not presented his allegations to Nebraska court was not entitled to federal habeas corpus relief. Chavez v. Sigler, 438 F.2d 890 (8th Cir. 1971).

Since petitioner had litigated issues on direct appeal, it was not necessary for proceedings to be maintained under this procedure as a prerequisite to federal habeas corpus proceedings. Kennedy v. Sigler, 397 F.2d 556 (8th Cir. 1968).

Intent of Post Conviction Act is not to provide a procedural quagmire to individual who attempts to point out constitutional infirmities. Barry v. Sigler, 373 F.2d 835 (8th Cir. 1967).

An adequate state remedy is provided which prisoner in custody must exhaust before seeking federal habeas corpus. Ellenson v. Fugate, 346 F.2d 151 (8th Cir. 1965); Burnside v. State, 346 F.2d 88 (8th Cir. 1965).

Where Nebraska Supreme Court had already ruled directly on issues before federal habeas corpus court they could not be relitigated under Post Conviction Act and petitioner had exhausted his state court remedies. Collins v. Wolff, 337 F.Supp. 114 (D. Neb. 1962).

Indigent state prisoner has no right to demand free transcript or other papers for purpose of searching for possible constitutional defects in proceedings, and to get same for purpose of collateral attack must first allege facts which show he had been deprived of a constitutional right which post conviction remedy was designed to protect. Harris v. State, 320 F.Supp. 100 (D. Neb. 1970).

5. Miscellaneous

A motion for postconviction relief is not a substitute for an appeal. State v. Gamez-Lira, 264 Neb. 96, 645 N.W.2d 562 (2002).

In an evidentiary hearing at a bench trial for postconviction relief, the postconviction trial judge, as the trier of fact, resolves conflicts in evidence and questions of fact, including witness credibility and weight to be given a witness' testimony. State v. Ryan, 248 Neb. 405, 534 N.W.2d 766 (1995).

When the material element of malice is omitted from the second degree murder jury instruction, a defendant's conviction for second degree murder is constitutionally invalid, and postconviction relief is proper to rectify a constitutionally invalid conviction. State v. Plant, 248 Neb. 52, 532 N.W.2d 619 (1995).

Having granted a defendant a postconviction hearing, a court is obligated to determine the issues and make findings of fact and conclusions of law. State v. Costanzo, 235 Neb. 126, 454 N.W.2d 283 (1990).

Proceedings under the Postconviction Act are civil in nature. State v. Bostwick, 233 Neb. 57, 443 N.W.2d 885 (1989).

The finding of the postconviction hearing court will not be disturbed unless clearly erroneous. State v. Luna, 230 Neb. 966, 434 N.W.2d 526 (1989); State v. Rice, 214 Neb. 518, 335 N.W.2d 269 (1983).

Retroactive operation of decision overruling prior interpretation of habitual criminal statute decision is not required by constitutional provisions. State v. Pierce, 216 Neb. 792, 345 N.W.2d 835 (1984).

A voluntary guilty plea waives every defense to the charge, whether the defense is procedural, statutory, or constitutional. State v. Falcone, 212 Neb. 720, 325 N.W.2d 160 (1982); State v. Stranghoener, 212 Neb. 203, 322 N.W.2d 407 (1982).

The lack of knowledge which may invalidate a guilty plea concerns knowledge of the charge and the consequences of the plea, and not the defendant's knowledge of whether the state can succeed at trial. State v. Falcone, 212 Neb. 720, 325 N.W.2d 160 (1982).

Where defendant was unable to show that insanity defense existed and the record disclosed that the defendant's trial counsel made reasonable efforts to obtain such evidence, but that none existed, defendant was not entitled to post conviction relief. State v. Landers, 212 Neb. 48, 321 N.W.2d 418 (1982).

A juvenile's conviction in district court need not be set aside in postconviction proceedings where a hearing was held to determine whether the defendant should have been transferred to juvenile jurisdiction and the court, based on sufficient evidence, found that the transfer was not required. State v. Tweedy, 202 Neb. 824, 277 N.W.2d 254 (1979).

Imposition of consecutive sentences for convictions on multiple charges involving a single incident held not violation of Fifth Amendment. State v. Hardin, 199 Neb. 314, 258 N.W.2d 245 (1977).

An illegal search and seizure or arrest issue known to defendant at time of his trial cannot be considered in a post conviction review. State v. Russ, 193 Neb. 308, 226 N.W.2d 775 (1975).

When a defendant waives his state court remedies and admits his guilt, he does so under the law then existing and he assumes the risk of ordinary error in either his or his attorney's assessment of the law and facts. State v. Bevins, 187 Neb. 785, 194 N.W.2d 181 (1972).

Granting of right to direct appeal two years after time of sentencing on the overruling of the motion for new trial in the original case was improper under the circumstances of the case. State v. Wycoff, 183 Neb. 373, 160 N.W.2d 221 (1968).

Trial court, after evidentiary hearing, determined that constitutional rights of defendant were not violated. State v. Howard, 182 Neb. 411, 155 N.W.2d 339 (1967).

Defendant was denied relief under section where sentence imposed was proper. State v. Burnside, 181 Neb. 20, 146 N.W.2d 754 (1966).

Denial of relief under Post Conviction Act was proper. State v. Brevet, 180 Neb. 616, 144 N.W.2d 210 (1966).

A 15-year suspension of a driver's license is insufficient to satisfy the ''in custody'' requirement for postconviction relief under this section. State v. Miller, 6 Neb. App. 363, 574 N.W.2d 519 (1998).

State remedies found to have been sufficiently exhausted notwithstanding the fact that no proceedings were had under this act. Davis v. Sigler, 415 F.2d 1159 (8th Cir. 1969).

29-3002 Postconviction relief; order; appeal; recognizance.

An order sustaining or overruling a motion filed under sections 29-3001 to 29-3004 shall be deemed to be a final judgment, and an appeal may be taken from the district court as provided for in appeals in civil cases. A prisoner may, in the discretion of the appellate court and upon application to the appellate court, be released on such recognizance as the appellate court fixes pending the determination of the appeal.

Source: Laws 1965, c. 145, § 2, p. 487; Laws 1991, LB 732, § 87; Laws 1993, LB 652, § 2.

Cross References

For appeals in civil cases, see sections 25-2728 to 25-2738.

Appeal cannot be taken directly to Supreme Court from municipal court in post conviction proceeding. State v. Williams, 188 Neb. 802, 199 N.W.2d 611 (1972).

State may appeal under this section although error proceedings under section 29-2315.01 are pending. State v. Carpenter, 186 Neb. 605, 185 N.W.2d 663 (1971).

Appointment of counsel to appeal from denial of post conviction relief is properly refused when record and files show prisoner is entitled to no relief. State v. Gero, 186 Neb. 379, 183 N.W.2d 274 (1971).

Failure to appeal decision within one month prevented Supreme Court from obtaining jurisdiction. State v. Pauley, 185 Neb. 478, 176 N.W.2d 687 (1970).

29-3003 Postconviction remedy; cumulative; dismissal; when.

The remedy provided by sections 29-3001 to 29-3004 is cumulative and is not intended to be concurrent with any other remedy existing in the courts of this state. Any proceeding filed under the provisions of sections 29-3001 to 29-3004 which states facts which if true would constitute grounds for relief under another remedy shall be dismissed without prejudice.

Source: Laws 1965, c. 145, § 3, p. 487.

Post conviction remedy is cumulative. State v. Williams, 181 Neb. 692, 150 N.W.2d 260 (1967).

Remedy under Post Conviction Act is cumulative and is not intended to be concurrent and with any other remedy. State v. Dabney, 181 Neb. 263, 147 N.W.2d 768 (1967); State v. Carr, 181 Neb. 251, 147 N.W.2d 619 (1967).

29-3004 Appointment of counsel; competency and effectiveness; compensation.

The district court may appoint not to exceed two attorneys to represent the prisoners in all proceedings under sections 29-3001 to 29-3004. The district court, upon hearing the application, shall fix reasonable expenses and fees, and the county board shall allow payment to the attorney or attorneys in the full amount determined by the court. The attorney or attorneys shall be competent and shall provide effective counsel.

Source: Laws 1965, c. 145, § 4, p. 487; Laws 1967, c. 180, § 2, p. 499; Laws 1990, LB 829, § 2; Laws 1993, LB 652, § 3.

Any right to effective assistance of counsel under this section is statutory only and cannot render a prisoner's conviction void or voidable under the U.S. or Nebraska Constitution. State v. Becerra, 263 Neb. 753, 642 N.W.2d 143 (2002).

This section does not provide a postconviction claim for ineffective assistance of postconviction counsel. State v. Hunt, 262 Neb. 648, 634 N.W.2d 475 (2001).

It is within the discretion of the district court to determine whether legal counsel shall be appointed to represent a defendant on appeal to this court, and, in the absence of a showing of an abuse of discretion, the failure to appoint counsel is not error. State v. Victor, 242 Neb. 306, 494 N.W.2d 565 (1993); State v. Paulson, 211 Neb. 711, 320 N.W.2d 115 (1982).

Neither the Eighth Amendment nor the Due Process Clause of the federal Constitution requires states to appoint counsel for indigent death row inmates seeking state postconviction relief. State v. Victor, 242 Neb. 306, 494 N.W.2d 565 (1993).

District court abused its discretion in failing to appoint counsel, where postconviction record showed a justiciable issue of law or fact was presented by the indigent defendant. State v. Wiley, 228 Neb. 608, 423 N.W.2d 477 (1988).

Trial court acted within its discretion in refusal to appoint other counsel after public defender had completed appeal subsequent to his request to withdraw from case. State v. Jackson, 182 Neb. 472, 155 N.W.2d 361 (1968).

Trial court did not err in failure to appoint defense counsel on appeal to Supreme Court. State v. Williams, 182 Neb. 444, 155 N.W.2d 377 (1967).

It is discretionary with district court as to whether or not counsel shall be appointed to represent accused on appeal. State

v. Hizel, 181 Neb. 680, 150 N.W.2d 217 (1967); State v. Burnside, 181 Neb. 20, 146 N.W.2d 754 (1966).

This section does not require the appointment of counsel in all cases. State v. Craig, 181 Neb. 8, 146 N.W.2d 744 (1966).

ARTICLE 31
RENDITION OF ACCUSED PERSONS

Cross References

Agreement on detainers, see sections 29-759 to 29-765.
Uniform Criminal Extradition Act, see section 29-758.

Section
29-3101. Arrest of accused person illegally in state; release; violation; warrant; documents filed; notify county attorney.
29-3102. Removal; hearing; rights of person accused; conditions for release.
29-3103. Order; return to demanding court.
29-3104. Severability.
29-3105. Sections, how construed.
29-3106. Act, how cited.

29-3101 Arrest of accused person illegally in state; release; violation; warrant; documents filed; notify county attorney.

(a) If a person who has been charged with crime in another state and released from custody prior to final judgment, including the final disposition of any appeal, is alleged to have violated the terms and conditions of his release, and is present in this state, a designated agent of the court, judge, or magistrate which authorized the release may request the issuance of a warrant for the arrest of the person and an order authorizing his return to the demanding court, judge, or magistrate. Before the warrant is issued, the designated agent must file with a judicial officer of this state having authority under the laws of this state to issue warrants for the arrest of persons charged with crime the following documents:

(1) An affidavit stating the name and whereabouts of the person whose removal is sought, the crime with which the person was charged, the time and place of the crime charged, and the status of the proceedings against him;

(2) A certified copy of the order or other document specifying the terms and conditions under which the person was released from custody; and

(3) A certified copy of an order of the demanding court, judge, or magistrate stating the manner in which the terms and the conditions of the release have been violated and designating the affiant its agent for seeking removal of the person.

(b) Upon initially determining that the affiant is a designated agent of the demanding court, judge, or magistrate, and that there is probable cause for believing that the person whose removal is sought has violated the terms or conditions of his release, the judicial officer shall issue a warrant to a law enforcement officer of this state for the person's arrest.

(c) The judicial officer shall notify the county attorney of his action and shall direct him to investigate the case to ascertain the validity of the affidavits and documents required by subsection (a) and the identity and authority of the affiant.

Source: Laws 1969, c. 228, § 1, p. 851.

29-3102 Removal; hearing; rights of person accused; conditions for release.

(a) The person whose removal is sought shall be brought before the judicial officer immediately upon arrest pursuant to the warrant; whereupon the judicial officer shall set a time and place for hearing, and shall advise the person of his right to have the assistance of counsel, to confront the witnesses against him, and to produce evidence in his own behalf at the hearing.

(b) The person whose removal is sought may at this time in writing waive the hearing and agree to be returned to the demanding court, judge, or magistrate. If a waiver is executed, the judicial officer shall issue an order pursuant to section 29-3103.

(c) The judicial officer may impose conditions of release authorized by the laws of this state which will reasonably assure the appearance at the hearing of the person whose removal is sought.

Source: Laws 1969, c. 228, § 2, p. 852.

29-3103 Order; return to demanding court.

The county attorney shall appear at the hearing and report to the judicial officer the results of his investigation. If the judicial officer finds that the affiant is a designated agent of the demanding court, judge, or magistrate and that the person whose removal is sought was released from custody by the demanding court, judge, or magistrate, and that the person has violated the terms or conditions of his release, the judicial officer shall issue an order authorizing the return of the person to the custody of the demanding court, judge, or magistrate forthwith.

Source: Laws 1969, c. 228, § 3, p. 853.

29-3104 Severability.

If any provision of sections 29-3101 to 29-3106 or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of sections 29-3101 to 29-3106 which can be given effect without the invalid provision or application, and to this end the provisions of sections 29-3101 to 29-3106 are severable.

Source: Laws 1969, c. 228, § 4, p. 853.

29-3105 Sections, how construed.

Sections 29-3101 to 29-3106 shall be so construed as to effectuate their general purpose to make uniform the law of those states which enact them.

Source: Laws 1969, c. 228, § 5, p. 853.

29-3106 Act, how cited.

Sections 29-3101 to 29-3106 may be cited as the Uniform Rendition of Accused Persons Act.

Source: Laws 1969, c. 228, § 6, p. 853.

ARTICLE 32

RENDITION OF PRISONERS AS WITNESSES

Section

29-3201. Terms, defined.
29-3202. Witness; summoning in this state to testify in another state; procedure.

Section
29-3203. Order; conditions; contents.
29-3204. Order; mileage and expenses; order effective, when; conditions.
29-3205. Sections; exceptions.
29-3206. Prisoner from another state summoned to testify in this state; procedure.
29-3207. Order; compliance.
29-3208. Exemptions from arrest and personal service.
29-3209. Sections, how construed.
29-3210. Act, how cited.

29-3201 Terms, defined.

As used in sections 29-3201 to 29-3210,

(a) Witness means a person who is confined in a penal institution in any state and whose testimony is desired in another state in any criminal proceeding or investigation by a grand jury or in any criminal action before a court.

(b) Penal institutions includes a jail, prison, penitentiary, house of correction, or other place of penal detention.

(c) State includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory of the United States.

Source: Laws 1969, c. 229, § 1, p. 854.

29-3202 Witness; summoning in this state to testify in another state; procedure.

A judge of a state court of record in another state, which by its laws has made provision for commanding persons confined in penal institutions within that state to attend and testify in this state, may certify (1) that there is a criminal proceeding or investigation by a grand jury or a criminal action pending in the court, (2) that a person who is confined in a penal institution in this state may be a material witness in the proceeding, investigation, or action, and (3) that his presence will be required during a specified time. Upon presentation of the certificate to any judge having jurisdiction over the person confined, and upon notice to the Attorney General, the judge in this state shall fix a time and place for a hearing and shall make an order directed to the person having custody of the prisoner requiring that the prisoner be produced before him at the hearing.

Source: Laws 1969, c. 229, § 2, p. 854.

29-3203 Order; conditions; contents.

If at the hearing the judge determines (1) that the witness may be material and necessary, (2) that his attending and testifying are not adverse to the interests of this state or to the health or legal rights of the witness, (3) that the laws of the state in which he is requested to testify will give him protection from arrest and the service of civil and criminal process because of any act committed prior to his arrival in the state under the order, and (4) that as a practical matter the possibility is negligible that the witness may be subject to arrest or to the service of civil or criminal process in any state through which he will be required to pass, the judge shall issue an order, with a copy of the certificate attached, (a) directing the witness to attend and testify, (b) directing the person having custody of the witness to produce him, in the court where the criminal action is pending, or where the grand jury investigation is pending, at

a time and place specified in the order, and (c) prescribing such conditions as the judge shall determine.

Source: Laws 1969, c. 229, § 3, p. 855.

29-3204 Order; mileage and expenses; order effective, when; conditions.

The order to the witness and to the person having custody of the witness shall provide for the return of the witness at the conclusion of his or her testimony, proper safeguards on his or her custody, and proper financial reimbursement or prepayment by the requesting jurisdiction for all expenses incurred in the production and return of the witness, and may prescribe such other conditions as the judge thinks proper or necessary. Mileage and expenses shall be allowed as provided in sections 81-1174 to 81-1177 for state employees. The order shall not become effective until the judge of the state requesting the witness enters an order directing compliance with the conditions prescribed.

Source: Laws 1969, c. 229, § 4, p. 855; Laws 1981, LB 204, § 45.

29-3205 Sections; exceptions.

Sections 29-3201 to 29-3210 do not apply to any person in this state confined as mentally ill or under sentence of death.

Source: Laws 1969, c. 229, § 5, p. 855; Laws 1986, LB 1177, § 11.

29-3206 Prisoner from another state summoned to testify in this state; procedure.

If a person confined in a penal institution in any other state may be a material witness in a criminal action pending in a court of record or in a grand jury investigation in this state, a judge of the court may certify (1) that there is a criminal proceeding or investigation by a grand jury or a criminal action pending in the court, (2) that a person who is confined in a penal institution in the other state may be a material witness in the proceeding, investigation, or action, and (3) that his presence will be required during a specified time. The certificate shall be presented to a judge of a court of record in the other state having jurisdiction over the prisoner confined, and a notice shall be given to the Attorney General of the state in which the prisoner is confined.

Source: Laws 1969, c. 229, § 6, p. 855.

29-3207 Order; compliance.

The judge of the court in this state may enter an order directing compliance with the terms and conditions prescribed by the judge of the state in which the witness is confined.

Source: Laws 1969, c. 229, § 7, p. 856.

29-3208 Exemptions from arrest and personal service.

If a witness from another state comes into or passes through this state under an order directing him to attend and testify in this or another state, he shall not while in this state pursuant to the order be subject to arrest or the service of process, civil or criminal, because of any act committed prior to his arrival in this state under the order.

Source: Laws 1969, c. 229, § 8, p. 856.

29-3209 Sections, how construed.

Sections 29-3201 to 29-3210 shall be so construed as to effectuate their general purpose to make uniform the law of those states which enact them.

Source: Laws 1969, c. 229, § 9, p. 856.

29-3210 Act, how cited.

Sections 29-3201 to 29-3210 may be cited as the Uniform Rendition of Prisoners as Witnesses in Criminal Proceedings Act.

Source: Laws 1969, c. 229, § 10, p. 856.

ARTICLE 33

IDENTIFYING PHYSICAL CHARACTERISTICS

Section
29-3301. Terms, defined.
29-3302. Orders authorizing identification procedures; who may issue.
29-3303. Order; issuance; requirements.
29-3304. Order; when not required.
29-3305. Order; contents.
29-3306. Order; service; return.
29-3307. Contempt; penalty.

29-3301 Terms, defined.

As used in sections 29-3301 to 29-3307, the terms identifying physical characteristics or identification procedures shall include but not be limited to fingerprints, palm prints, footprints, measurements, handwriting exemplars, lineups, hand printing, voice samples, blood samples, urine samples, saliva samples, hair samples, comparative personal appearance, and photographs of an individual.

Source: Laws 1971, LB 568, § 1.

The identifying physical characteristics statutes require a showing of probable cause to believe the person seized has engaged in an articulable criminal offense before the judicial officer can issue an order to produce identifying physical characteristics. State v. Marcus, 265 Neb. 910, 660 N.W.2d 837 (2003).

When determining whether an order to produce identifying physical characteristics was based on a showing of probable cause, a court considers the totality of the circumstances. State v. Marcus, 265 Neb. 910, 660 N.W.2d 837 (2003).

Sections 29-3301 to 29-3307 do not violate privilege against self-incrimination, are constitutional, and apply to physical evidence, not to oral communications or testimony. State v. Swayze, 197 Neb. 149, 247 N.W.2d 440 (1976).

29-3302 Orders authorizing identification procedures; who may issue.

Judges and magistrates may issue orders authorizing identification procedures for the purpose of obtaining identifying physical characteristics in accordance with the procedures specified in sections 29-3301 to 29-3307. An order may be issued by any judge of the district court, Court of Appeals, or Supreme Court for service and execution anywhere within the State of Nebraska. An order may also be issued by any judge of the county court or other magistrate for service within the county of issuance.

Source: Laws 1971, LB 568, § 2; Laws 1982, LB 928, § 26; Laws 1984, LB 13, § 73; Laws 1991, LB 732, § 88; Laws 1992, LB 1059, § 27.

The identifying physical characteristics statutes require a showing of probable cause to believe the person seized has engaged in an articulable criminal offense before the judicial officer can issue an order to produce identifying physical characteristics. State v. Marcus, 265 Neb. 910, 660 N.W.2d 837 (2003).

When determining whether an order to produce identifying physical characteristics was based on a showing of probable

cause, a court considers the totality of the circumstances. State v. Marcus, 265 Neb. 910, 660 N.W.2d 837 (2003).

Sections 29-3301 to 29-3307 do not violate privilege against self-incrimination, are constitutional, and apply to physical evidence, not to oral communications or testimony. State v. Swayze, 197 Neb. 149, 247 N.W.2d 440 (1976).

29-3303 Order; issuance; requirements.

The order may issue upon a showing by affidavit of a peace officer that (1) there is probable cause to believe that an offense has been committed; (2) there is probable cause to believe that the person subject to the order has committed the offense; (3) procurement of evidence of identifying physical characteristics through nontestimonial identification procedures from an identified or particularly described individual may contribute to the identification of the individual who committed such offense; and (4) the identified or described individual has refused, or there is reason to believe he or she will refuse, to voluntarily provide the desired evidence of identifying physical characteristics. The contents of the affidavit may be supplemented or augmented by the affidavits of other persons or by sworn testimony given to the issuing judge or magistrate.

Source: Laws 1971, LB 568, § 3; Laws 2005, LB 361, § 31.

The identifying physical characteristics statutes require a showing of probable cause to believe the person seized has engaged in an articulable criminal offense before the judicial officer can issue an order to produce identifying physical characteristics. State v. Marcus, 265 Neb. 910, 660 N.W.2d 837 (2003).

When determining whether an order to produce identifying physical characteristics was based on a showing of probable cause, a court considers the totality of the circumstances. State v. Marcus, 265 Neb. 910, 660 N.W.2d 837 (2003).

The provisions of this section require a showing that there is both probable cause to believe that a crime has been committed and probable cause to believe the person being compelled to submit to nontestimonial identification procedures committed that crime. State v. Evans, 215 Neb. 433, 338 N.W.2d 788 (1983).

29-3304 Order; when not required.

No order shall be required or necessary where the individual has been lawfully arrested, nor under any circumstances where peace officers may otherwise lawfully require or request the individual to provide evidence of identifying physical characteristics, and no order shall be required in the course of trials or other judicial proceedings.

Source: Laws 1971, LB 568, § 4.

The identifying physical characteristics statutes require a showing of probable cause to believe the person seized has engaged in an articulable criminal offense before the judicial officer can issue an order to produce identifying physical characteristics. State v. Marcus, 265 Neb. 910, 660 N.W.2d 837 (2003).

When determining whether an order to produce identifying physical characteristics was based on a showing of probable cause, a court considers the totality of the circumstances. State v. Marcus, 265 Neb. 910, 660 N.W.2d 837 (2003).

29-3305 Order; contents.

Any order issued under sections 29-3301 to 29-3307 shall specify (1) the character of the alleged criminal offense which is the subject of the application; (2) the specific type or types of identifying physical characteristic evidence which are sought; (3) the identity or description of the individual who may be detained for obtaining such evidence; (4) the name and official status of the peace officer or officers authorized to obtain such evidence and to effectuate any detention which may be necessary to obtain the evidence; (5) the place at which the obtaining of such evidence may be carried out; (6) that the person will be under no legal obligation to submit to any interrogation or to make any statement during the period of his appearance except that required for voice identification; (7) that the individual shall forthwith accompany the officer serving the order for the purpose of carrying out its objectives, or, in the alternative, fixing a time at which the individual shall appear for the purpose of

carrying out the objectives of the order; (8) that the person, if he fails to accompany the officer, or to appear at the time fixed, as may be provided, or to otherwise comply with the provisions of the order, shall be guilty of contempt of court and punished accordingly; (9) the period of time during which the named or described individual may be detained for obtaining such evidence, which in no event shall exceed five hours; (10) the period of time, not exceeding fifteen days, during which the order shall continue in force and effect; and (11) any other conditions which the issuing judge or magistrate finds to be necessary to properly protect the rights of the individual who is to supply such evidence.

Source: Laws 1971, LB 568, § 5.

The identifying physical characteristics statutes require a showing of probable cause to believe the person seized has engaged in an articulable criminal offense before the judicial officer can issue an order to produce identifying physical characteristics. State v. Marcus, 265 Neb. 910, 660 N.W.2d 837 (2003).

When determining whether an order to produce identifying physical characteristics was based on a showing of probable cause, a court considers the totality of the circumstances. State v. Marcus, 265 Neb. 910, 660 N.W.2d 837 (2003).

29-3306 Order; service; return.

A copy of the order shall be given to the individual at the time it is served on him. No more than thirty days after the identification procedures have been carried out, a return of the order shall be made to the issuing court setting forth the type of evidence taken. Where the order is not executed, a return so indicating shall be filed within thirty days of its issuance.

Source: Laws 1971, LB 568, § 6.

The identifying physical characteristics statutes require a showing of probable cause to believe the person seized has engaged in an articulable criminal offense before the judicial officer can issue an order to produce identifying physical characteristics. State v. Marcus, 265 Neb. 910, 660 N.W.2d 837 (2003).

When determining whether an order to produce identifying physical characteristics was based on a showing of probable cause, a court considers the totality of the circumstances. State v. Marcus, 265 Neb. 910, 660 N.W.2d 837 (2003).

29-3307 Contempt; penalty.

The penalty for contempt of court, as provided in sections 29-3301 to 29-3307, shall not exceed thirty days' imprisonment in the county jail.

Source: Laws 1971, LB 568, § 7.

The identifying physical characteristics statutes require a showing of probable cause to believe the person seized has engaged in an articulable criminal offense before the judicial officer can issue an order to produce identifying physical characteristics. State v. Marcus, 265 Neb. 910, 660 N.W.2d 837 (2003).

When determining whether an order to produce identifying physical characteristics was based on a showing of probable cause, a court considers the totality of the circumstances. State v. Marcus, 265 Neb. 910, 660 N.W.2d 837 (2003).

Sections 29-3301 to 29-3307 do not violate privilege against self-incrimination, are constitutional, and apply to physical evidence, not to oral communications or testimony. State v. Swayze, 197 Neb. 149, 247 N.W.2d 440 (1976).

ARTICLE 34

INTERSTATE CORRECTIONS COMPACT

Section
29-3401. Interstate corrections compact.
29-3402. Department of Correctional Services; powers.

29-3401 Interstate corrections compact.

The State of Nebraska ratifies and approves the following compact:

INTERSTATE CORRECTIONS COMPACT

Article I

Purpose and Policy

The party States, desiring by common action to fully utilize and improve their institutional facilities and provide adequate programs for the confinement, treatment and rehabilitation of various types of offenders, declare that it is the policy of each of the party States to provide such facilities and programs on a basis of cooperation with one another, thereby serving the best interests of such offenders and of society and effecting economies in capital expenditures and operational costs. The purpose of this Compact is to provide for the mutual development and execution of such programs of cooperation for the confinement, treatment and rehabilitation of offenders with the most economical use of human and material resources.

Article II

Definitions

As used in this Compact, unless the context clearly requires otherwise:

(1) ''State'' means a State of the United States, the United States of America, a Territory or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico;

(2) ''sending State'' means a State party to this Compact in which conviction or court commitment was had;

(3) ''receiving State'' means a State party to this Compact to which an inmate is sent for confinement other than a State in which conviction or court commitment was had;

(4) ''inmate'' means a male or female offender who is committed, under sentence to or confined in a penal or correctional institution;

(5) ''institution'' means any penal or correctional facility, including but not limited to a facility for the mentally ill or mentally defective, in which inmates as defined in (4) above may lawfully be confined.

Article III

Contracts

(a) Each party State may make one or more contracts with any one or more of the other party States for the confinement of inmates on behalf of a sending State in institutions situated within receiving States. Any such contract shall provide for:

(1) its duration;

(2) payments to be made to the receiving State by the sending State for inmate maintenance, extraordinary medical and dental expenses, and any participation in or receipt by inmates of rehabilitative or correctional services, facilities, programs or treatment not reasonably included as part of normal maintenance;

(3) participation in programs of inmate employment, if any, the disposition or crediting of any payments received by inmates on account thereof, and the crediting of proceeds from or disposal of any products resulting therefrom;

(4) delivery and retaking of inmates;

(5) such other matters as may be necessary and appropriate to fix the obligations, responsibilities and rights of the sending and receiving States.

(b) The terms and provisions of this Compact shall be a part of any contract entered into by the authority of or pursuant thereto, and nothing in any such contract shall be inconsistent therewith.

Article IV

Procedures and Rights

(a) Whenever the duly constituted authorities in a State party to this Compact, and which has entered into a contract pursuant to Article III, shall decide that confinement in, or transfer of an inmate to, an institution within the territory of another party State is necessary or desirable in order to provide adequate quarters and care or an appropriate program of rehabilitation or treatment, said officials may direct that the confinement be within an institution within the territory of said other party State, the receiving State to act in that regard solely as agent for the sending State.

(b) The appropriate officials of any State party to this Compact shall have access, at all reasonable times, to any institution in which it has a contractual right to confine inmates for the purpose of inspecting the facilities thereof and visiting such of its inmates as may be confined in the institution.

(c) Inmates confined in an institution pursuant to the terms of this Compact shall at all times be subject to the jurisdiction of the sending State and may at any time be removed therefrom for transfer to a prison or other institution within the sending State, for transfer to another institution in which the sending State may have a contractual or other right to confine inmates, for release on probation or parole, for discharge, or for any other purpose permitted by the laws of the sending State, provided, that the sending State shall continue to be obligated to such payments as may be required pursuant to the terms of any contract entered into under the terms of Article III.

(d) Each receiving State shall provide regular reports to each sending State on the inmates of that sending State in institutions pursuant to this Compact including a conduct record of each inmate and certify said record to the official designated by the sending State, in order that each inmate may have official review of his or her record in determining and altering the disposition of said inmate in accordance with the law which may obtain in the sending State and in order that the same may be a source of information for the sending State.

(e) All inmates who may be confined in an institution pursuant to the provisions of this Compact shall be treated in a reasonable and humane manner and shall be treated equally with such similar inmates of the receiving State as may be confined in the same institution. The fact of confinement in a receiving State shall not deprive any inmate so confined of any legal rights which said inmate would have had if confined in an appropriate institution of the sending State.

(f) Any hearing or hearings to which an inmate confined pursuant to this Compact may be entitled by the laws of the sending state may be had before the appropriate authorities of the sending State, or of the receiving State, if authorized by the sending State. The receiving State shall provide adequate facilities for such hearings as may be conducted by the appropriate officials of a sending State. In the event such hearing or hearings are had before officials of the receiving State, the governing law shall be that of the sending State and a

record of the hearing or hearings as prescribed by the sending State shall be made. Said record together with any recommendations of the hearing officials shall be transmitted forthwith to the official or officials before whom the hearing would have been had if it had taken place in the sending State. In any and all proceedings had pursuant to the provisions of this subdivision, the officials of the receiving State shall act solely as agents of the sending State and no final determination shall be made in any matter except by the appropriate officials of the sending State.

(g) Any inmate confined pursuant to this Compact shall be released within the territory of the sending State unless the inmate, and the sending and receiving States, shall agree upon release in some other place. The sending State shall bear the cost of such return to its territory.

(h) Any inmate confined pursuant to the terms of this Compact shall have any and all rights to participate in and derive any benefits or incur or be relieved of any obligations or have such obligations modified or his status changed on account of any action or proceeding in which he could have participated if confined in any appropriate institution of the sending State located within such State.

(i) The parent, guardian, trustee, or other person or persons entitled under the laws of the sending State to act for, advise, or otherwise function with respect to any inmate shall not be deprived of or restricted in his exercise of any power in respect of any inmate confined pursuant to the terms of this Compact.

Article V

Acts Not Reviewable in Receiving State: Extradition

(a) Any decision of the sending State in respect of any matter over which it retains jurisdiction pursuant to this Compact shall be conclusive upon and not reviewable within the receiving State, but if at the time the sending State seeks to remove an inmate from an institution in the receiving State there is pending against the inmate within such State any criminal charge or if the inmate is formally accused of having committed within such State a criminal offense, the inmate shall not be returned without the consent of the receiving State until discharged from prosecution or other form of proceeding, imprisonment or detention for such offense. The duly accredited officers of the sending State shall be permitted to transport inmates pursuant to this Compact through any and all States party to this Compact without interference.

(b) An inmate who escapes from an institution in which he is confined pursuant to this Compact shall be deemed a fugitive from the sending State and from the State in which the institution is situated. In the case of an escape to a jurisdiction other than the sending or receiving State, the responsibility for institution of extradition or rendition proceedings shall be that of the sending State, but nothing contained herein shall be construed to prevent or affect the activities of officers and agencies of any jurisdiction directed toward the apprehension and return of an escapee.

Article VI

Federal Aid

Any State party to this Compact may accept federal aid for use in connection with any institution or program, the use of which is or may be affected by this Compact or any contract pursuant hereto and any inmate in a receiving State

pursuant to this Compact may participate in any such federally aided program or activity for which the sending and receiving States have made contractual provision; *provided*, that if such program or activity is not part of the customary correctional regimen the express consent of the appropriate official of the sending State shall be required therefor.

Article VII

Entry into Force

This Compact shall enter into force and become effective and binding upon the States so acting when it has been enacted into law by any 2 States. Thereafter, this Compact shall enter into force and become effective and binding as to any other of said States upon similar action by such State.

Article VIII

Withdrawal and Termination

This Compact shall continue in force and remain binding upon a party State until it shall have enacted a statute repealing the same and providing for the sending of formal written notice of withdrawal from the Compact to the appropriate officials of all other party States. An actual withdrawal shall not take effect until one year after the notices provided in said statute have been sent. Such withdrawal shall not relieve the withdrawing State from its obligations assumed hereunder prior to the effective date of withdrawal. Before the effective date of withdrawal, a withdrawing State shall remove to its territory, at its own expense, such inmates as it may have confined pursuant to the provisions of this Compact.

Article IX

Other Arrangements Unaffected

Nothing contained in this Compact shall be construed to abrogate or impair any agreement or other arrangement which a party State may have with a non-party State for the confinement, rehabilitation or treatment of inmates nor to repeal any other laws of a party State authorizing the making of cooperative institutional arrangements.

Article X

Construction and Severability

The provisions of this Compact shall be liberally construed and shall be severable. If any phrase, clause, sentence or provision of this Compact is declared to be contrary to the constitution of any participating State or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this Compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this Compact shall be held contrary to the constitution of any State participating therein, the Compact shall remain in full force and effect as to the remaining States and in full force and effect as to the State affected as to all severable matters.

Article XI

An inmate must request a transfer in writing before such a transfer can be made pursuant to Article IV.

Source: Laws 1974, LB 697, § 1.

A Nebraska parole violator who is serving an Iowa sentence imposed for a subsequent offense does not recommence serving his Nebraska sentence until he has been released from custody by Iowa and arrested for the custody of the Nebraska Board of Parole. Falkner v. Neb. Board of Parole, 213 Neb. 474, 330 N.W.2d 141 (1983).

29-3402 Department of Correctional Services; powers.

The Department of Correctional Services is hereby authorized and directed to do all things necessary or incidental to the carrying out of the Compact in every particular.

Source: Laws 1974, LB 697, § 2.

ARTICLE 35

CRIMINAL HISTORY INFORMATION

Section

29-3501. Act, how cited.
29-3502. Sections; purposes.
29-3503. Definitions; sections found.
29-3504. Administration of criminal justice, defined.
29-3505. Commission, defined.
29-3506. Criminal history record information, defined.
29-3507. Complete, defined.
29-3508. Criminal history record information system or system, defined.
29-3509. Criminal justice agency, defined.
29-3510. Direct access, defined.
29-3511. Disposition, defined.
29-3512. Operator, defined.
29-3513. Person, defined.
29-3514. Person in interest, defined.
29-3515. Criminal justice agency; criminal history record information; maintain.
29-3516. Criminal justice agency; disposition of cases; report; procedure; commission; forms; rules and regulations; adopt.
29-3517. Criminal justice agency; criminal history record information; process; assure accuracy.
29-3518. Criminal history record information; access; restrictions; requirements.
29-3519. Criminal justice information systems; computerized; access; limitations; security; conditions.
29-3520. Criminal history record information; public record; criminal justice agencies; regulations; adopt.
29-3521. Information; considered public record; classifications.
29-3522. Criminal justice agency records; application to inspect; unavailable; procedure to provide records.
29-3523. Criminal history record information; notation of an arrest; dissemination; limitations; removal; expungement.
29-3524. Criminal justice agencies; fees; assessment.
29-3525. Criminal history record information; review by person in interest; identity; verification.
29-3526. Commission; powers and duties; rules and regulations.
29-3527. Violations; penalty.
29-3528. Violations; person aggrieved; remedies.

29-3501 Act, how cited.

Sections 29-209, 29-210, 29-3501 to 29-3528, and 81-1423 shall be known and may be cited as the Security, Privacy, and Dissemination of Criminal History Information Act.

Source: Laws 1978, LB 713, § 1.

29-3502 Sections; purposes.

The purposes of sections 29-209, 29-210, 29-3501 to 29-3528, and 81-1423 are (1) to control and coordinate criminal offender record keeping within this state, (2) to establish more efficient and uniform systems of criminal offender record keeping, (3) to assure periodic audits of such record keeping in order to determine compliance with sections 29-209, 29-210, 29-3501 to 29-3528, and 81-1423, (4) to establish a more effective administrative structure for the protection of individual privacy in connection with such record keeping, and (5) to preserve the principle of the public's right to know of the official actions of criminal justice agencies.

Source: Laws 1978, LB 713, § 2.

29-3503 Definitions; sections found.

For the purposes of sections 29-209, 29-210, 29-3501 to 29-3528, and 81-1423, unless the context otherwise requires, the definitions found in sections 29-3504 to 29-3514 shall be used.

Source: Laws 1978, LB 713, § 3.

29-3504 Administration of criminal justice, defined.

Administration of criminal justice shall mean performance of any of the following activities: Detection, apprehension, detention, pretrial release, pretrial diversion, posttrial release, prosecution, defense by a full-time public defender's office, defense by the Commission on Public Advocacy, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders. The administration of criminal justice shall include criminal identification activities and the collection, storage, and dissemination of criminal history record information.

Source: Laws 1978, LB 713, § 4; Laws 2002, LB 82, § 15.

29-3505 Commission, defined.

Commission shall mean the Nebraska Commission on Law Enforcement and Criminal Justice.

Source: Laws 1978, LB 713, § 5.

29-3506 Criminal history record information, defined.

Criminal history record information shall mean information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of issuance of arrest warrants, arrests, detentions, indictments, charges by information, and other formal criminal charges, and any disposition arising from such arrests, charges, sentencing, correctional supervision, and release. Criminal history record information shall not include intelligence or investigative information.

Source: Laws 1978, LB 713, § 6.

This section has no application to presentence reports and does not restrict the use of criminal history information in determining an appropriate sentence. State v. Guida, 230 Neb. 961, 434 N.W.2d 522 (1989).

29-3507 Complete, defined.

With reference to criminal history record information, complete shall mean that arrest records shall show the subsequent disposition of the case as it moves through the various stages of the criminal justice system; and accurate shall mean containing no erroneous information of a material nature.

Source: Laws 1978, LB 713, § 7.

29-3508 Criminal history record information system or system, defined.

Criminal history record information system or system shall mean a system including the equipment, facilities, procedures, agreements, and organizations thereof, for the collection, processing, preservation, or dissemination of criminal history record information.

Source: Laws 1978, LB 713, § 8.

29-3509 Criminal justice agency, defined.

Criminal justice agency shall mean:

(1) Courts; and

(2) A government agency or any subunit thereof which performs the administration of criminal justice pursuant to a statute or executive order and which allocates a substantial part of its annual budget to the administration of criminal justice.

Source: Laws 1978, LB 713, § 9.

29-3510 Direct access, defined.

Direct access shall mean having the custodial authority to handle and control the actual documents or automated or computerized documentary record which constitutes the criminal history data base.

Source: Laws 1978, LB 713, § 10.

29-3511 Disposition, defined.

Disposition shall mean information disclosing that criminal proceedings have been concluded, including information disclosing that the police have elected not to refer a matter to a prosecutor or that a prosecutor has elected not to commence criminal proceedings, and also information disclosing the nature of the termination of the proceedings.

Source: Laws 1978, LB 713, § 11.

29-3512 Operator, defined.

Operator shall mean the agency, person, or group of persons designated by the governing body of the jurisdiction served by a criminal history record information system to coordinate and supervise the system.

Source: Laws 1978, LB 713, § 12.

29-3513 Person, defined.

Person shall mean any natural person, corporation, partnership, limited liability company, firm, or association.

Source: Laws 1978, LB 713, § 13; Laws 1993, LB 121, § 192.

29-3514 Person in interest, defined.

Person in interest shall mean the person who is the primary subject of a criminal justice record or any representative designated by such person, except that if the subject of the record is under legal disability, person in interest shall mean the person's parent or duly appointed legal representative.

Source: Laws 1978, LB 713, § 14.

29-3515 Criminal justice agency; criminal history record information; maintain.

Each criminal justice agency shall maintain complete and accurate criminal history record information with regard to the actions taken by the agency.

Source: Laws 1978, LB 713, § 15.

29-3516 Criminal justice agency; disposition of cases; report; procedure; commission; forms; rules and regulations; adopt.

Each criminal justice agency in this state shall report the disposition of cases which enter its area in the administration of criminal justice. As to cases in which fingerprint records must be reported to the Nebraska State Patrol under section 29-209, such disposition reports shall be made to the patrol. In all other cases when a centralized criminal history record information system is maintained by local units of government, dispositions made within the jurisdiction covered by such system shall be reported to the operator of that system or to the arresting agency in a noncentralized criminal history record information system. All dispositions shall be reported as promptly as feasible but not later than fifteen days after the happening of an event which constitutes a disposition. In order to achieve uniformity in reporting procedures, the commission shall prescribe the form to be used in reporting dispositions and may adopt rules and regulations to achieve efficiency and which will promote the ultimate purpose of insuring that each criminal justice information system maintained in this state shall contain complete and accurate criminal history information. All forms and rules and regulations relating to reports of dispositions by courts shall be approved by the Supreme Court of Nebraska.

Source: Laws 1978, LB 713, § 18.

29-3517 Criminal justice agency; criminal history record information; process; assure accuracy.

Each criminal justice agency shall institute a process of data collection, entry, storage, and systematic audit of criminal history record information that will minimize the possibility of recording and storing inaccurate information. Any criminal justice agency which finds that it has reported inaccurate information of a material nature shall forthwith notify each criminal justice agency known to have received such information. Each criminal justice agency shall (1) maintain a listing of the individuals or agencies both in and outside of the state to which criminal history record information was released, a record of what information was released, and the date such information was released, (2) establish a delinquent disposition monitoring system, and (3) verify all record entries.

Source: Laws 1978, LB 713, § 19.

29-3518 Criminal history record information; access; restrictions; requirements.

Direct access to criminal history record information system facilities, system operating environments, data file contents, and system documentation shall be restricted to authorized organizations and persons. Wherever criminal history record information is collected, stored, or disseminated, the criminal justice agency or agencies responsible for the operation of the system: (1) May

determine for legitimate security purposes which personnel may work in a defined area where such information is stored, collected, or disseminated; (2) shall select and supervise all personnel authorized to have direct access to such information; (3) shall assure that an individual or agency authorized direct access is administratively held responsible for (a) the physical security of criminal history record information under its control or in its custody, and (b) the protection of such information from unauthorized access, disclosure, or dissemination; (4) shall institute procedures to reasonably protect any central repository of criminal history record information from unauthorized access, theft, sabotage, fire, flood, wind, or other natural or manmade disasters; (5) shall provide that each employee working with or having access to criminal history record information is to be made familiar with sections 29-209, 29-210, 29-3501 to 29-3528, and 81-1423 and of any rules and regulations promulgated under such sections; and (6) shall require that direct access to criminal history record information shall be made available only to authorized officers or employees of a criminal justice agency and, as necessary, other authorized personnel essential to the proper operation of the criminal history record information system. This section shall not be construed to inhibit or limit dissemination of criminal history record information as authorized in other sections of sections 29-209, 29-210, 29-3501 to 29-3528, and 81-1423, including both review of original records and the right to have copies made of records when not prohibited.

Source: Laws 1978, LB 713, § 20.

29-3519 Criminal justice information systems; computerized; access; limitations; security; conditions.

Whenever computerized data processing is employed, effective and technologically advanced software and hardware designs shall be instituted to prevent unauthorized access to such information. Computer operations which support criminal justice information systems shall operate in accordance with procedures approved by the participating criminal justice agencies and assure that (1) criminal history record information is stored by the computer in such a manner that it cannot be modified, destroyed, accessed, changed, purged, or overlaid in any fashion by noncriminal justice terminals, (2) operation programs are used that will prohibit inquiry, record updates, or destruction of records from any terminal other than criminal justice system terminals which are so designated, (3) destruction of records is limited to designated terminals under the direct control of the criminal justice agency responsible for creating or storing the criminal history record information, (4) operational programs are used to detect and store, for the output of designated criminal justice agency employees, all unauthorized attempts to penetrate any criminal history record information system, program, or file, (5) the programs specified in subdivisions (2) and (4) of this section are known only to criminal justice agency employees responsible for criminal history record information control, or individuals and agencies pursuant to a specific agreement with the criminal justice agency to provide such programs and that the programs are kept continuously under maximum security conditions, and (6) a criminal justice agency may audit, monitor, and inspect procedures established in this section.

Source: Laws 1978, LB 713, § 21.

29-3520 Criminal history record information; public record; criminal justice agencies; regulations; adopt.

Complete criminal history record information maintained by a criminal justice agency shall be a public record open to inspection and copying by any person during normal business hours and at such other times as may be established by the agency maintaining the record. Criminal justice agencies may adopt such regulations with regard to inspection and copying of records as are reasonably necessary for the physical protection of the records and the prevention of unnecessary interference with the discharge of the duties of the agency.

Source: Laws 1978, LB 713, § 22.

29-3521 Information; considered public record; classifications.

In addition to public records under section 29-3520, information consisting of the following classifications shall be considered public record for purposes of dissemination: (1) Posters, announcements, lists for identifying or apprehending fugitives or wanted persons, or photographs taken in conjunction with an arrest for purposes of identification of the arrested person; (2) original records of entry such as police blotters, offense reports, or incident reports maintained by criminal justice agencies; (3) court records of any judicial proceeding; and (4) records of traffic offenses maintained by the Department of Motor Vehicles for the purpose of regulating the issuance, suspension, revocation, or renewal of driver's or other operator's licenses.

Source: Laws 1978, LB 713, § 23.

29-3522 Criminal justice agency records; application to inspect; unavailable; procedure to provide records.

If the requested criminal justice history record or other public record, as defined in section 29-3521, of a criminal justice agency is not in the custody or control of the person to whom application is made, such person shall immediately notify the applicant of this fact. Such notification shall be in writing if requested by the applicant and shall state the agency, if known, which has custody or control of the record in question. If the requested criminal history record or other public record of a criminal justice agency is in the custody and control of the person to whom application is made but is not available at the time an applicant asks to examine it, the custodian shall immediately notify the applicant of such fact, in writing, if requested by the applicant. When requested by the applicant, the custodian shall set a date and hour within three working days at which time the record shall be available for inspection.

Source: Laws 1978, LB 713, § 24.

29-3523 Criminal history record information; notation of an arrest; dissemination; limitations; removal; expungement.

(1) That part of criminal history record information consisting of a notation of an arrest, described in subsection (2) of this section, shall not be disseminated to persons other than criminal justice agencies after the expiration of the periods described in subsection (2) of this section except when the subject of the record:

(a) Is currently the subject of prosecution or correctional control as the result of a separate arrest;

(b) Is currently an announced candidate for or holder of public office;

(c) Has made a notarized request for the release of such record to a specific person; or

(d) Is kept unidentified, and the record is used for purposes of surveying or summarizing individual or collective law enforcement agency activity or practices, or the dissemination is requested consisting only of release of criminal history record information showing (i) dates of arrests, (ii) reasons for arrests, and (iii) the nature of the dispositions including, but not limited to, reasons for not prosecuting the case or cases.

(2) Except as provided in subsection (1) of this section, the notation of arrest shall be removed from the public record as follows:

(a) In the case of an arrest for which no charges are filed as a result of the determination of the prosecuting attorney, the arrest shall not be part of the public record after one year from the date of arrest;

(b) In the case of an arrest for which charges are not filed as a result of a completed diversion, the arrest shall not be part of the public record after two years from the date of arrest; and

(c) In the case of an arrest for which charges are filed, but dismissed by the court on motion of the prosecuting attorney or as a result of a hearing not the subject of a pending appeal, the arrest shall not be part of the public record after three years from the date of arrest.

(3) Any person arrested due to the error of a law enforcement agency may file a petition with the district court for an order to expunge the criminal history record information related to such error. The petition shall be filed in the district court of the county in which the petitioner was arrested. The county attorney shall be named as the respondent and shall be served with a copy of the petition. The court may grant the petition and issue an order to expunge such information if the petitioner shows by clear and convincing evidence that the arrest was due to error by the arresting law enforcement agency.

Source: Laws 1978, LB 713, § 25; Laws 1980, LB 782, § 1; Laws 1997, LB 856, § 1; Laws 2007, LB470, § 1.

29-3524 Criminal justice agencies; fees; assessment.

Criminal justice agencies may assess reasonable fees, not to exceed actual costs, for search, retrieval, storing, maintaining, and copying of criminal justice records and may waive fees at their discretion. When fees for certified copies or other copies, printouts, or photographs of such records are specifically prescribed by law, such specific fees shall apply. All fees collected by the Nebraska State Patrol pursuant to this section shall be remitted to the State Treasurer for credit to the Nebraska State Patrol Cash Fund.

Source: Laws 1978, LB 713, § 26; Laws 1986, LB 851, § 4; Laws 2003, LB 17, § 17.

29-3525 Criminal history record information; review by person in interest; identity; verification.

Any person in interest, who asserts that he or she has reason to believe that criminal history information relating to him or her or the person in whose interest he or she acts is maintained by any system in this state, shall be entitled to review and receive a copy of such information for the purpose of determining its accuracy and completeness by making application to the agency operating such system. The applicant shall provide satisfactory verification of the subject's identity, which shall include name, date, and place of birth, and, when identification is doubtful, a set of fingerprint impressions may be taken upon fingerprint cards or forms commonly used for law enforcement purposes by law enforcement agencies. The review authorized by this section shall be limited to a review of criminal history record information.

Source: Laws 1978, LB 713, § 28.

29-3526 Commission; powers and duties; rules and regulations.

The commission may by rule authorize a fee for each application for review under section 29-3525, and may charge for making copies or printouts as provided in section 29-3524. The commission shall implement section 29-3525 by rule and regulation, including but not limited to provisions for (1) administrative review and necessary correction of any claim by the individual to whom the information relates that the information is inaccurate or incomplete, (2) administrative appeal when a criminal justice agency refuses to correct challenged information to the satisfaction of the individual to whom the information relates, (3) supplying to an individual whose record has been corrected, upon his or her request, the names of all noncriminal justice agencies and individuals to which the data has been given, and (4) requiring the correcting agency to notify all criminal justice recipients of corrected information.

Source: Laws 1978, LB 713, § 29.

29-3527 Violations; penalty.

Any person who (1) permits unauthorized direct access to criminal history record information, (2) knowingly fails to disseminate or make public criminal history record information of official acts as required under sections 29-209, 29-210, 29-3501 to 29-3528, and 81-1423, or (3) knowingly disseminates nondisclosable criminal history record information in violation of sections 29-209, 29-210, 29-3501 to 29-3528, and 81-1423, shall be guilty of a Class IV misdemeanor.

Source: Laws 1978, LB 713, § 30.

29-3528 Violations; person aggrieved; remedies.

Whenever any officer or employee of the state, its agencies, or its political subdivisions, or whenever any state agency or any political subdivision or its agencies fails to comply with the requirements of sections 29-209, 29-210, 29-3501 to 29-3528, and 81-1423 or of regulations lawfully adopted to implement sections 29-209, 29-210, 29-3501 to 29-3528, and 81-1423, any person aggrieved may bring an action, including but not limited to an action for mandamus, to compel compliance and such action may be brought in the district court of any district in which the records involved are located or in the district court of Lancaster County. The commission may request the Attorney General to bring such action.

Source: Laws 1978, LB 713, § 31.

ARTICLE 36

PRETRIAL DIVERSION

Section

29-3601. Legislative findings.
29-3602. Pretrial diversion program; established.
29-3603. Pretrial diversion plan for criminal offenses; requirements.
29-3604. Driving while intoxicated, implied consent refusal; not eligible for pretrial diversion.
29-3605. Minor traffic violations; terms, defined.
29-3606. Minor traffic violations; pretrial diversion plan; driver's safety training program.
29-3607. Minor traffic violations; driver's safety training program; certificate; fee.
29-3608. Minor traffic violations; pretrial diversion program; eligibility.
29-3609. Minor traffic violations; applicability.

29-3601 Legislative findings.

The Legislature finds that pretrial diversion offers persons charged with criminal offenses and minor traffic violations an alternative to traditional criminal justice proceedings in that: (1) It permits participation by the accused only on a voluntary basis; (2) the accused has access to counsel for criminal offenses prior to a decision to participate; (3) it occurs prior to an adjudication but after arrest and a decision has been made by the prosecutor that the offense will support criminal charges; and (4) it results in dismissal of charges, or its equivalent, if the individual successfully completes the diversion process.

Source: Laws 1979, LB 573, § 2; Laws 2002, LB 1303, § 1; Laws 2003, LB 43, § 11.

29-3602 Pretrial diversion program; established.

The county attorney of any county may establish a pretrial diversion program with the concurrence of the county board. Any city attorney may establish a pretrial diversion program with the concurrence of the governing body of the city. Such programs shall be established pursuant to sections 29-3603 and 29-3605 to 29-3609.

Source: Laws 1979, LB 573, § 3; Laws 1999, LB 295, § 1; Laws 2002, LB 1303, § 2.

29-3603 Pretrial diversion plan for criminal offenses; requirements.

A pretrial diversion plan for criminal offenses shall include, but not be limited to:

(1) Formal eligibility guidelines established following consultation with criminal justice officials and program representatives. The guidelines shall be written and made available and routinely disseminated to all interested parties;

(2) A maximum time limit for any defendant's participation in a diversion program, beyond which no defendant shall be required or permitted to participate. Such maximum term shall be long enough to effect sufficient change in participants to deter them from criminal activity, but not so long as to prejudice the prosecution or defense of the case should the participant be returned to the ordinary course of prosecution;

(3) The opportunity for eligible defendants to review, with their counsel present, a copy of general diversion program requirements including average

program duration and possible outcome, prior to making the decision to enter a diversion program;

(4) Dismissal of the diverted case upon completion of the program;

(5) A provision that participants shall be able to withdraw at any time before the program is completed and be remanded to the court process without prejudice to them during the ordinary course of prosecution;

(6) Enrollment shall not be conditioned on a plea of guilty; and

(7) Defendants who are denied enrollment in a diversion program shall be afforded an administrative review of the decision and written reasons for denial.

Source: Laws 1979, LB 573, § 4; Laws 2002, LB 1303, § 3.

29-3604 Driving while intoxicated, implied consent refusal; not eligible for pretrial diversion.

No person charged with a violation of section 60-6,196 or 60-6,197 shall be eligible for pretrial diversion under a program established pursuant to sections 29-3601 to 29-3603 and 29-3605 to 29-3609.

Source: Laws 1982, LB 568, § 4; Laws 1993, LB 370, § 15; Laws 2002, LB 1303, § 4.

29-3605 Minor traffic violations; terms, defined.

For purposes of sections 29-3606 to 29-3609:

(1) Department means the Department of Motor Vehicles; and

(2) Minor traffic violation does not include leaving the scene of an accident, sections 60-696 to 60-698, driving under the influence of alcoholic liquor or drugs, sections 60-4,164, 60-6,196, and 60-6,211.01, reckless driving or willful reckless driving, sections 60-6,213 and 60-6,214, participating in a speed competition, section 60-6,195, operating a motor vehicle to avoid arrest, section 28-905, refusing a breath or blood test, sections 60-4,164, 60-6,197, 60-6,197.04, and 60-6,211.02, driving on a suspended or revoked operator's license, sections 60-4,107 to 60-4,110 and 60-6,197.06, speeding twenty or more miles per hour over the speed limit, operating a motor vehicle without insurance or other financial responsibility in violation of the Motor Vehicle Safety Responsibility Act, any injury accident, or any violation which is classified as a misdemeanor or a felony.

Source: Laws 2002, LB 1303, § 5; Laws 2004, LB 208, § 3.

Cross References

Motor Vehicle Safety Responsibility Act, see section 60-569.

29-3606 Minor traffic violations; pretrial diversion plan; driver's safety training program.

(1) A pretrial diversion plan for minor traffic violations shall consist of a driver's safety training program.

(2) A driver's safety training program shall:

(a) Provide a curriculum of driver's safety training, as approved by the department, which is designed to educate persons committing minor traffic violations and to deter future violations; and

(b) Require payment of a fee approved by the department which is reasonable and appropriate to defray the cost of the presentation of the program. A jurisdiction shall charge a uniform fee for participation in a driver's safety training program regardless of the traffic violation for which the applicant was cited. Fees received by a jurisdiction offering a driver's safety training program may be utilized by such jurisdiction to pay for the costs of administering and operating such program, to promote driver safety, and to pay for the costs of administering and operating other safety and educational programs within such jurisdiction.

(3) The program administrator of each driver's safety training program shall keep a record of attendees and shall be responsible for determining eligibility. A report of attendees at all driver's safety training programs in the state shall be shared only with similar programs throughout the state. All procedures for sharing records of attendees among such programs shall conform with the rules and regulations adopted and promulgated by the department to assure that no individual takes the approved course more than once within any three-year period in Nebraska. Such record of attendees and any related records shall not be considered a public record as defined in section 84-712.01.

(4) The department shall approve the curriculum and fees of each program and shall adopt and promulgate rules and regulations governing such programs, including guidelines for fees, curriculum, and instructor certification.

Source: Laws 2002, LB 1303, § 6.

29-3607 Minor traffic violations; driver's safety training program; certificate; fee.

Any organization or governmental entity desiring to offer a driver's safety training program shall first obtain a certificate from the department, to be renewed annually. The certificate fee and the annual renewal fee shall each be fifty dollars. The fee collected by the department from the organization or governmental entity shall be remitted to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund.

Source: Laws 2002, LB 1303, § 7.

29-3608 Minor traffic violations; pretrial diversion program; eligibility.

Any driver holding a commercial driver's license issued pursuant to sections 60-462.01 and 60-4,138 to 60-4,172 shall not be eligible to participate in a program under sections 29-3605 to 29-3609 if such participation would be in noncompliance with federal law or regulation and subject the state to possible loss of federal funds.

Source: Laws 2002, LB 1303, § 8; Laws 2003, LB 562, § 1; Laws 2005, LB 76, § 1.

29-3609 Minor traffic violations; applicability.

Sections 29-3605 to 29-3609 shall not apply to programs of pretrial diversion for offenses other than minor traffic violations.

Source: Laws 2002, LB 1303, § 9.

ARTICLE 37

PERSON ACQUITTED ON GROUNDS OF INSANITY; SPECIAL PROCEDURES

Cross References

Defense of insanity, see section 29-2203.
Nebraska Mental Health Commitment Act, see section 71-901.

Section
29-3701. Verdict of acquittal; probable cause hearing; finding; referral or confinement; evaluations; conditions of confinement; order; preparation of treatment plan; contents.
29-3702. Evidentiary hearing; determination; release or court-ordered treatment; personnel at facility violating order of commitment; contempt.
29-3703. Trial court; person found not responsible by reason of insanity; review records; conduct hearing; evaluation; treatment program; discharge plan; compliance with conditions; reports.
29-3704. Hearing; person's rights.
29-3705. Person acquitted prior to May 29, 1981; jurisdiction of trial court; petition; hearing.
29-3706. Records of proceedings; part of criminal case records; medical and psychiatric records; how treated.

29-3701 Verdict of acquittal; probable cause hearing; finding; referral or confinement; evaluations; conditions of confinement; order; preparation of treatment plan; contents.

(1) Following receipt of a verdict of acquittal on grounds of insanity, the court shall forthwith conduct a hearing to determine whether there is probable cause to believe the person is dangerous to himself, herself, or others by reason of mental illness or defect or will be so dangerous in the foreseeable future, as demonstrated by omissions, threats, or overt acts. In making this determination the court shall consider all evidence adduced at trial and all additional relevant evidence. If the court finds probable cause it shall order an evaluation not to exceed ninety days in length of the person's mental condition and a treatment plan pursuant to subsection (4) of this section. The evaluation of the person may be conducted as an outpatient at a regional center or other appropriate facility if the court finds by clear and convincing evidence that the person poses no current danger to society at the time of the probable cause hearing and will not become a danger to society during the evaluation period. Otherwise the evaluation of the person shall be conducted as an inpatient at a locked and secure regional center facility or other appropriate locked and secure facility. When the court orders such an inpatient evaluation, the court shall specify in a detailed written order all conditions of the person's confinement during the evaluation and under what, if any, circumstances the person may leave the locked and secure facility. The written order specifying the conditions of confinement shall include a finding by the court that any freedom of movement accorded the person outside a locked and secure facility is consistent with the safety of the public.

(2) The superintendent of the regional center or the director of the facility to which the person has been referred or confined for evaluation shall be responsible for supervising the evaluation and the preparation of an individualized treatment plan.

(3) The report of the evaluation shall address the following to the extent that the available information allows: (a) The person's psychological condition at

the time of the evaluation; (b) the probable course of development of the person's condition, with special attention to the probable relationship between the person's current condition and the person's condition at the time of any omissions, threats, or overt acts establishing dangerousness, including the crime for which he or she was acquitted on grounds of insanity; (c) the probable relationship, if any, between the previous omissions, threats, or overt acts establishing dangerousness and the person's condition at the time of the omissions, threats, or overt acts; and (d) the prognosis for change in the person's condition in light of available treatment.

(4) The individualized treatment plan shall contain a statement of the nature of the specific mental and physical problems and needs of the person, a statement of the least restrictive treatment conditions necessary to achieve the purposes of the plan, a statement of the least restrictive treatment conditions consistent with the safety of the public, and a description of intermediate and long-range treatment goals and a projected timetable for their attainment.

(5) Such evaluation and treatment plan shall include the facts upon which conclusions stated therein are based and shall be received by the court at least ten days prior to the expiration of the evaluation period. Copies of the evaluation and treatment plan shall be furnished to the prosecuting attorney and to the person.

(6) If the person desires a separate evaluation, he or she may file a motion with the court requesting an evaluation by one or more qualified experts of his or her choice. Such evaluation shall be at the person's expense unless otherwise ordered by the court. Any such expert evaluating a person pursuant to this subsection shall have access to the person's records at his or her place of confinement. The court may extend the person's referral or confinement for an additional period not to exceed sixty days, if necessary to permit completion of the separate evaluation. The evaluation shall include the facts upon which conclusions stated therein are based and shall be received by the court at least ten days prior to the expiration of the evaluation period. A copy of such evaluation shall be furnished the prosecuting attorney.

Source: Laws 1981, LB 213, § 3; Laws 1994, LB 498, § 1.

Under subsection (1) of this section, the definition of mentally ill dangerous persons in the Nebraska Mental Health Commitment Act and the statutes governing persons acquitted of a crime on grounds of insanity are constitutional and do not violate equal protection guarantees. Tulloch v. State, 237 Neb. 138, 465 N.W.2d 448 (1991).

Under subsection (6) of this section, an indigent who is acquitted of a crime on grounds of insanity may obtain an independent evaluation upon the individual's motion. Tulloch v. State, 237 Neb. 138, 465 N.W.2d 448 (1991).

In a hearing concerning an evaluation and treatment plan in a commitment proceeding, a report by a doctor did not constitute inadmissible hearsay. State v. Hayden, 233 Neb. 211, 444 N.W.2d 317 (1989).

The time limits set forth in this section and section 29-3702 are directory, not mandatory, and dismissal of the proceedings is not a proper remedy for a nonprejudicial violation of this section and section 29-3702. State v. Hayden, 233 Neb. 211, 444 N.W.2d 317 (1989).

The provisions of this section and section 29-3702 which set out the time in which the patient is to be provided a hearing and the report of the hospital is to be provided to the court do not relate to the essence of the statutes but govern the time or manner of performance of the thing to be done and are directory as opposed to mandatory. State v. Steele, 224 Neb. 476, 399 N.W.2d 267 (1987).

The Supreme Court will not interfere on appeal with a final order made by the district court in a mental health commitment proceeding unless the court can say as a matter of law that the order is not supported by clear and convincing proof. State v. Mayfield, 212 Neb. 724, 325 N.W.2d 162 (1982).

29-3702 Evidentiary hearing; determination; release or court-ordered treatment; personnel at facility violating order of commitment; contempt.

(1) Prior to the expiration of the evaluation period provided for in section 29-3701, the court shall conduct an evidentiary hearing regarding the condition of the person, at which time a representative of the facility where he or she was

evaluated may testify as to the results of the evaluation and the contents of the treatment plan. Based upon the results of the evaluation, evidence adduced at trial, evidence of other omissions, threats, or overt acts indicative of dangerousness, and any other relevant evidence, the court shall determine whether the person is dangerous to himself, herself, or others by reason of mental illness or defect, will be so dangerous in the foreseeable future, or will be so dangerous absent continuing participation in appropriate treatment.

(2) If the court does not find that there is clear and convincing evidence of such dangerousness, as demonstrated by omissions, threats, or overt acts, the court shall unconditionally release the person from further court-ordered treatment. If the court finds clear and convincing evidence of such dangerousness, as demonstrated by omissions, threats, or overt acts, the court shall order that such person participate in an appropriate treatment program specifying conditions of liberty and monitoring consistent with the treatment needs of the person and the safety of the public. The treatment program may involve any public or private facility or program which offers treatment for mental illness and may include an inpatient, residential, day, or outpatient setting. The court shall place the person in the least restrictive available treatment program that is consistent with the treatment needs of the person and the safety of the public. Personnel at the facility providing the treatment program shall obey the court-ordered conditions, and any person who fails to do so shall upon conviction be subject to the full contempt powers of the court.

Source: Laws 1981, LB 213, § 4; Laws 1994, LB 498, § 2.

Cross References

Applicant for handgun, limited disclosure of commitment records, see section 69-2409.01.

In determining whether an act is sufficiently recent to be probative of dangerousness, each case must be decided on the basis of the surrounding facts and circumstances. State v. Hayden, 233 Neb. 211, 444 N.W.2d 317 (1989).

The time limits set forth in section 29-3701 and this section are directory, not mandatory, and dismissal of the proceedings is not a proper remedy for a nonprejudicial violation of section 29-3701 and this section. State v. Hayden, 233 Neb. 211, 444 N.W.2d 317 (1989).

The provisions of this section and section 29-3701 which set out the time in which the patient is to be provided a hearing and the report of the hospital is to be provided to the court do not relate to the essence of the statutes but govern the time or manner of performance of the thing to be done and are directory as opposed to mandatory. State v. Steele, 224 Neb. 476, 399 N.W.2d 267 (1987).

29-3703 Trial court; person found not responsible by reason of insanity; review records; conduct hearing; evaluation; treatment program; discharge plan; compliance with conditions; reports.

(1) The court which tried a person who is found not responsible by reason of insanity shall annually and may, upon its own motion or upon motion of the person or the prosecuting attorney, review the records of such person and conduct an evidentiary hearing on the status of the person. The court may, upon its own motion or upon a motion by the person or the prosecuting attorney, order an independent psychiatric or psychological evaluation of the person. The court shall consider the results of the evaluation at the evidentiary hearing. When the independent evaluation is conducted pursuant to a motion by the court or the prosecuting attorney, the cost of such independent evaluation shall be the expense of the county. When the evaluation is conducted pursuant to a motion by the person and if the person is not indigent, the cost of the evaluation shall be borne by the person.

(2) If as a result of such hearing the court finds that such person is no longer dangerous to himself, herself, or others by reason of mental illness or defect and will not be so dangerous in the foreseeable future, the court shall order

such person unconditionally released from court-ordered treatment. If the court does not so find, the court shall order that such person participate in an appropriate treatment program specifying conditions of liberty and monitoring consistent with the treatment needs of the person and the safety of the public. The treatment program may involve any public or private facility or program which offers treatment for mental illness and may include an inpatient, residential, day, or outpatient setting. The court shall place the person in the least restrictive available treatment program that is consistent with the treatment needs of the person and the safety of the public.

(3) If the person has been treated in a regional center or other appropriate facility and is ordered placed in a less restrictive treatment program, the regional center or other appropriate facility shall develop an individual discharge plan consistent with the order of the court and shall provide the less restrictive treatment program a copy of the discharge plan and all relevant treatment information.

(4) Upon motion of the prosecuting attorney or upon its own motion, but at least annually, the court shall hold a hearing to determine whether the person is complying with the conditions set by the court. Upon an initial showing of probable cause by affidavit or sworn testimony that the person is not complying with the court-ordered conditions, the court may issue a warrant directing the sheriff or any peace officer to take the person into custody and place him or her into a mental health center, regional center, or other appropriate facility with available space where he or she shall be held pending the hearing. When a person has been taken into custody pursuant to this subsection, the hearing shall be held within ten days. Following the hearing, the court shall determine whether placement in the current treatment program should be continued or ceased and whether the conditions of the placement should be continued or modified.

(5) Any treatment program to which a person is committed on July 16, 1994, under this section or section 29-3702 shall submit reports to the trial court and the prosecuting attorney documenting the treatment progress of that person at least annually. Additionally, if the person fails to comply with any condition specified by the court, the court and the prosecuting attorney shall be notified forthwith.

Source: Laws 1981, LB 213, § 5; Laws 1994, LB 498, § 3.

At an annual review hearing, the court may receive records for the purpose of providing the basis for expert witnesses' opinions. At an annual review hearing, courts are to consider public safety when determining what conditions of liberty and monitoring to place upon a person found to be mentally ill and dangerous. State v. Simants, 248 Neb. 581, 537 N.W.2d 346 (1995).

A court may review records and conduct an evidentiary hearing to determine if the insanity acquittee remains dangerous. State v. Simants, 245 Neb. 925, 517 N.W.2d 361 (1994).

At an annual review hearing pursuant to this section, the court may receive records for the purpose of providing the basis for expert witness' opinions. State v. Hayden, 237 Neb. 286, 466 N.W.2d 66 (1991).

It is proper that the State recommend a treatment plan, provided that the State allows the person being recommitted an opportunity to confront and cross-examine the State's witness presenting the plan regarding the plan's content. The court may consider any treatment plan which may be proposed by an expert witness for the person being recommitted. State v. Hayden, 237 Neb. 286, 466 N.W.2d 66 (1991).

The civil commitment weight of evidence standard, that of ''clear and convincing evidence,'' is appropriate for persons acquitted on grounds of insanity and is not vague and ambiguous. Tulloch v. State, 237 Neb. 138, 465 N.W.2d 448 (1991).

The court's incorporation by reference of the conditions of confinement set forth in a doctor's report did not deny access to the district court. State v. Hayden, 233 Neb. 211, 444 N.W.2d 317 (1989).

Where the only issue is whether the restrictions of confinement should be relaxed and whether such modifications would be consistent with public safety, that determination is left to the trial court's discretion and will not be disturbed on appeal absent an abuse of discretion. State v. Morris, 2 Neb. App. 887, 518 N.W.2d 664 (1994).

29-3704 Hearing; person's rights.

At each hearing conducted pursuant to sections 29-3701 to 29-3703, the person shall be entitled to assistance of counsel and such additional rights as

are guaranteed by the laws and Constitution of the State of Nebraska and by the United States Constitution.

Source: Laws 1981, LB 213, § 6.

Due process in review hearings is guaranteed under this section. State v. Hayden, 237 Neb. 286, 466 N.W.2d 66 (1991).

The rights one enjoys at a section 29-3703 hearing include adherence by the court to the Nebraska Evidence Rules and the right of appellant to confront and cross-examine adverse witnesses. State v. Hayden, 237 Neb. 286, 466 N.W.2d 66 (1991).

29-3705 Person acquitted prior to May 29, 1981; jurisdiction of trial court; petition; hearing.

The court which tried and acquitted any person who, as of May 29, 1981, stands committed by an order of a mental health board pursuant to the Nebraska Mental Health Commitment Act in consequence of the insanity or derangement which was the ground of the acquittal, shall have jurisdiction over such person for disposition consistent with the provisions of sections 29-2203 and 29-3701 to 29-3704. Within sixty days of May 29, 1981, the county attorney in the jurisdiction of the court which tried and acquitted the person shall file with the court which tried and acquitted the person and shall serve on the person a petition asserting the court's jurisdiction over the person for disposition consistent with sections 29-3701 to 29-3704. The court shall then conduct an evidentiary hearing on the status of the person pursuant to section 29-3703.

Source: Laws 1981, LB 213, § 7; Laws 2004, LB 1083, § 88.

Cross References

Nebraska Mental Health Commitment Act, see section 71-901.

29-3706 Records of proceedings; part of criminal case records; medical and psychiatric records; how treated.

All pleadings, evidence admitted, orders, judgments, and memoranda of findings and conclusions made in the proceedings held pursuant to sections 29-3701 to 29-3704 shall be made a part of the official record of the underlying criminal case. The court may direct that the medical and psychiatric records not received into evidence at such proceedings be kept confidential and not be available for public inspection.

Source: Laws 1981, LB 213, § 8.

This section does not regulate the release of trial records, but merely makes all pleadings, evidence, and orders related to a review hearing part of the official record in the underlying case. State v. Cribbs, 237 Neb. 947, 469 N.W.2d 108 (1991).

ARTICLE 38

DISPOSITION OF UNTRIED CHARGES

Section
29-3801. Terms, defined.
29-3802. Notice of untried charges and rights; director; duties.
29-3803. Prisoner; request final disposition; director; duties.
29-3804. Prosecutor; require prisoner's attendance; procedure.
29-3805. Untried charges; trial; when.
29-3806. Temporary custody; conditions; limitations.
29-3807. Escape from custody; effect.
29-3808. Mentally ill person; sections not applicable.
29-3809. Transportation costs; how paid.

29-3801 Terms, defined.

As used in sections 29-3801 to 29-3809, unless the context otherwise requires:

(1) Director shall mean the Director of Correctional Services; and

(2) Prosecutor shall mean a prosecuting attorney as defined in section 29-104.

Source: Laws 1984, LB 591, § 1.

The procedure set out in section 29-3801 et seq., rather than that in section 29-1201 et seq., applies to instate prisoners. State v. Ebert, 235 Neb. 330, 455 N.W.2d 165 (1990).

29-3802 Notice of untried charges and rights; director; duties.

The director shall promptly inform in writing each prisoner in the custody of the Department of Correctional Services of the source and nature of any untried indictment, information, or complaint against him or her of which the director has knowledge and of his or her right to make a request for final disposition thereof.

Source: Laws 1984, LB 591, § 2.

Where the prisoner has actual knowledge of the pending charge, this section is deemed satisfied. State v. Tucker, 259 Neb. 225, 609 N.W.2d 306 (2000).

29-3803 Prisoner; request final disposition; director; duties.

Any person who is imprisoned in a facility operated by the Department of Correctional Services may request in writing to the director final disposition of any untried indictment, information, or complaint pending against him or her in this state. Upon receiving any request from a prisoner for final disposition of any untried indictment, information, or complaint, the director shall:

(1) Furnish the prosecutor with a certificate stating the term of commitment under which the prisoner is being held, the time already served on the sentence, the time remaining to be served, the good time earned, the time of the prisoner's parole eligibility, and any decision of the Board of Parole relating to the prisoner;

(2) Send by registered or certified mail, return receipt requested, one copy of the request and the certificate to the court in which the untried indictment, information, or complaint is pending and one copy to the prosecutor charged with the duty of prosecuting it; and

(3) Offer to deliver temporary custody of the prisoner to the appropriate authority in the city or county where the untried indictment, information, or complaint is pending.

Source: Laws 1984, LB 591, § 3.

It is a prosecutor's receipt of the statutorily required certificate from the Director of Correctional Services pursuant to this section or section 29-3804 which triggers the 180-day period for disposition of untried charges prescribed by section 29-3805. State v. Tucker, 259 Neb. 225, 609 N.W.2d 306 (2000).

The statutory right of a person in the custody of the Nebraska Department of Correctional Services to a speedy trial on pending criminal charges in Nebraska is governed by sections 29-3801 to 29-3809. The denial of a speedy trial claim governed by these sections is a final, appealable order. State v. Tucker, 259 Neb. 225, 609 N.W.2d 306 (2000).

29-3804 Prosecutor; require prisoner's attendance; procedure.

The prosecutor in a city or county in which an untried indictment, information, or complaint is pending shall be entitled to have a prisoner, against whom he or she has lodged a detainer and who is serving a term of imprisonment in

any facility operated by the Department of Correctional Services, made available upon presentation of a written request for temporary custody or availability to the director. The court having jurisdiction of such indictment, information, or complaint shall duly approve, record, and transmit the prosecutor's request. Upon receipt of the prosecutor's written request the director shall:

(1) Furnish the prosecutor with a certificate stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the good time earned, the time of the prisoner's parole eligibility, and any decision of the Board of Parole relating to the prisoner; and

(2) Offer to deliver temporary custody of the prisoner to the appropriate authority in the city or county where the untried indictment, information, or complaint is pending in order that speedy and efficient prosecution may be had.

Source: Laws 1984, LB 591, § 4.

Subsection (2) of this section does not require a prosecutor to file a detainer against any prisoner, and the filing of a detainer is not required in order for a prisoner to assert his or her right to a speedy trial pursuant to section 29-3803. It is a prosecutor's receipt of the statutorily required certificate from the Director of Correctional Services pursuant to section 29-3803 or this section which triggers the 180-day period for disposition of untried charges prescribed by section 29-3805. State v. Tucker, 259 Neb. 225, 609 N.W.2d 306 (2000).

A prosecutor must lodge a detainer in order to trigger the expediting provisions of Chapter 29, article 38. Bradley v. Hopkins, 246 Neb. 646, 522 N.W.2d 394 (1994).

29-3805 Untried charges; trial; when.

Within one hundred eighty days after the prosecutor receives a certificate from the director pursuant to section 29-3803 or 29-3804 or within such additional time as the court for good cause shown in open court may grant, the untried indictment, information, or complaint shall be brought to trial with the prisoner or his or her counsel being present. The parties may stipulate for a continuance or a continuance may be granted on a notice to the attorney of record and an opportunity for him or her to be heard. If the indictment, information, or complaint is not brought to trial within the time period stated in this section, including applicable continuances, no court of this state shall any longer have jurisdiction thereof nor shall the untried indictment, information, or complaint be of any further force or effect and it shall be dismissed with prejudice.

Source: Laws 1984, LB 591, § 5.

The statutory right of a person in the custody of the Nebraska Department of Correctional Services to a speedy trial on pending criminal charges in Nebraska is governed by sections 29-3801 to 29-3809. The denial of a speedy trial claim governed by these sections is a final, appealable order. State v. Tucker, 259 Neb. 225, 609 N.W.2d 306 (2000).

Good cause existed to continue a trial that charged a prisoner, who was incarcerated on an unrelated offense, with making terroristic threats against a juvenile court judge, beyond the 180-day time limit in this section setting forth requirements for when the untried charges were to be brought to trial. The day after the pretrial conference setting the trial date, the juvenile court judge informed the State he would be unavailable for trial on that date, and the State came forward as soon as possible after the trial was scheduled to inform the court and opposing counsel about the conflict. State v. Caldwell, 10 Neb. App. 803, 639 N.W.2d 663 (2002).

"Good cause" in intrastate or interstate detainer statutes means a substantial reason; one that affords legal excuse. State v. Caldwell, 10 Neb. App. 803, 639 N.W.2d 663 (2002).

Good cause in statutory provisions setting forth requirements for disposition of untried cases is something that must be substantial, but also a factual question dealt with on a case-by-case basis. State v. Caldwell, 10 Neb. App. 803, 639 N.W.2d 663 (2002).

Good cause under statutory provisions setting forth requirements for disposition of untried cases encompasses a situation where a witness is unavailable. State v. Caldwell, 10 Neb. App. 803, 639 N.W.2d 663 (2002).

Whether good cause exists for extending the time limit in this section, setting forth when untried charges are brought to trial, is a subjective, factual question within the discretion of the trial court. State v. Caldwell, 10 Neb. App. 803, 639 N.W.2d 663 (2002).

29-3806 Temporary custody; conditions; limitations.

The temporary custody referred to in sections 29-3803 and 29-3804 shall be only for the purpose of permitting prosecution on the charge or charges

contained in one or more untried indictments, informations, or complaints which form the basis of a detainer lodged with the director or for prosecution on any other charge or charges arising out of the same transaction. Except for attendance at court and transportation to or from any place where the prisoner's presence may be required, the prisoner shall be held in a suitable jail or other facility regularly used for persons awaiting prosecution. However, the prisoner shall not be classified as a pretrial detainee but shall be deemed to remain in custody of the Department of Correctional Services and any escape from temporary custody may be dealt with in the same manner as an escape from the Department of Correctional Services' facility to which he or she was confined.

Source: Laws 1984, LB 591, § 6.

29-3807 Escape from custody; effect.

Escape from custody by a prisoner subsequent to execution of a request for final disposition of any untried indictment, information, or complaint shall void the request.

Source: Laws 1984, LB 591, § 7.

29-3808 Mentally ill person; sections not applicable.

No provision of sections 29-3801 to 29-3809 and no remedy made available by sections 29-3801 to 29-3809 shall apply to any person who is adjudged to be mentally ill.

Source: Laws 1984, LB 591, § 8.

29-3809 Transportation costs; how paid.

The costs of transporting prisoners to and from the city or county in which any untried indictment, information, or complaint is pending as provided in sections 29-3801 to 29-3809 shall be paid by the city or county.

Source: Laws 1984, LB 591, § 9.

ARTICLE 39

PUBLIC DEFENDERS AND APPOINTED COUNSEL

Cross References

Civil legal services for eligible low-income persons, see sections 25-3001 to 25-3004.
Public defender, duty to represent indigent defendants, see section 23-3402.

(a) INDIGENT DEFENDANTS

Section
29-3901. Terms, defined.
29-3902. Indigent defendant; right to counsel.
29-3903. Indigent defendant; right to counsel; appointment.
29-3904. Appointment of other counsel; when.
29-3905. Appointed counsel; fees and expenses.
29-3906. Misdemeanor defendant; indigent; counties with no public defender; court-appointed counsel; compensation.
29-3907. Counsel; right to consult with accused privately.
29-3908. Indigent; reimburse county for costs; when.

(b) JUDICIAL DISTRICT PUBLIC DEFENDER

29-3909. Judicial district public defender; established.

Section
29-3910. Judicial district public defender; determination; district judge; conditions; certification to Governor; salary.
29-3911. Judicial district public defender; appointment; salary; payment.
29-3912. Judicial district public defender; office; equipment; personnel.
29-3913. Judicial district public defender; election; term.
29-3914. Judicial district public defender; qualifications.
29-3915. Persons entitled to representation.
29-3916. Application for counsel; inquiry by court or magistrate; waiver of counsel.
29-3917. Office of public defender; abolished; when.
29-3918. Special counsel; appointment; procedure; cost; payment.

(c) COUNTY REVENUE ASSISTANCE ACT

29-3919. Act, how cited.
29-3920. Legislative findings.
29-3921. Commission on Public Advocacy Operations Cash Fund; created; use; investment; study of juvenile legal defense and guardian ad litem systems.
29-3922. Terms, defined.
29-3923. Commission on Public Advocacy; created; duties.
29-3924. Commission; members; term.
29-3925. Commission; chairperson; expenses.
29-3926. Commission; quorum.
29-3927. Commission; duties.
29-3928. Chief counsel; qualifications; salary.
29-3929. Chief counsel; duties.
29-3930. Commission; divisions established.
29-3931. Transferred to section 33-156.
29-3932. Indigent Defense Standards Advisory Council; created; members; expenses.
29-3933. Request for reimbursement; requirements.

(a) INDIGENT DEFENDANTS

29-3901 Terms, defined.

For purposes of sections 29-3901 to 29-3908:

(1) Court shall mean a district court or a county court;

(2) Felony defendant shall mean a person who is charged by complaint, information, or indictment with or who is under arrest for investigation or on suspicion that he or she may have committed any criminal offense which may be punishable by imprisonment in a Department of Correctional Services adult correctional facility;

(3) Indigent shall mean the inability to retain legal counsel without prejudicing one's financial ability to provide economic necessities for one's self or one's family. Before a felony defendant's initial court appearance, the determination of his or her indigency shall be made by the public defender, but thereafter it shall be made by the court; and

(4) Judge shall mean a judge of the district court, a judge of the county court, or a clerk magistrate.

Source: Laws 1972, LB 1463, § 3; Laws 1979, LB 241, § 2; R.S.1943, (1989), § 29-1804.04; Laws 1990, LB 822, § 19; Laws 1993, LB 31, § 14.

In determining whether a criminal defendant is indigent as the term is used in this section, a court is to consider the seriousness of the offense; the defendant's income; the availability of resources, including real and personal property, bank accounts, Social Security, and unemployment or other benefits; normal living expenses; outstanding debts; and the number and age of dependents. State v. Eichelberger, 227 Neb. 545, 418 N.W.2d 580 (1988); State v. Masilko, 226 Neb. 45, 409 N.W.2d 322 (1987).

To determine whether a defendant in a criminal case is indigent, requiring court-appointed counsel, a court must consider factors listed. State v. Richter, 225 Neb. 837, 408 N.W.2d 717 (1987).

This section defines indigency and along with section 29-1804.05 requires the court to make a reasonable inquiry as to a defendant's financial condition. To determine indigency the court must consider the seriousness of the offense; the defendant's income; the availability of other resources, including real and personal property, bank accounts, Social Security, and unemployment or other benefits; normal living expenses; outstanding debts; and the number and age of dependents. State v. Lafler, 224 Neb. 613, 399 N.W.2d 808 (1987).

29-3902 Indigent defendant; right to counsel.

At a felony defendant's first appearance before a court, the court shall advise him or her of the right to court-appointed counsel if he or she is indigent.

If he or she asserts indigency, the court shall make a reasonable inquiry to determine his or her financial condition and may require him or her to execute an affidavit of indigency. If the court determines him or her to be indigent, it shall formally appoint the public defender to represent him or her in all proceedings before the court and shall make a notation of such appointment and appearances of the public defender upon the felony complaint. The same procedure shall be followed by the court in misdemeanor cases punishable by imprisonment.

Source: Laws 1972, LB 1463, § 4; Laws 1975, LB 285, § 2; Laws 1984, LB 189, § 3; R.S.1943, (1989), § 29-1804.05; Laws 1990, LB 822, § 20.

The requirement of this section is that before counsel is provided at public expense for a criminal defendant, there must be a reasonable inquiry to determine the defendant's financial condition. State v. Eichelberger, 227 Neb. 545, 418 N.W.2d 580 (1988).

Section 29-1804.04 defines indigency and along with this section requires the court to make a reasonable inquiry as to a defendant's financial condition. To determine indigency the court must consider the seriousness of the offense; the defendant's income; the availability of other resources, including real and personal property, bank accounts, Social Security, and unemployment or other benefits; normal living expenses; outstanding debts; and the number and age of dependents. State v. Lafler, 224 Neb. 613, 399 N.W.2d 808 (1987).

Failure to inquire into a defendant's indigency for appointment of counsel at the defendant's first court appearance does not result in prejudicial error if the defendant is not ultimately sentenced to time in jail. State v. Golden, 8 Neb. App. 601, 599 N.W.2d 224 (1999).

29-3903 Indigent defendant; right to counsel; appointment.

At a felony defendant's first appearance before a judge, the judge shall advise him or her of the right to court-appointed counsel if such person is indigent. If he or she asserts indigency, the court shall make a reasonable inquiry to determine such person's financial condition and shall require him or her to execute an affidavit of indigency for filing with the clerk of the court.

If the court determines the defendant to be indigent, it shall formally appoint the public defender or, in counties not having a public defender, an attorney or attorneys licensed to practice law in this state, not exceeding two, to represent the indigent felony defendant at all future critical stages of the criminal proceedings against such defendant, consistent with the provisions of section 23-3402, but appointed counsel other than the public defender must obtain leave of court before being authorized to proceed beyond an initial direct appeal to either the Court of Appeals or the Supreme Court of Nebraska to any further direct, collateral, or postconviction appeals to state or federal courts.

A felony defendant who is not indigent at the time of his or her first appearance before a judge may nevertheless assert his or her indigency at any subsequent stage of felony proceedings, at which time the judge shall consider appointing counsel as otherwise provided in this section.

The judge shall make a notation of such appointment and all appearances of appointed counsel upon the court's docket. If at the time of appointment of counsel the indigent felony defendant and appointed counsel have not had a reasonable opportunity to consult concerning the prosecution, the judge shall

continue the arraignment, trial, or other next stage of the felony proceedings for a reasonable period of time to allow for such consultation.

Source: Laws 1972, LB 1463, § 6; Laws 1979, LB 241, § 3; Laws 1984, LB 189, § 4; R.S.1943, (1989), § 29-1804.07; Laws 1990, LB 822, § 21; Laws 1991, LB 732, § 89.

Defendant's right to desire to have counsel appointed was violated. State v. Sondag, 214 Neb. 659, 335 N.W.2d 306 (1983).

29-3904 Appointment of other counsel; when.

(1) Nothing in sections 23-3402, 29-3902, and 29-3903 shall prevent any judge from appointing counsel other than the public defender or other substitute counsel when the public defender or counsel initially appointed might otherwise be required to represent conflicting interests or for other good cause shown, from not appointing any counsel for any indigent felony defendant who expressly waives his or her right to such counsel at any stage of felony proceedings, or from appointing the public defender or other counsel as may be required or permitted by other applicable law.

(2) In selecting counsel to represent an indigent felony defendant, the prosecuting attorney shall not have any role whatsoever in the selection or appointment process of the counsel by the court, including, but not limited to, any individual appointment suggestions.

Source: Laws 1972, LB 1463, § 7; Laws 1979, LB 241, § 4; R.S.1943, (1989), § 29-1804.08; Laws 1990, LB 822, § 22; Laws 2003, LB 610, § 1.

29-3905 Appointed counsel; fees and expenses.

Appointed counsel for an indigent felony defendant other than the public defender shall apply to the district court which appointed him or her for all expenses reasonably necessary to permit him or her to effectively and competently represent his or her client and for fees for services performed pursuant to such appointment, except that if the defendant was not bound over for trial in the district court, the application shall be made in the appointing court. The court, upon hearing the application, shall fix reasonable expenses and fees, and the county board shall allow payment to counsel in the full amount determined by the court.

Source: Laws 1972, LB 1463, § 11; Laws 1979, LB 241, § 5; R.S.1943, (1989), § 29-1804.12; Laws 1990, LB 822, § 23.

Either appointed counsel or the county involved may appeal to the Supreme Court from an order determining the amount of fees and expenses allowed appointed counsel under this section. In re Claim of Rehm and Faesser, 226 Neb. 107, 410 N.W.2d 92 (1987).

29-3906 Misdemeanor defendant; indigent; counties with no public defender; court-appointed counsel; compensation.

In counties not having public defenders, the court may appoint an attorney licensed to practice law in this state to represent any indigent person who is charged with a misdemeanor offense punishable by imprisonment. When such a defendant asserts indigency, the court shall make a reasonable inquiry to determine the defendant's financial condition and may require him or her to execute an affidavit of indigency. Attorneys appointed pursuant to this section

shall be compensated in the manner provided by section 29-3905 with application being made to the appointing court.

Source: Laws 1975, LB 285, § 3; Laws 1979, LB 241, § 6; R.S.1943, (1989), § 29-1804.13; Laws 1990, LB 822, § 24.

29-3907 Counsel; right to consult with accused privately.

Any public defender, assistant public defender, or other attorney representing an indigent felony defendant who is incarcerated by law enforcement officers or other government officials without bond or in lieu of bond shall have full access to and the right to consult privately with such defendant at all reasonable hours.

Source: Laws 1972, LB 1463, § 8; R.S.1943, (1989), § 29-1804.09; Laws 1990, LB 822, § 25.

29-3908 Indigent; reimburse county for costs; when.

Whenever any court finds subsequent to its appointment of the public defender or other counsel to represent a felony defendant that its initial determination of indigency was incorrect or that during the course of representation by appointed counsel the felony defendant has become no longer indigent, the court may order such felony defendant to reimburse the county for all or part of the reasonable cost of providing such representation.

Source: Laws 1972, LB 1463, § 9; R.S.1943, (1989), § 29-1804.10; Laws 1990, LB 822, § 26.

This section does not require parents to pay their child's legal fees unless it is shown that the parents refused to provide necessary legal services. County of York v. Johnson, 206 Neb. 200, 292 N.W.2d 31 (1980).

(b) JUDICIAL DISTRICT PUBLIC DEFENDER

29-3909 Judicial district public defender; established.

There is hereby established the office of judicial district public defender subject to the provisions of sections 29-3910 to 29-3918.

Source: Laws 1969, c. 234, § 1, p. 863; R.S.1943, (1989), § 29-1805.01; Laws 1990, LB 822, § 27.

29-3910 Judicial district public defender; determination; district judge; conditions; certification to Governor; salary.

Whenever the district judge or judges determine that a public defender should be named for his, her, or their judicial district, as provided in section 24-301.02, the fact of such determination shall be certified to the Governor. In making the determination, the judge or judges shall consider (1) the number of indigent persons in the district for whom appointment of counsel was necessary in the preceding year, (2) the number and geographic distribution within the district of attorneys available for appointment as counsel on an individual case basis, and (3) the relative expense of providing counsel for the indigent on an individual case basis as compared to the expense of providing a public defender.

At the time of making the determination, the judge or judges shall also fix the salary of the public defender and make a determination whether the office shall be full time or part time. For succeeding terms the district judge or judges shall

fix the salary of the public defender at least sixty days prior to the closing of filings for the primary election for such office. All salary determinations shall be filed with the clerk of the district court of each county in the district and shall be available for public inspection.

When it is deemed desirable to have the same public defender for more than one judicial district, the same may be accomplished by having the district judges concerned jointly make the determinations provided for in sections 29-3910 to 29-3918.

Source: Laws 1969, c. 234, § 2, p. 863; R.S.1943, (1989), § 29-1805.02; Laws 1990, LB 822, § 28.

29-3911 Judicial district public defender; appointment; salary; payment.

Within thirty days following receipt of a certification as provided in section 29-3910, the Governor shall authorize the judge or judges to appoint a public defender for the district. The salary and all expenses, including trial expense and expert witness fees, of the judicial district public defender shall be paid out of funds appropriated to the office of Governor for that purpose.

Source: Laws 1969, c. 234, § 3, p. 864; R.S.1943, (1989), § 29-1805.03; Laws 1990, LB 822, § 29.

29-3912 Judicial district public defender; office; equipment; personnel.

If necessary office space is not available in a courthouse within the district, the judicial district public defender may rent or lease such space. He or she may also purchase, through the materiel administrator of the Department of Administrative Services, necessary furniture, equipment, books, stationery, and other supplies necessary for the operation of the office. The public defender may employ, with the approval of the appropriate district judge or judges, necessary assistant public defenders and other employees at salaries which are to be approved by the judge or judges. Such judge or judges shall also determine whether assistant public defenders and other employees are to be part time or full time. Public defenders may employ law students authorized by the Supreme Court to engage in a limited form of the practice of law and may enter into agreements with law schools to provide clinical training for their students under the provisions of the Higher Education Act of 1965 and other similar federal programs.

Source: Laws 1969, c. 234, § 4, p. 864; R.S.1943, (1989), § 29-1805.04; Laws 1990, LB 822, § 30; Laws 2000, LB 654, § 1.

29-3913 Judicial district public defender; election; term.

The successor to the judicial district public defender initially appointed shall be elected at the next general election and shall take office at the same time as other elected state officers. The term of office of an elected judicial district public defender shall be four years. With the exception of being nominated and elected within their respective districts, candidates for such office shall be nominated and elected as nearly as may be practicable in the same manner as candidates for the office of Governor. Candidates for such office shall file with

the Secretary of State as provided in section 32-607 and pay the filing fee provided in section 32-608.

Source: Laws 1969, c. 234, § 5, p. 864; R.S.1943, (1989), § 29-1805.05; Laws 1990, LB 822, § 31; Laws 1994, LB 76, § 550.

29-3914 Judicial district public defender; qualifications.

A judicial district public defender shall be a lawyer duly admitted to and engaged in the practice of law in Nebraska.

Source: Laws 1969, c. 234, § 6, p. 865; R.S.1943, (1989), § 29-1805.06; Laws 1990, LB 822, § 32.

29-3915 Persons entitled to representation.

The following persons who are financially unable to obtain counsel shall be entitled to be represented by a judicial district public defender:

(1) A person charged with a felony, including appeals from convictions for a felony;

(2) A person pursuing a postconviction proceeding under sections 29-3001 to 29-3004 after conviction of a felony, when the public defender after investigation concludes that there may be merit to such a proceeding or when the court in which such proceeding is pending directs the public defender to represent the person;

(3) A minor brought before the juvenile court when neither the minor nor his or her parent or guardian is able to afford counsel; and

(4) A person against whom a petition has been filed with a mental health board as provided in sections 71-945 to 71-947.

Source: Laws 1969, c. 234, § 7, p. 865; R.S.1943, (1989), § 29-1805.07; Laws 1990, LB 822, § 33; Laws 1991, LB 830, § 29; Laws 2004, LB 1083, § 89.

Cross References

Nebraska Mental Health Commitment Act, see section 71-901.

29-3916 Application for counsel; inquiry by court or magistrate; waiver of counsel.

Any person described in section 29-3915 or any other person entitled by law to representation by counsel may at any time request the court in which the matter is pending or the court in which the person was convicted to appoint the public defender to provide representation. Upon a request for the appointment of counsel, the court or magistrate shall proceed to make appropriate inquiry into the financial circumstances of the applicant who shall submit, unless waived in whole or in part by the court, a financial statement under oath or affirmation setting forth his or her assets and liabilities, source or sources of income, and such other information as may be required by the court or magistrate. The information contained in such a statement shall be confidential and for the exclusive use of the court or magistrate unless it is made to appear to the satisfaction of the court or magistrate that the statement may contain false, misleading, or incomplete information, in which event the person making the statement shall be punished as for contempt if it is established after a hearing that the statement was in whole or in part false, misleading, or

incomplete. A refusal to execute a financial statement as provided in this section shall constitute a waiver of the right to the appointment of the public defender.

Source: Laws 1969, c. 234, § 8, p. 865; R.S.1943, (1989), § 29-1805.08; Laws 1990, LB 822, § 34.

29-3917 Office of public defender; abolished; when.

Any county in a judicial district in which a determination is made that a public defender should be named in accordance with section 29-3910 shall no longer be subject to section 23-3401, and the office created by section 23-3401 shall be abolished as of the date specified in such determination.

Source: Laws 1969, c. 234, § 9, p. 866; R.S.1943, (1989), § 29-1805.09; Laws 1990, LB 822, § 35.

29-3918 Special counsel; appointment; procedure; cost; payment.

Nothing in sections 29-3910 to 29-3918 shall prevent a court from appointing counsel other than the public defender to represent indigent defendants or other persons by law entitled to legal representation, but appointments of counsel other than the public defender shall be limited to situations in which there are multiple defendants requiring separate representation or when other exigent circumstances are present which in the opinion of the court require appointment of other than the public defender. In all such cases of appointments of other than the public defender, the procedure shall be in accordance with sections 43-272 and 43-273 and the cost of such appointments shall be paid by the county as provided in such sections.

Source: Laws 1969, c. 234, § 10, p. 866; Laws 1988, LB 790, § 2; R.S.1943, (1989), § 29-1805.10; Laws 1990, LB 822, § 36.

Cross References

Nebraska Juvenile Code, see section 43-2,129.

Appointment of counsel other than the public defender are limited to cases of multiple defendants requiring separate representation or circumstances which, in the court's opinion, require outside counsel. State v. Addison, 198 Neb. 166, 251 N.W.2d 895 (1977).

(c) COUNTY REVENUE ASSISTANCE ACT

29-3919 Act, how cited.

Sections 29-3919 to 29-3933 shall be known and may be cited as the County Revenue Assistance Act.

Source: Laws 1995, LB 646, § 1; Laws 2001, LB 335, § 2.

29-3920 Legislative findings.

The Legislature finds that:

(1) County property owners should be given some relief from the obligation of providing mandated indigent defense services which in most instances are required because of state laws establishing crimes and penalties;

(2) Property tax relief can be accomplished if the state begins to assist the counties with the obligation of providing indigent defense services required by state laws establishing crimes and penalties;

(3) Property tax relief in the form of state assistance to the counties of Nebraska in providing for indigent defense services will also increase accountability because the state, which is the governmental entity responsible for passing criminal statutes, will likewise be responsible for paying some of the costs;

(4) Property tax relief in the form of state assistance to the counties of Nebraska in providing for indigent defense services will also improve inconsistent and inadequate funding of indigent defense services by the counties;

(5) Property tax relief in the form of state assistance to the counties of Nebraska in providing for indigent defense services will also lessen the impact on county property taxpayers of the cost of a high profile death penalty case which can significantly affect the finances of the counties; and

(6) To accomplish property tax relief in the form of the state assisting the counties of Nebraska in providing for indigent defense services, the Commission on Public Advocacy Operations Cash Fund should be established to fund the operation of the Commission on Public Advocacy and to fund reimbursement requests as determined by section 29-3933.

Source: Laws 1995, LB 646, § 2; Laws 2002, LB 876, § 64; Laws 2003, LB 760, § 9.

29-3921 Commission on Public Advocacy Operations Cash Fund; created; use; investment; study of juvenile legal defense and guardian ad litem systems.

The Commission on Public Advocacy Operations Cash Fund is created. The fund shall be used for the operations of the commission. The fund shall consist of money remitted pursuant to section 33-156. It is the intent of the Legislature that the commission shall be funded solely from the fund. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

The State Treasurer shall transfer two hundred fifty thousand dollars from the Commission on Public Advocacy Operations Cash Fund to the University Cash Fund within fifteen days after May 1, 2008. Such funds shall be used for a study of the juvenile legal defense and guardian ad litem systems utilizing the University of Nebraska Public Policy Center to create, administer, and review a Request for Proposals to select from a national search a research consultant that is qualified to provide a methodologically sound and objective assessment of Nebraska's juvenile justice system. The assessment shall include: (1) Gathering of general data and information about the structure and funding mechanisms for juvenile legal defense and guardian ad litem representation; (2) a review of caseloads; (3) examining issues related to the timing of appointment of counsel and guardians ad litem; (4) supervision of attorneys; (5) charging and trying juveniles as adults; (6) frequency with which juveniles waive their right to counsel and under what conditions they do so; (7) allocation of resources; (8) adequacy of juvenile court facilities; (9) compensation of attorneys; (10) supervising and training of attorneys; (11) access to investigators, experts, social workers, and support staff; (12) access to educational officers, teachers, educational staff, and truancy officers; (13) the relationship between a guardian ad litem, a juvenile's legal counsel, and the judicial system with identified educational staff regarding a juvenile's educational status; (14) examining issues related to truancy and the relationship between the school

districts and the juvenile court system; (15) recidivism; (16) time to permanency and time in court, especially when a guardian ad litem is appointed; and (17) coordination of representation for those juveniles that may have been appointed an attorney in a juvenile delinquency matter and a guardian ad litem because of abuse or neglect. The assessment shall also highlight promising approaches and innovative practices within the state and offer recommendations to improve weak areas.

Source: Laws 1995, LB 646, § 3; Laws 1997, LB 108, § 1; Laws 2001, LB 659, § 14; Laws 2002, LB 876, § 65; Laws 2003, LB 760, § 10; Laws 2008, LB961, § 2.
Operative date April 3, 2008.

Cross References

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

29-3922 Terms, defined.

For purposes of the County Revenue Assistance Act:

(1) Chief counsel means an attorney appointed to be the primary administrative officer of the commission pursuant to section 29-3928;

(2) Commission means the Commission on Public Advocacy;

(3) Commission staff means attorneys, investigators, and support staff who are performing work for the capital litigation division, appellate division, DNA testing division, and major case resource center;

(4) Contracting attorney means an attorney contracting to act as a public defender pursuant to sections 23-3404 to 23-3408;

(5) Council means the Indigent Defense Standards Advisory Council;

(6) Court-appointed attorney means an attorney other than a contracting attorney or a public defender appointed by the court to represent an indigent person;

(7) Indigent defense services means legal services provided to indigent persons by an indigent defense system in capital cases, felony cases, misdemeanor cases, juvenile cases, mental health commitment cases, child support enforcement cases, and paternity establishment cases;

(8) Indigent defense system means a system of providing services, including any services necessary for litigating a case, by a contracting attorney, court-appointed attorney, or public defender;

(9) Indigent person means a person who is indigent and unable to obtain legal counsel as determined pursuant to subdivision (3) of section 29-3901; and

(10) Public defender means an attorney appointed or elected pursuant to sections 23-3401 to 23-3403.

Source: Laws 1995, LB 646, § 4; Laws 2001, LB 335, § 3; Laws 2001, LB 659, § 15.

29-3923 Commission on Public Advocacy; created; duties.

The Commission on Public Advocacy is created. The commission shall provide legal services and resources to assist counties in fulfilling their obligation to provide for effective assistance of counsel for indigent persons.

Source: Laws 1995, LB 646, § 5.

Cross References

Civil legal services for eligible low-income persons, see sections 25-3001 to 25-3004.

29-3924 Commission; members; term.

The commission shall consist of nine members appointed by the Governor from a list of attorneys submitted by the executive council of the Nebraska State Bar Association after consultation with the board of directors of the Nebraska Criminal Defense Attorneys Association. A member shall be appointed from each of the six Supreme Court judicial districts, and three members shall be appointed at large. The executive council of the Nebraska State Bar Association shall ensure that the selection process promotes appointees who are independent from partisan political influence. To be eligible for appointment, a person shall be a member of the Nebraska State Bar Association who has substantial experience in criminal defense work and, for appointments made after September 13, 1997, substantial experience in civil legal matters that commonly affect low-income persons and, at the time of selection or at any time during the term of office, shall not be a prosecutor, law enforcement official, or judge. All members shall be committed to the principle of providing indigent defense services and civil legal services to low-income persons free from unwarranted judicial or political influence. Each member shall serve for a term of six years, except that three of the initial appointees shall serve terms of two years and three shall serve terms of four years as designated by the Governor. Members may be removed from the commission by the Governor for cause.

Source: Laws 1995, LB 646, § 6; Laws 1997, LB 729, § 7.

29-3925 Commission; chairperson; expenses.

The Governor shall designate one of the members of the commission as the chairperson. The members of the commission shall be reimbursed for their actual and necessary expenses incurred in the performance of their duties as provided in sections 81-1174 to 81-1177.

Source: Laws 1995, LB 646, § 7.

29-3926 Commission; quorum.

Five members of the commission constitute a quorum for the transaction of business. The commission may act by a majority of the members present at any meeting at which a quorum is in attendance.

Source: Laws 1995, LB 646, § 8.

29-3927 Commission; duties.

(1) With respect to its duties under section 29-3923, the commission shall:

(a) Adopt and promulgate rules and regulations for its organization and internal management and rules and regulations governing the exercise of its powers and the fulfillment of its purpose;

(b) Appoint and abolish such advisory committees as may be necessary for the performance of its functions and delegate appropriate powers and duties to them;

(c) Accept and administer loans, grants, and donations from the United States and its agencies, the State of Nebraska and its agencies, and other sources, public and private, for carrying out the functions of the commission;

(d) Enter into contracts, leases, and agreements necessary, convenient, or desirable for carrying out its purposes and the powers granted under this section with agencies of state or local government, corporations, or persons;

(e) Acquire, hold, and dispose of personal property in the exercise of its powers;

(f) Provide legal services to indigent persons through the divisions in section 29-3930; and

(g) Adopt guidelines and standards, which are recommended to the commission by the council, for county indigent defense systems, including, but not limited to, standards relating to the following: The use and expenditure of funds appropriated by the Legislature to reimburse counties which qualify for reimbursement; attorney eligibility and qualifications for court appointments; compensation rates for salaried public defenders, contracting attorneys, and court-appointed attorneys and overall funding of the indigent defense system; maximum caseloads for all types of systems; systems administration, including rules for appointing counsel, awarding defense contracts, and reimbursing defense expenses; conflicts of interest; continuing legal education and training; and availability of supportive services and expert witnesses.

(2) The standards adopted by the commission under subdivision (1)(g) of this section are intended to be used as a guide for the proper methods of establishing and operating indigent defense systems. The standards are not intended to be used as criteria for the judicial evaluation of alleged misconduct of defense counsel to determine the validity of a conviction. They may or may not be relevant in such judicial evaluation, depending upon all the circumstances.

(3) With respect to its duties related to the provision of civil legal services to eligible low-income persons, the commission shall have such powers and duties as described in sections 25-3001 to 25-3004.

(4) The commission may adopt and promulgate rules and regulations governing the Legal Education for Public Service Loan Repayment Act which are recommended by the Legal Education for Public Service Loan Repayment Board pursuant to the act. The commission shall have the powers and duties provided in the act.

Source: Laws 1995, LB 646, § 9; Laws 1997, LB 729, § 8; Laws 2001, LB 335, § 4; Laws 2002, LB 876, § 66; Laws 2008, LB1014, § 28.
Operative date July 18, 2008.

Cross References

Legal Education for Public Service Loan Repayment Act, see section 7-201.

29-3928 Chief counsel; qualifications; salary.

The commission shall appoint a chief counsel. The responsibilities and duties of the chief counsel shall be defined by the commission and shall include the overall supervision of the workings of the various divisions of the commission. The chief counsel shall be qualified for his or her position, shall have been licensed to practice law in the State of Nebraska for at least five years prior to the effective date of the appointment, and shall be experienced in the practice of criminal defense, including the defense of capital cases. The chief counsel shall serve at the pleasure of the commission. The salary of the chief counsel shall be set by the commission.

Source: Laws 1995, LB 646, § 10.

29-3929 Chief counsel; duties.

The primary duties of the chief counsel shall be to provide direct legal services to indigent defendants, and the chief counsel shall:

(1) Supervise the operations of the appellate division, the capital litigation division, the DNA testing division, and the major case resource center;

(2) Prepare a budget and disburse funds for the operations of the commission;

(3) Present to the commission an annual report on the operations of the commission, including an accounting of all funds received and disbursed, an evaluation of the cost-effectiveness of the commission, and recommendations for improvement;

(4) Convene or contract for conferences and training seminars related to criminal defense;

(5) Perform other duties as directed by the commission;

(6) Establish and administer projects and programs for the operation of the commission;

(7) Appoint and remove employees of the commission and delegate appropriate powers and duties to them;

(8) Adopt and promulgate rules and regulations for the management and administration of policies of the commission and the conduct of employees of the commission;

(9) Transmit monthly to the commission a report of the operations of the commission for the preceding calendar month;

(10) Execute and carry out all contracts, leases, and agreements authorized by the commission with agencies of federal, state, or local government, corporations, or persons; and

(11) Exercise all powers and perform all duties necessary and proper in carrying out his or her responsibilities.

Source: Laws 1995, LB 646, § 11; Laws 2001, LB 659, § 16.

29-3930 Commission; divisions established.

The following divisions are established within the commission:

(1) The capital litigation division shall be available to assist in the defense of capital cases in Nebraska, subject to caseload standards of the commission;

(2) The appellate division shall be available to prosecute appeals to the Court of Appeals and the Supreme Court, subject to caseload standards of the commission;

(3) The violent crime and drug defense division shall be available to assist in the defense of certain violent and drug crimes as defined by the commission, subject to the caseload standards of the commission;

(4) The DNA testing division shall be available to assist in representing persons who are indigent who have filed a motion pursuant to the DNA Testing Act, subject to caseload standards; and

(5) The major case resource center shall be available to assist public defenders, contracting attorneys, or court-appointed attorneys with the defense of a felony offense, subject to caseload standards of the commission.

Source: Laws 1995, LB 646, § 12; Laws 2001, LB 659, § 17; Laws 2003, LB 760, § 11.

Cross References

DNA Testing Act, see section 29-4116.

29-3931 Transferred to section 33-156.

29-3932 Indigent Defense Standards Advisory Council; created; members; expenses.

(1) The Indigent Defense Standards Advisory Council is created. The council shall consist of seven members, including the elected public defenders for Douglas County and Lancaster County, the chief counsel, and four members who have substantial experience in providing indigent defense services either as a public defender, contracting attorney, or court-appointed attorney and who are nominated by the Nebraska Criminal Defense Attorneys Association and appointed by the commission. The four members who are appointed by the commission shall serve terms of four years, except that, of the members first appointed, one member shall serve a term of one year, one member shall serve a term of two years, one member shall serve a term of three years, and one member shall serve a term of four years. A member may be reappointed at the expiration of his or her term. Any vacancy occurring other than by expiration of a term shall be filled for the remainder of the unexpired term in the same manner as the original appointment. The council shall select one of its members as chairperson.

(2) Notwithstanding any other provision of law, membership on the council shall not disqualify any member from holding his or her office or position or cause the forfeiture thereof.

(3) Members of the council shall serve without compensation, but they shall be entitled to reimbursement for their actual and necessary expenses as provided in sections 81-1174 to 81-1177.

(4) The council shall be responsible for developing and recommending to the commission guidelines and standards for county indigent defense systems, including, but not limited to, standards relating to the following: The use and expenditure of funds appropriated by the Legislature to reimburse counties which qualify for reimbursement; attorney eligibility and qualifications for court appointments; compensation rates for salaried public defenders, contracting attorneys, and court-appointed attorneys and overall funding of the indigent defense system; maximum caseloads for all types of systems; systems administration, including rules for appointing counsel, awarding defense contracts, and reimbursing defense expenses; conflicts of interest; continuing legal education and training; and availability of supportive services and expert witnesses.

Source: Laws 2001, LB 335, § 5; Laws 2002, LB 876, § 68.

29-3933 Request for reimbursement; requirements.

(1) Any county which intends to request reimbursement for a portion of its expenditures for its indigent defense system must comply with this section.

(2) In order to assist the Commission on Public Advocacy in its budgeting process for determining future reimbursement amounts, after July 1, 2002, and before July 15, 2002, and for each year thereafter in which the county intends to seek reimbursement for a portion of its expenditures for indigent defense services in felony cases for the next fiscal year, the county shall present to the Commission on Public Advocacy (a) a plan, in a format approved by the commission, describing how the county intends to provide indigent defense services in felony cases, (b) a statement of intent declaring that the county intends to comply with the standards set by the commission for felony cases and that the county intends to apply for reimbursement, and (c) a projection of the total dollar amount of expenditures for that county's indigent defense services in felony cases for the next fiscal year.

(3) The commission may conduct whatever investigation is necessary and may require certifications by key individuals in the criminal justice system, in order to determine if the county is in compliance with the standards. If a county is certified by the commission as having met the standards established by the commission for felony cases, the county shall be eligible for reimbursement according to the following schedule and procedures: The county clerk of the county seeking reimbursement may submit, on a quarterly basis, a certified request to the commission, for reimbursement from funds appropriated by the Legislature, for an amount equal to one-fourth of the county's actual expenditures for indigent defense services in felony cases.

(4) Upon certification by the county clerk of the amount of the expenditures, and a determination by the commission that the request is in compliance with the standards set by the commission for felony cases, the commission shall quarterly authorize an amount of reimbursement to the county as set forth in this section.

(5) If the appropriated funds are insufficient in any quarter to meet the amount needed for full payment of all county reimbursements for net expenditures that are certified for that quarter, the commission shall pay the counties their pro rata share of the remaining funds based upon the percentage of the county's certified request in comparison to the total certified requests for that quarter.

(6) For purposes of section 13-519, for any year in which a county first seeks reimbursement from funds appropriated by the Legislature or has previously qualified for reimbursement and is seeking additional reimbursement for improving its indigent criminal defense program, the last prior year's total of restricted funds shall be the last prior year's total of restricted funds plus any increased amount budgeted for indigent defense services that is required to develop a plan and meet the standards necessary to qualify for reimbursement of expenses from funds appropriated by the Legislature.

Source: Laws 2001, LB 335, § 6; Laws 2002, LB 876, § 69.

ARTICLE 40

SEX OFFENDERS

(a) SEX OFFENDER REGISTRATION ACT

Section
29-4001. Act, how cited.
29-4002. Legislative findings.
29-4003. Applicability of act.

Section
29-4004. Registration; sheriff; duties; Nebraska State Patrol; duties.
29-4005. Registration duration; sexually violent predator determination.
29-4006. Registration form; contents; verification; name change; duties.
29-4007. Sentencing court; duties; Department of Correctional Services or local facility; Department of Motor Vehicles; notification requirements; Attorney General; prepare form.
29-4008. False or misleading information prohibited.
29-4009. Information confidential; exceptions.
29-4010. Expungement; procedure.
29-4011. Violations; penalties.
29-4012. Immunity from liability.
29-4013. Rules and regulations; release of information; duties; access to documents.
29-4014. Person committed to Department of Correctional Services; attend sex offender treatment and counseling programming.

(b) SEXUAL PREDATOR RESIDENCY RESTRICTION ACT

29-4015. Act, how cited.
29-4016. Terms, defined.
29-4017. Political subdivision restrictions on sex offender residency; requirements.

(c) DANGEROUS SEX OFFENDERS

29-4018. Offense requiring civil commitment evaluation; sentencing court; duties.
29-4019. Offense requiring lifetime community supervision; sentencing court; duties.

(a) SEX OFFENDER REGISTRATION ACT

29-4001 Act, how cited.

Sections 29-4001 to 29-4014 shall be known and may be cited as the Sex Offender Registration Act.

Source: Laws 1996, LB 645, § 1; Laws 2006, LB 1199, § 17.

Use of a stakeholder group to determine the cutoff points for the three risk levels under the Sex Offender Registration Act does not render the risk assessment instrument arbitrary. Lein v. Nesbitt, 269 Neb. 109, 690 N.W.2d 799 (2005).

The duty to register as a sex offender under Nebraska's Sex Offender Registration Act is collateral to a defendant's sentence on the underlying conviction. A trial court is not required to inform a defendant of the collateral consequence of his or her duty to register as a sex offender under Nebraska's Sex Offender Registration Act before accepting a plea of guilty or no contest, and such pleas are not rendered involuntary or unintelligent because the defendant was not aware of this requirement. State v. Schneider, 263 Neb. 318, 640 N.W.2d 8 (2002).

29-4002 Legislative findings.

The Legislature finds that sex offenders present a high risk to commit repeat offenses. The Legislature further finds that efforts of law enforcement agencies to protect their communities, conduct investigations, and quickly apprehend sex offenders are impaired by the lack of available information about individuals who have pleaded guilty to or have been found guilty of sex offenses and who live, work, or attend school in their jurisdiction. The Legislature further finds that state policy should assist efforts of local law enforcement agencies to protect their communities by requiring sex offenders to register with local law enforcement agencies as provided by the Sex Offender Registration Act.

Source: Laws 1996, LB 645, § 2; Laws 2002, LB 564, § 2.

29-4003 Applicability of act.

(1) Except as provided in subsection (2) of this section, the Sex Offender Registration Act shall apply to any person who on or after January 1, 1997:

(a) Pleads guilty to or is found guilty of:

(i) Kidnapping of a minor pursuant to section 28-313, except when the person is the parent of the minor and was not convicted of any other offense in this section;

(ii) False imprisonment of a minor pursuant to section 28-314 or 28-315;

(iii) Sexual assault pursuant to section 28-319 or 28-320;

(iv) Sexual assault of a child in the second or third degree pursuant to section 28-320.01;

(v) Sexual assault of a child in the first degree pursuant to section 28-319.01;

(vi) Sexual assault of a vulnerable adult pursuant to subdivision (1)(c) of section 28-386;

(vii) Incest of a minor pursuant to section 28-703;

(viii) Pandering of a minor pursuant to section 28-802;

(ix) Visual depiction of sexually explicit conduct of a child pursuant to section 28-1463.03 or 28-1463.05;

(x) Knowingly possessing any visual depiction of sexually explicit conduct which has a child as one of its participants or portrayed observers pursuant to section 28-813.01;

(xi) Criminal child enticement pursuant to section 28-311;

(xii) Child enticement by means of a computer pursuant to section 28-320.02;

(xiii) Debauching a minor pursuant to section 28-805; or

(xiv) Attempt, solicitation, or conspiracy to commit an offense listed in subdivisions (1)(a)(i) through (1)(a)(xiii) of this section;

(b) Enters the state and has pleaded guilty to or has been found guilty of any offense that is substantially equivalent to a registrable offense under subdivision (1)(a) of this section by any state, territory, commonwealth, or other jurisdiction of the United States, by the United States Government, or by court-martial or other military tribunal, notwithstanding a procedure comparable in effect to that described under section 29-2264 or any other procedure to nullify a conviction other than by pardon;

(c) Is incarcerated in a jail, a penal or correctional facility, or any other public or private institution or is under probation or parole as a result of pleading guilty to or being found guilty of a registrable offense under subdivision (1)(a) or (b) of this section prior to January 1, 1997; or

(d) Enters the state and is required to register as a sex offender under the laws of another state, territory, commonwealth, or other jurisdiction of the United States.

(2) In the case of a person convicted of a violation of section 28-313, 28-314, 28-315, or 28-805, the convicted person shall be subject to the Sex Offender Registration Act, unless the sentencing court determines at the time of sentencing, in light of all the facts, that the convicted person is not subject to the act. The sentencing court shall make such determination part of the sentencing order.

(3) A person appealing a conviction of a registrable offense under this section shall be required to comply with the act during the appeals process.

Source: Laws 1996, LB 645, § 3; Laws 2002, LB 564, § 3; Laws 2004, LB 943, § 9; Laws 2005, LB 713, § 4; Laws 2006, LB 1199, § 18.

29-4004 Registration; sheriff; duties; Nebraska State Patrol; duties.

(1) Any person subject to the Sex Offender Registration Act shall register with the sheriff of the county in which the person resides or is temporarily domiciled within five working days of becoming subject to the act.

(2) Any person required to register under the act shall inform the sheriff of the county in which he or she resides, in writing, if he or she has a new address within such county within five working days after the address change. The sheriff shall forward such information to the sex offender registration and community notification division of the Nebraska State Patrol within five working days after receipt of the new address.

(3) Any person required to register under the act shall inform the sheriff of the county in which he or she resides, in writing, if he or she has a new address in a different county in this state within five working days after the address change. The sheriff shall forward the new address to the sex offender registration and community notification division of the Nebraska State Patrol within five working days after receipt of the new address. The division shall notify the sheriff of the county to which the person is relocating of the new address. The person shall report to the county sheriff of his or her new county of residence and register with such county sheriff within five working days after the address change.

(4) Any person required to register under the act shall inform the sheriff of the county in which he or she resides, in writing, if he or she moves to a new out-of-state address within five working days after the address change. The sheriff shall forward the new out-of-state address to the sex offender registration and notification division of the Nebraska State Patrol within five working days after receipt of the new out-of-state address. The division shall forward the new out-of-state address to the other state's central repository for sex offender registration.

(5) Any person required to register under the act who is residing in another state or is temporarily domiciled in another state, and is employed, carries on a vocation, or attends school in this state shall report and register with the sheriff of the county in which he or she is employed, carries on a vocation, or attends school in this state within five working days after becoming employed, carrying on a vocation, or attending school. The person shall also notify the sheriff of any changes in employment, vocation, or school of attendance, in writing, within five working days after the change. The sheriff shall forward this information to the sex offender registration and community notification division of the Nebraska State Patrol within five working days after receipt of such information. For purposes of this subsection:

(a) Attends school means enrollment in any educational institution in this state on a full-time or part-time basis;

(b) Is employed or carries on a vocation means any full-time or part-time employment, with or without compensation, which lasts for a duration of more than fourteen days or for an aggregate period exceeding thirty days in a calendar year; and

(c) Temporarily domiciled means a place at which the person actually lives or stays on a temporary basis even though he or she may plan to return to his or her permanent address or to another temporary address. For purposes of this

section, a temporary domicile means any place at which the person actually lives or stays for a period of at least five working days.

(6) Any person incarcerated for a registrable offense under section 29-4003 in a jail, penal or correctional facility, or other public or private institution who is not already registered shall be registered by the jail, penal or correctional facility, or public or private institution prior to his or her discharge, parole, furlough, work release, or release. The person shall be informed and information shall be obtained as required in section 29-4006.

(7) Any person required to register under the act shall inform the sheriff of the county in which he or she resides, in writing, of each postsecondary educational institution at which he or she is employed, carries on a vocation, or attends school, within five working days after such employment or attendance. The person shall also notify the sheriff of any change in such employment or attendance status at the postsecondary educational institution, in writing, within five working days after such change. The sheriff shall forward the information regarding such employment or attendance to the sex offender registration and community notification division of the Nebraska State Patrol within five working days after receipt of the information.

(8) Any person required to register or who is registered under the act, but is incarcerated for more than five days, whether or not in his or her own county of residence or temporary domicile, shall inform the sheriff of the county in which such person would reside or would be temporarily domiciled if he or she was not incarcerated, within five working days after incarceration, of his or her incarceration and his or her expected release date, if any such date is available. The sheriff shall forward the information regarding incarceration to the sex offender registration and community notification division of the Nebraska State Patrol within five working days after receipt of the information.

(9) Any person required to register or who is registered under the act who no longer has a residence or temporary domicile shall notify the county sheriff in which he or she is located, in writing, within five working days after such change in residence or temporary domicile. Such person shall update his or her registration, in writing, on a form approved by the sex offender registration and community notification division of the Nebraska State Patrol at least once every thirty calendar days during the time he or she remains without residence or temporary domicile.

(10) Each registering entity shall forward all written information, photographs, and fingerprints obtained pursuant to the act to the sex offender registration and community notification division of the Nebraska State Patrol within five working days. The information shall be forwarded on forms furnished by the division. The division shall maintain a central registry of sex offenders required to register under the act.

Source: Laws 1996, LB 645, § 4; Laws 2002, LB 564, § 4; Laws 2005, LB 713, § 5; Laws 2006, LB 1199, § 19.

29-4005 Registration duration; sexually violent predator determination.

(1) Except as provided in subsections (2) and (3) of this section, any person to whom the Sex Offender Registration Act applies shall be required to register during any period of supervised release, probation, or parole and shall continue to comply with the act for a period of ten years after the date of discharge from probation, parole, or supervised release or release from incarceration, whichev-

er date is most recent. The ten-year registration requirement shall not apply to any person while he or she is incarcerated in a jail, a penal or correctional facility, or any other public or private institution. The ten-year registration requirement does not include any time period when any person who is required to register under the act knowingly or willfully fails to comply with such registration requirement.

(2) A person required to register under section 29-4003 shall be required to register under the act for the rest of his or her life if the offense creating the obligation to register is an aggravated offense, if the person has a prior conviction for a registrable offense, or if the person is required to register as a sex offender for the rest of his or her life under the laws of another state, territory, commonwealth, or other jurisdiction of the United States. A sentencing court shall make that fact part of the sentencing order.

(3)(a) When sentencing a person for a registrable offense under section 29-4003, a court may also determine if the person is a sexually violent predator. When making its determination the court shall consider information contained in the presentence report and the recommendation of experts in the behavior and treatment of sex offenders, victims' rights advocates, and representatives of law enforcement agencies.

(b) In addition to complying with the annual verification requirements in section 29-4006 and the lifetime registration requirements of subsection (2) of this section, a person determined to be a sexually violent predator shall verify the registration information quarterly after the initial registration date.

(4) For purposes of this section:

(a) Aggravated offense means any registrable offense under section 29-4003 which involves the penetration of (i) a victim age twelve years or more through the use of force or the threat of serious violence or (ii) a victim under the age of twelve years;

(b) Mental abnormality means a congenital or acquired condition of a person that affects the emotional or volitional capacity of the person in a manner that predisposes that person to the commission of a criminal sexual act to a degree that makes the person a menace to the health and safety of other persons; and

(c) Sexually violent predator means a person who has been convicted of one or more registrable offenses under section 29-4003 and who suffers from a mental abnormality or personality disorder that makes the person likely to engage in sexually violent offenses directed at a stranger, or at a person with whom a relationship has been established or promoted, for the primary purpose of victimization.

Source: Laws 1996, LB 645, § 5; Laws 2002, LB 564, § 5; Laws 2006, LB 1199, § 20.

The plain language of this section states that when sentencing a person, the court ''shall'' provide written notification and copies of the notification and corresponding journal entry to various parties. Thus, the requirements of the Sex Offender Registration Act are mandatory. State v. Pathod, 269 Neb. 155, 690 N.W.2d 784 (2005).

Because subsection (2) of this section requires the sentencing court to include the finding of an aggravated offense as part of the sentencing order, the registration requirements for an aggravated offense are part of the court's judgment for purposes of filing a direct appeal. State v. Worm, 268 Neb. 74, 680 N.W.2d 151 (2004).

The lifetime registration requirement under subsection (2) of this section is not criminal punishment. State v. Worm, 268 Neb. 74, 680 N.W.2d 151 (2004).

The plain language of this section requires that when making a determination that a person is a sexually violent offender, the sentencing court shall consider evidence from experts in the field of the behavior and treatment of sexual offenders. State v. Rodriguez, 11 Neb. App. 819, 660 N.W.2d 901 (2003).

29-4006 Registration form; contents; verification; name change; duties.

(1) Registration information required by the Sex Offender Registration Act shall be in a form approved by the sex offender registration and community notification division of the Nebraska State Patrol and shall include the following information:

(a) The legal name and all aliases which the person has used or under which the person has been known;

(b) A complete description of the person, including date of birth, social security number, photographs, and fingerprints;

(c) A listing of each registrable offense under section 29-4003 to which the person pleaded guilty or was found guilty, the jurisdiction where each offense was committed, the court in which the person pleaded guilty or was found guilty of each offense, and the name under which the person pleaded guilty or was found guilty of each offense;

(d) The name and location of each jail, penal or correctional facility, or public or private institution to which the person was incarcerated for each offense and the actual time served or confined; and

(e) The address of the person's current residence and place of employment or vocation and any school he or she is attending.

(2) For the duration of the registration period required by the act, registration information shall be verified annually within thirty days after the anniversary date of the person's initial registration date. To properly verify, the following shall occur:

(a) The sex offender registration and community notification division of the Nebraska State Patrol shall mail a nonforwardable verification form to the last-reported address of the person;

(b) The verification form shall be signed by the person and state whether the address last reported to the division is still correct; and

(c) The person shall mail the verification form to the division within ten days after receipt of the form.

(3) If the person fails to complete and mail the verification form to the sex offender registration and community notification division of the Nebraska State Patrol within ten days after receipt of the form, or the form cannot be delivered due to the registrant not being at the address last reported, the person shall be in violation of this section unless the person proves that the address last reported to the division is still correct.

(4) If the person falsifies the registration or verification form, the person shall be in violation of this section.

(5) The requirement to verify the address of a sexually violent predator quarterly as provided in section 29-4005 and the requirement to verify the address of any other registrant annually as required in this section shall not apply during periods of such registrant's incarceration. Address verification shall be resumed as soon as such incarcerated person is placed on any type of supervised release, parole, or probation or is released from incarceration. Prior to any type of release from incarceration, such person shall report the change of address to the sheriff of the county in which he or she is incarcerated and the sheriff of the county in which he or she resides or is temporarily domiciled. The sheriff shall forward the change of address to the sex offender registration and community notification division of the Nebraska State Patrol.

(6) Any person required to register under the Sex Offender Registration Act shall inform the sheriff of any legal change in name, in writing, within five working days after such change, and provide a copy of the legal documentation supporting the change in name. The sheriff shall forward the information to the sex offender registration and community notification division of the Nebraska State Patrol, in writing, within five working days after receipt of the information.

Source: Laws 1996, LB 645, § 6; Laws 2002, LB 564, § 6; Laws 2006, LB 1199, § 21.

29-4007 Sentencing court; duties; Department of Correctional Services or local facility; Department of Motor Vehicles; notification requirements; Attorney General; prepare form.

(1) When sentencing a person convicted of a registrable offense under section 29-4003, the court shall:

(a) Provide written notification of the duty to register under the Sex Offender Registration Act at the time of sentencing to any defendant who has pleaded guilty or has been found guilty of a registrable offense under section 29-4003. The written notification shall:

(i) Inform the defendant that if he or she moves to another address within the same county or ceases to have a residence or temporary domicile, he or she must report all address changes, including not having a residence or temporary domicile, to the county sheriff in the county where he or she has been residing within five working days after his or her move;

(ii) Inform the defendant that if he or she moves to another county in the State of Nebraska, he or she must notify the county sheriff in the county where he or she had been last residing and the county sheriff in the county where he or she is living of his or her current address. The notice must be given within five working days after his or her move;

(iii) Inform the defendant that if he or she moves to another state, he or she must report the change of address to the county sheriff of the county where he or she has been residing and must comply with the registration requirements of the state to which he or she is moving. The notice must be given within five working days after his or her move;

(iv) Inform the defendant that he or she shall (A) inform the sheriff of the county in which he or she resides, in writing, of each postsecondary educational institution at which he or she is employed, carries on a vocation, or attends school, within five working days after such employment or attendance and (B) notify the sheriff of any change in such employment or attendance status of such person at such postsecondary educational institution;

(v) Inform the defendant that if he or she goes to another state to work or goes to another state as a student and still resides or is temporarily domiciled in this state, he or she must comply with the registration requirements of both states; and

(vi) Inform the defendant that fingerprints and a photograph will be obtained by any registering entity in order to comply with the registration requirements;

(b) Require the defendant to read and sign a form stating that the duty of the defendant to register under the Sex Offender Registration Act has been explained;

(c) Retain a copy of the written notification signed by the defendant; and

(d) If the defendant is adjudicated a sexually violent predator, include the supporting reports and other information supporting this finding.

A copy of the signed, written notification and the journal entry of the court shall be provided to the county attorney, the defendant, the sex offender registration and community notification division of the Nebraska State Patrol, and the county sheriff of the county in which the defendant resides or is temporarily domiciled.

(2) When a person is convicted of a registrable offense under section 29-4003 and is not subject to immediate incarceration upon sentencing, prior to being released by the court, the sentencing court shall ensure that the defendant is registered by the sheriff of the county in which the defendant is convicted no later than the time of sentencing. The sheriff shall obtain full registration information and documents as required by section 29-4006, and forward the information and documents to the sex offender registration and notification division of the Nebraska State Patrol within five working days.

(3)(a) The Department of Correctional Services or a city or county correctional or jail facility shall provide written notification of the duty to register pursuant to the Sex Offender Registration Act to any person committed to its custody for a registrable offense under section 29-4003 prior to the person's release from incarceration. The written notification shall:

(i) Inform the person that if he or she moves to another address within the same county, he or she must report all address changes to the county sheriff in the county where he or she has been residing within five working days after his or her move;

(ii) Inform the person that if he or she moves to another county in the State of Nebraska, he or she must notify the county sheriff in the county where he or she had been last residing and the county sheriff in the county where he or she is living of his or her current address. The notice must be given within five working days after his or her move;

(iii) Inform the person that if he or she moves to another state, he or she must report the change of address to the county sheriff of the county where he or she has been residing and must comply with the registration requirements of the state to which he or she is moving. The notice must be given within five working days after his or her move;

(iv) Inform the person that he or she shall (A) inform the sheriff of the county in which he or she resides, in writing, of each postsecondary educational institution at which he or she is employed, carries on a vocation, or attends school, within five working days after such employment or attendance and (B) notify the sheriff of any change in such employment or attendance status of such person at such postsecondary educational institution;

(v) Inform the person that if he or she goes to another state to work or goes to another state as a student and still resides or is temporarily domiciled in this state, he or she must comply with the registration requirements of both states; and

(vi) Inform the defendant that fingerprints and a photograph will be obtained by any registering entity in order to comply with the registration requirements.

(b) The Department of Correctional Services or a city or county correctional or jail facility shall:

(i) Require the person to read and sign the notification form stating that the duty to register under the Sex Offender Registration Act has been explained;

(ii) Retain a signed copy of the written notification to register; and

(iii) Provide a copy of the notification to register to the person, the sex offender registration and notification division of the Nebraska State Patrol, and the sheriff of the county in which the person will be residing upon release from the institution. If the person is going to reside outside of the State of Nebraska, then notification to the sheriff is not required.

(4) The Department of Motor Vehicles shall cause written notification of the duty to register to be provided on the applications for a motor vehicle operator's license and for a commercial driver's license.

(5) All written notification as provided in this section shall be on a form prepared by the Attorney General.

Source: Laws 1996, LB 645, § 7; Laws 1998, LB 204, § 1; Laws 2002, LB 564, § 7; Laws 2006, LB 1199, § 22.

29-4008 False or misleading information prohibited.

No person subject to the Sex Offender Registration Act shall knowingly and willfully furnish any false or misleading information in the registration.

Source: Laws 1996, LB 645, § 8.

29-4009 Information confidential; exceptions.

Information obtained under the Sex Offender Registration Act shall be confidential, except that:

(1) Information shall be disclosed to law enforcement agencies for law enforcement purposes;

(2) Information on persons subject to section 83-174.03 shall be disclosed to the Office of Parole Administration;

(3) Information concerning a defendant who is registered and reports to be employed with, carrying on a vocation at, or attending a postsecondary educational institution, shall be disclosed to the law enforcement agency having responsibility for the campus where the institution is located. This notification shall go to the affected campus police, if any, and other law enforcement agency having jurisdiction in the area in which the institution is located;

(4) Information may be disclosed to governmental agencies conducting confidential background checks for employment, volunteer, licensure, or certification purposes;

(5) Information may be disclosed to health care providers who serve children or vulnerable adults for the purpose of conducting confidential background checks for employment;

(6) Information concerning the address or whereabouts of the person required to register may be disclosed to the victim or victims of such person; and

(7) The Nebraska State Patrol, any law enforcement agency, and any probation or parole officer may release relevant information that is necessary to protect the public concerning a specific person required to register, except that the identity of a victim of an offense that requires registration shall not be released.

The release of information authorized by this section shall conform with the rules and regulations adopted and promulgated by the Nebraska State Patrol pursuant to section 29-4013.

Source: Laws 1996, LB 645, § 9; Laws 1998, LB 204, § 2; Laws 2002, LB 564, § 8; Laws 2005, LB 713, § 6; Laws 2006, LB 1199, § 23.

29-4010 Expungement; procedure.

(1) Any person having a duty to register under the Sex Offender Registration Act may file a petition with the district court for an order to expunge the information except for a person required under the act to register for his or her lifetime.

(2) The petition shall be filed in the district court of the county in which the petitioner was convicted of a registrable offense under section 29-4003. If the petitioner was convicted in another state, the petition shall be filed in the district court of the county in which the petitioner resides. A nonresident may file in the district court of the county in which he or she is employed or carries on a vocation, attends school, or had a prior duty to register pursuant to the act. The county attorney shall be named as the respondent and shall be served with a copy of the petition.

(3) The court may grant the petition and issue an order to expunge the information if the petitioner shows by clear and convincing evidence that the (a) petitioner's duty to register has expired, (b) petitioner does not have a criminal charge pending and is not under criminal investigation for a registrable offense under section 29-4003, and (c) petitioner is not a substantial risk to commit another registrable offense under section 29-4003.

Source: Laws 1996, LB 645, § 10; Laws 2002, LB 564, § 9.

29-4011 Violations; penalties.

(1) Any person required to register under the Sex Offender Registration Act who violates the act is guilty of a Class IV felony unless the act which caused the person to be placed on the registry was a misdemeanor, in which case a violation of the Sex Offender Registration Act shall be a crime of the same class or within the same penalty range as the original act.

(2) Any person required to register under the Sex Offender Registration Act who violates the act and who has previously been convicted of a violation of the act is guilty of a Class III felony and shall be sentenced to a mandatory minimum term of at least one year in prison unless the act which caused the person to be placed on the registry was a misdemeanor, in which case the violation of the Sex Offender Registration Act shall be a Class IV felony.

Source: Laws 1996, LB 645, § 11; Laws 2006, LB 1199, § 24.

29-4012 Immunity from liability.

Law enforcement officials, their employees, and state officials shall be immune from liability for good faith conduct under the Sex Offender Registration Act.

Source: Laws 1996, LB 645, § 12.

29-4013 Rules and regulations; release of information; duties; access to documents.

(1) The Nebraska State Patrol shall adopt and promulgate rules and regulations to carry out the registration provisions of the Sex Offender Registration Act.

(2)(a) The Nebraska State Patrol shall adopt and promulgate rules and regulations for the release of information pursuant to section 29-4009.

(b) The rules and regulations adopted by the Nebraska State Patrol shall identify and incorporate factors relevant to the sex offender's risk of recidivism. Factors relevant to the risk of recidivism include, but are not limited to:

(i) Conditions of release that minimize the risk of recidivism, including probation, parole, counseling, therapy, or treatment;

(ii) Physical conditions that minimize the risk of recidivism, including advanced age or debilitating illness; and

(iii) Any criminal history of the sex offender indicative of a high risk of recidivism, including:

(A) Whether the conduct of the sex offender was found to be characterized by repetitive and compulsive behavior;

(B) Whether the sex offender committed the sexual offense against a child;

(C) Whether the sexual offense involved the use of a weapon, violence, or infliction of serious bodily injury;

(D) The number, date, and nature of prior offenses;

(E) Whether psychological or psychiatric profiles indicate a risk of recidivism;

(F) The sex offender's response to treatment;

(G) Any recent threats by the sex offender against a person or expressions of intent to commit additional crimes; and

(H) Behavior of the sex offender while confined.

(c) The procedures for release of information established by the Nebraska State Patrol shall provide for three levels of notification by the law enforcement agency in whose jurisdiction the sex offender is to be released depending on the risk of recidivism by the sex offender as follows:

(i) If the risk of recidivism is low, other law enforcement agencies shall be notified;

(ii) If the risk of recidivism is moderate, in addition to the notice required by subdivision (i) of this subdivision, schools, day care centers, health care facilities providing services to children or vulnerable adults, and religious and youth organizations shall be notified; and

(iii) If the risk of recidivism is high, in addition to the notice required by subdivisions (i) and (ii) of this subdivision, the public shall be notified through means designed to reach members of the public, which are limited to direct contact, news releases, a method utilizing a telephone system, or the Internet. The Nebraska State Patrol shall provide notice of sex offenders with a high risk of recidivism to at least one legal newspaper published in and of general circulation in the county where the offender is registered or, if none is published in the county, in a legal newspaper of general circulation in such county. If any means of notification proposes a fee for usage, then nonprofit

organizations holding a certificate of exemption under section 501(c) of the Internal Revenue Code shall not be charged.

(d) The Nebraska State Patrol shall establish procedures for the evaluation of the risk of recidivism and implementation of community notification that promote the uniform application of the notification rules and regulations required by this section.

(e) The Nebraska State Patrol or a designee shall assign a notification level, based upon the risk of recidivism, to all persons required to register under the act.

(f) Personnel and mental health professionals for the sex offender registration and community notification division of the Nebraska State Patrol shall have access to all documents that are generated by any governmental agency that may have bearing on sex offender risk assessment and community notification pursuant to this section. This may include, but is not limited to, law enforcement reports, presentence reports, criminal histories, or birth certificates. The division shall not be charged for access to documents under this subdivision. Access to such documents will ensure that a fair risk assessment is completed using the totality of all information available. For purposes of this subdivision, mental health professional means (i) a practicing physician licensed to practice medicine in this state under the Medicine and Surgery Practice Act, (ii) a practicing psychologist licensed to engage in the practice of psychology in this state as provided in section 38-3111, or (iii) a practicing mental health professional licensed or certified in this state as provided in the Mental Health Practice Act.

(3) Nothing in subsection (2) of this section shall be construed to prevent law enforcement officers from providing community notification concerning any person who poses a danger under circumstances that are not provided for in the Sex Offender Registration Act.

Source: Laws 1996, LB 645, § 13; Laws 1998, LB 204, § 3; Laws 2002, LB 564, § 10; Laws 2005, LB 713, § 7; Laws 2006, LB 1199, § 25; Laws 2007, LB463, § 1130.

Cross References

Medicine and Surgery Practice Act, see section 38-2001.
Mental Health Practice Act, see section 38-2101.

This section permits the Nebraska State Patrol to post information concerning Level 3 sex offenders on its Web site. Slansky v. Nebraska State Patrol, 268 Neb. 360, 685 N.W.2d 335 (2004).

29-4014 Person committed to Department of Correctional Services; attend sex offender treatment and counseling programming.

Any person convicted of a crime requiring registration as a sex offender pursuant to section 29-4003 and committed to the Department of Correctional Services shall attend appropriate sex offender treatment and counseling programming offered by the department. Refusal to participate in such programming shall not result in disciplinary action or a loss of good time credit on the part of the offender but shall require a civil commitment evaluation pursuant to section 83-174.02 prior to the completion of his or her criminal sentence.

Source: Laws 2006, LB 1199, § 26.

(b) SEXUAL PREDATOR RESIDENCY RESTRICTION ACT

29-4015 Act, how cited.

Sections 29-4015 to 29-4017 shall be known and may be cited as the Sexual Predator Residency Restriction Act.

Source: Laws 2006, LB 1199, § 27.

29-4016 Terms, defined.

For purposes of the Sexual Predator Residency Restriction Act:

(1) Child care facility means a facility licensed pursuant to the Child Care Licensing Act;

(2) Political subdivision means a village, a city, a county, a school district, a public power district, or any other unit of local government;

(3) School means a public, private, denominational, or parochial school which meets the requirements for accreditation or approval prescribed in Chapter 79;

(4) Sex offender means an individual who has been convicted of a crime listed in section 29-4003 and who is required to register as a sex offender pursuant to the Sex Offender Registration Act; and

(5) Sexual predator means an individual who is required to register under the Sex Offender Registration Act, who has a high risk of recidivism as determined by the Nebraska State Patrol under section 29-4013, and who has victimized a person eighteen years of age or younger.

Source: Laws 2006, LB 1199, § 28.

Cross References

Child Care Licensing Act, see section 71-1908.
Sex Offender Registration Act, see section 29-4001.

29-4017 Political subdivision restrictions on sex offender residency; requirements.

(1) A political subdivision may enact an ordinance, resolution, or other legal restriction prescribing where sex offenders may reside only if the restrictions are limited to sexual predators, extend no more than five hundred feet from a school or child care facility, and meet the requirements of subsection (2) of this section.

(2) An ordinance, resolution, or other legal restriction enacted by a political subdivision shall not apply to a sexual predator who:

(a) Resides within a prison or a correctional or treatment facility operated by the state or a political subdivision;

(b) Established a residence before July 1, 2006, and has not moved from that residence; or

(c) Established a residence after July 1, 2006, and the school or child care facility triggering the restriction was established after the initial date of the sexual predator's residence at that location.

(3) Any ordinance, resolution, or other legal restriction prescribing where sex offenders may reside which does not meet the requirements of this section is

void, regardless of whether such ordinance, resolution, or legal restriction was adopted prior to, on, or after July 14, 2006.

Source: Laws 2006, LB 1199, § 29.

(c) DANGEROUS SEX OFFENDERS

29-4018 Offense requiring civil commitment evaluation; sentencing court; duties.

When sentencing a person convicted of an offense which requires a civil commitment evaluation pursuant to section 83-174.02, the sentencing court shall:

(1) Provide written notice to the defendant that a civil commitment evaluation is required prior to his or her release from incarceration;

(2) Require the defendant to read and sign a form stating that the defendant has been informed that a civil commitment evaluation is required prior to his or her release from incarceration; and

(3) Retain a copy of the written notification signed by the defendant.

Source: Laws 2006, LB 1199, § 55.

29-4019 Offense requiring lifetime community supervision; sentencing court; duties.

(1) When sentencing a person convicted of an offense which requires lifetime community supervision upon release pursuant to section 83-174.03, the sentencing court shall:

(a) Provide written notice to the defendant that he or she shall be subject to lifetime community supervision by the Office of Parole Administration upon release from incarceration or civil commitment. The written notice shall inform the defendant (i) that he or she shall be subject to lifetime community supervision by the office upon release and that the office shall conduct a risk assessment and evaluation to determine the conditions of community supervision which will minimize, in the least restrictive manner that is compatible with public safety, the risk of the defendant committing additional offenses, (ii) that a violation of any of the conditions of community supervision imposed by the office may result in the revision of existing conditions, the addition of new conditions, a recommendation that civil commitment proceedings should be instituted, or criminal prosecution, and (iii) of his or her right to challenge the determination of the conditions of community supervision by the office and the right to a periodic review of the conditions of community supervision pursuant to section 83-174.03 to determine if the conditions are still necessary to protect the public;

(b) Require the defendant to read and sign a form stating that the duty of the defendant to comply with the conditions of community supervision and his or her rights to challenge the conditions of community supervision imposed by the office has been explained; and

(c) Retain a copy of the written notification signed by the defendant.

(2) Prior to the release of a person serving a sentence for an offense requiring lifetime community supervision by the Office of Parole Administration pursuant to section 83-174.03, the Department of Correctional Services, the Department

of Health and Human Services, or a city or county correctional or jail facility shall:

(a) Provide written notice to the person that he or she shall be subject to lifetime community supervision by the office upon release from incarceration. The written notice shall inform the person (i) that he or she shall be subject to lifetime community supervision by the office upon release and that the office shall conduct a risk assessment and evaluation of the defendant to determine the conditions of community supervision which will minimize, in the least restrictive manner that is compatible with public safety, the risk of the person committing additional offenses, (ii) that a violation of any of the conditions of community supervision imposed by the office may result in the revision of existing conditions, the addition of new conditions, a recommendation that civil commitment proceedings should be instituted, or criminal prosecution, and (iii) of his or her right to challenge the determination of the conditions of community supervision by the office and the right to a periodic review of the conditions of community supervision pursuant to section 83-174.03 to determine if the conditions are still necessary to protect the public;

(b) Require the defendant to read and sign a form stating that the duty of the defendant to comply with the conditions of community supervision and his or her right to challenge the conditions of community supervision imposed by the office has been explained; and

(c) Retain a copy of the written notification signed by the person.

Source: Laws 2006, LB 1199, § 106.

ARTICLE 41

DNA TESTING

(a) DNA IDENTIFICATION INFORMATION ACT

Section
29-4101. Act, how cited.
29-4102. Legislative findings.
29-4103. Terms, defined.
29-4104. State DNA Data Base; established; contents; Nebraska State Patrol; duties.
29-4105. DNA samples and records; access restrictions; Nebraska State Patrol; duties.
29-4106. Person subject to DNA sample.
29-4106.01. DNA samples; collection method choice.
29-4107. DNA samples; persons authorized to obtain samples; immunity.
29-4108. DNA samples and DNA records; confidentiality.
29-4109. DNA record; expungement; procedure.
29-4110. Unlawfully obtaining or possessing DNA samples or records; penalty.
29-4111. Unlawful disclosure for pecuniary gain; penalty; attorney's fees.
29-4112. Injunction.
29-4113. DNA samples; additional offenses; Nebraska State Patrol; duties.
29-4114. Rules and regulations.
29-4115. Act; how construed.

(b) DNA TESTING ACT

29-4116. Act, how cited.
29-4117. Legislative intent.
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29-4119. Exculpatory evidence, defined.
29-4120. DNA testing; procedure.
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Section
29-4122. Appointed counsel; when.
29-4123. DNA testing results; effect.
29-4124. Act; how construed.
29-4125. Biological material; secured; when.

(c) DNA SAMPLES

29-4126. Limitations on obtaining and using samples.

(a) DNA IDENTIFICATION INFORMATION ACT

29-4101 Act, how cited.

Sections 29-4101 to 29-4115 shall be known and may be cited as the DNA Identification Information Act.

Source: Laws 1997, LB 278, § 1; Laws 2006, LB 385, § 2; Laws 2006, LB 1113, § 28.

29-4102 Legislative findings.

The Legislature finds that DNA data banks are an important tool in criminal investigations, in the exclusion of individuals who are the subject of criminal investigations or prosecutions, in deterring and detecting recidivist acts, and in locating and identifying missing persons and human remains. Several states have enacted laws requiring persons convicted of certain crimes, especially sex offenses, to provide genetic samples for DNA typing tests. Moreover, it is the policy of this state to assist federal, state, and local criminal justice and law enforcement agencies in the identification and detection of individuals in criminal investigations and in locating and identifying missing persons and human remains. It is in the best interest of this state to establish a State DNA Data Base for DNA records and a State DNA Sample Bank as a repository for DNA samples from individuals convicted of felony sex offenses and other specified offenses and from individuals for purposes of assisting in locating and identifying missing persons and human remains.

Source: Laws 1997, LB 278, § 2; Laws 2006, LB 385, § 3; Laws 2006, LB 1113, § 29.

29-4103 Terms, defined.

For purposes of the DNA Identification Information Act:

(1) Combined DNA Index System means the Federal Bureau of Investigation's national DNA identification index system that allows the storage and exchange of DNA records submitted by state and local forensic DNA laboratories;

(2) DNA means deoxyribonucleic acid which is located in the cells and provides an individual's personal genetic blueprint. DNA encodes genetic information that is the basis of human heredity and forensic identification;

(3) DNA record means the DNA identification information stored in the State DNA Data Base or the Combined DNA Index System which is derived from DNA typing test results;

(4) DNA sample means a blood, tissue, or bodily fluid sample provided by any person covered by the DNA Identification Information Act for analysis or storage, or both;

(5) DNA typing tests means the laboratory procedures which evaluate the characteristics of a DNA sample which are of value in establishing the identity of an individual;

(6) Felony sex offense means a felony offense, or an attempt, conspiracy, or solicitation to commit a felony offense, under any of the following:

(a) Kidnapping of a minor pursuant to section 28-313, except when the person is the parent of the minor and was not convicted of any other offense in this subdivision;

(b) Incest of a minor pursuant to section 28-703;

(c) Sexual assault in the first or second degree pursuant to section 28-319 or 28-320;

(d) Sexual assault of a child in the second or third degree pursuant to section 28-320.01;

(e) Sexual assault of a child in the first degree pursuant to section 28-319.01;

(f) Sexual assault of a vulnerable adult pursuant to subdivision (1)(c) of section 28-386; and

(g) False imprisonment of a minor in the first degree pursuant to section 28-314, except when the person is the parent of the minor and was not convicted of any other offense in this subdivision;

(7) Law enforcement agency includes a police department, a town marshal, a county sheriff, and the Nebraska State Patrol;

(8) Other specified offense means an offense, or an attempt, conspiracy, or solicitation to commit an offense, under any of the following:

(a) Murder in the first degree pursuant to section 28-303;

(b) Murder in the second degree pursuant to section 28-304;

(c) Manslaughter pursuant to section 28-305;

(d) Stalking pursuant to sections 28-311.02 to 28-311.05;

(e) Burglary pursuant to section 28-507 provided that the real estate is a dwelling place intended for human occupancy; or

(f) Robbery pursuant to section 28-324; and

(9) Released means any release, parole, furlough, work release, prerelease, or release in any other manner from a prison, a jail, or any other detention facility or institution.

Source: Laws 1997, LB 278, § 3; Laws 2006, LB 385, § 4; Laws 2006, LB 1199, § 30.

29-4104 State DNA Data Base; established; contents; Nebraska State Patrol; duties.

The State DNA Data Base is established. The Nebraska State Patrol shall administer the State DNA Data Base and shall provide DNA records to the Federal Bureau of Investigation for storage and maintenance in the Combined DNA Index System. The patrol shall provide for liaison with the Federal Bureau of Investigation and other law enforcement agencies in regard to the state's participation in the Combined DNA Index System. The State DNA Data Base shall store and maintain DNA records related to:

(1) Forensic casework, including, but not limited to, forensic casework relating to missing persons, relatives of missing persons, and unidentified human remains;

(2) Convicted offenders required to provide a DNA sample under the DNA Identification Information Act;

(3) Anonymous DNA records used for research or quality control; and

(4) Missing persons, relatives of missing persons, and unidentified human remains.

Source: Laws 1997, LB 278, § 4; Laws 2006, LB 385, § 5; Laws 2006, LB 1113, § 30.

29-4105 DNA samples and records; access restrictions; Nebraska State Patrol; duties.

(1) The Nebraska State Patrol shall prescribe procedures to be used in the collection, submission, identification, analysis, storage, and disposition of DNA samples in the State DNA Sample Bank and DNA records in the State DNA Data Base. These procedures shall include quality assurance guidelines for laboratories which submit DNA records to the State DNA Data Base and shall also require that all laboratories be accredited by the American Society of Crime Laboratory Directors-LAB-Laboratory Accreditation Board or the National Forensic Science Technology Center or by any other national accrediting body or public agency which has requirements that are substantially equivalent to or more comprehensive than those of the society or center. The State DNA Data Base shall be compatible with the procedures specified by the Federal Bureau of Investigation, including the use of comparable test procedures, laboratory equipment, supplies, and computer software. The DNA records shall be securely stored in the State DNA Data Base and retained in a manner consistent with the procedures established by the Federal Bureau of Investigation.

(2) The Nebraska State Patrol may contract with the University of Nebraska Medical Center to establish the State DNA Sample Bank at the medical center and for DNA typing tests. The State DNA Sample Bank shall serve as the repository of DNA samples collected under the DNA Identification Information Act and other forensic casework. Any such contract shall require that the University of Nebraska Medical Center be subject to the same restrictions and requirements of the act, insofar as applicable, as the Nebraska State Patrol, as well as any additional restrictions imposed by the patrol.

(3) The DNA samples and DNA records shall only be used by the Nebraska State Patrol (a) to create a separate population data base comprised of DNA records obtained after all personal identification is removed and (b) for quality assurance, training, and research purposes related to human DNA identification. The patrol may share or disseminate the population data base with other law enforcement agencies or forensic DNA laboratories which assist the patrol with statistical data bases. The population data base may be made available to and searched by other agencies participating in the Combined DNA Index System.

(4) Except for records and samples expunged under section 29-4109, the Nebraska State Patrol shall permanently retain DNA samples and records of an individual obtained under section 29-4106. Any other DNA samples and records

related to forensic casework, other than those used for research or quality control, shall not be permanently retained but shall be retained only as long as needed for a criminal investigation or criminal prosecution.

(5) If the Nebraska State Patrol determines after analysis that a forensic sample has been submitted by an individual who has been eliminated as a suspect in a crime, the patrol or the law enforcement agency which submitted the sample shall destroy the DNA sample and record in the presence of a witness. After destruction, the patrol or law enforcement agency shall make and keep a written record of the destruction, signed by the individual who witnessed the destruction. After the patrol or the law enforcement agency destroys the DNA sample and record, it shall notify the individual if he or she is not a minor or the parent or legal guardian of a minor by certified mail that the sample and record have been destroyed. Destruction of a DNA sample and record under this section shall not be considered the offense of tampering with physical evidence under section 28-922.

Source: Laws 1997, LB 278, § 5; Laws 2001, LB 432, § 7; Laws 2006, LB 385, § 6.

29-4106 Person subject to DNA sample.

(1) A person who is convicted of a felony sex offense or other specified offense on or after July 14, 2006, who does not have a DNA sample available for use in the State DNA Sample Bank, shall have a DNA sample collected:

(a) Upon intake to a prison, jail, or other detention facility or institution to which such person is sentenced. If the person is already confined at the time of sentencing, the person shall have a DNA sample collected immediately after the sentencing. Such DNA samples shall be collected at the place of incarceration or confinement. Such person shall not be released unless and until a DNA sample has been collected; or

(b) As a condition for any sentence which will not involve an intake into a prison, jail, or other detention facility or institution. Such DNA samples shall be collected at a detention facility or institution as specified by the court. Such person shall not be released unless and until a DNA sample has been collected.

(2) A person who has been convicted of a felony sex offense or other specified offense before July 14, 2006, who does not have a DNA sample available for use in the State DNA Sample Bank, and who is still serving a term of confinement for such offense on July 14, 2006, shall not be released prior to the expiration of his or her maximum term of confinement unless and until a DNA sample has been collected.

Source: Laws 1997, LB 278, § 6; Laws 2006, LB 385, § 7; Laws 2006, LB 1113, § 32.

29-4106.01 DNA samples; collection method choice.

A person required to submit a DNA sample pursuant to section 29-4106 shall be given the choice of having the sample collected by a blood draw or a buccal cell collection kit. Any person who collects a DNA sample pursuant to section 29-4106 shall honor the choice of collection method made by the person providing the DNA sample. If the person required to submit the DNA sample

does not indicate a preference as to the method of collection, either method may be used to collect the sample.

Source: Laws 2006, LB 1113, § 31.

29-4107 DNA samples; persons authorized to obtain samples; immunity.

(1) Only individuals (a) who are physicians or registered nurses, (b) who are trained to withdraw human blood for scientific or medical purposes and are obtaining blood specimens while working under orders of or protocols and procedures approved by a physician, registered nurse, or other independent health care practitioner licensed to practice by the state if the scope of practice of that practitioner permits the practitioner to obtain blood specimens, or (c) who are both employed by a licensed institution or facility and have been trained to withdraw human blood for scientific or medical purposes shall withdraw blood for a DNA blood sample under the DNA Identification Information Act. Withdrawal of blood shall be performed in a medically approved manner using a collection kit provided or accepted by the Nebraska State Patrol. The collection of buccal cell samples shall be performed by any person approved or designated by the Nebraska State Patrol and using a collection kit provided or accepted by the Nebraska State Patrol.

(2) In addition to the DNA sample, one thumb print or fingerprint shall be taken from the person from whom the DNA sample is being collected for the exclusive purpose of verifying the identity of such person. The DNA sample and the thumb print or fingerprint shall be delivered to the Nebraska State Patrol within five working days after collecting the sample.

(3) A person authorized to collect DNA samples under the act is not criminally liable for collecting a DNA sample and transmitting DNA records pursuant to the act if he or she performs these activities in good faith and is not civilly liable for such activities if he or she performed such activities in a reasonable manner according to generally accepted medical standards for blood samples or in accordance with the collection kit and procedures approved by the Nebraska State Patrol for tissue samples.

Source: Laws 1997, LB 278, § 7; Laws 2000, LB 151, § 1; Laws 2006, LB 385, § 8; Laws 2006, LB 1113, § 33.

29-4108 DNA samples and DNA records; confidentiality.

(1) All DNA samples and DNA records submitted to the State DNA Sample Bank or the State DNA Data Base are confidential except as otherwise provided in the DNA Identification Information Act. The Nebraska State Patrol shall make DNA records in the State DNA Data Base available:

(a) To law enforcement agencies and forensic DNA laboratories which serve such agencies; and

(b) Upon written or electronic request and in furtherance of an official investigation of a criminal offense or offender or suspected offender.

(2) The Nebraska State Patrol shall adopt and promulgate rules and regulations governing the methods of obtaining information from the State DNA Data Base and the Combined DNA Index System and procedures for verification of the identity and authority of the requester.

(3) The Nebraska State Patrol may, for good cause shown, revoke or suspend the right of a forensic DNA laboratory in this state to have access to or submit records to the State DNA Data Base.

(4) For purposes of this subsection, person means a law enforcement agency, the Federal Bureau of Investigation, any forensic DNA laboratory, or person. No records or DNA samples shall be provided to any person unless such person enters into a written agreement with the Nebraska State Patrol to comply with the provisions of section 29-4109 relative to expungement, when notified by the Nebraska State Patrol that expungement has been granted. Every person shall comply with the provisions of section 29-4109 within ten calendar days of receipt of such notice and certify in writing to the Nebraska State Patrol that such compliance has been effectuated. The Nebraska State Patrol shall provide notice of such certification to the person who was granted expungement.

Source: Laws 1997, LB 278, § 8; Laws 2006, LB 385, § 9.

29-4109 DNA record; expungement; procedure.

A person whose DNA record has been included in the State DNA Data Base pursuant to the DNA Identification Information Act may request expungement on the grounds that the conviction on which the authority for including such person's DNA record was based has been reversed and the case dismissed. The Nebraska State Patrol shall purge all DNA records and identifiable information in the data base pertaining to the person and destroy all DNA samples from the person upon receipt of a written request for expungement pursuant to this section and a certified copy of the final court order reversing and dismissing the conviction.

Within ten calendar days of granting expungement, the Nebraska State Patrol shall provide written notice of such expungement pursuant to subsection (4) of section 29-4108, to any person to whom DNA records and samples have been made available. The Nebraska State Patrol shall establish procedures for providing notice of certification of expungement to the person who was granted expungement.

Source: Laws 1997, LB 278, § 9; Laws 2006, LB 385, § 10.

29-4110 Unlawfully obtaining or possessing DNA samples or records; penalty.

(1) Any person who has possession of or access to individually identifiable DNA samples or DNA records in the State DNA Data Base or in the State DNA Sample Bank shall not disclose such samples or records in any manner to any person or agency not authorized to receive them knowing that such person or agency is not authorized to receive them.

(2) No person shall obtain individually identifiable DNA samples or DNA records from the State DNA Data Base or the State DNA Sample Bank without authorization to do so. Any person who knowingly violates this subsection is guilty of a Class III misdemeanor.

Source: Laws 1997, LB 278, § 10.

29-4111 Unlawful disclosure for pecuniary gain; penalty; attorney's fees.

(1) Any person who has possession of or access to individually identifiable DNA samples or DNA records contained in the State DNA Data Base or in the

State DNA Sample Bank and who for pecuniary gain for such person or for any other person discloses such samples and records in any manner to any person or agency not authorized to receive them is guilty of a Class III misdemeanor.

(2) Any person aggrieved by a knowing violation of this section has the substantive right to bring an action for damages for such violation in a court of competent jurisdiction. A person found by the court to have been aggrieved by a knowing violation of this section may receive damages of not less than one hundred dollars for each violation and may recover the reasonable costs of the litigation and attorney's fees.

Source: Laws 1997, LB 278, § 11.

29-4112 Injunction.

The Nebraska State Patrol or any other aggrieved individual or agency may institute an action in a court of proper jurisdiction against any person, including law enforcement agencies, to enjoin such person or agency from violating the DNA Identification Information Act.

Source: Laws 1997, LB 278, § 12; Laws 2006, LB 385, § 11.

29-4113 DNA samples; additional offenses; Nebraska State Patrol; duties.

The Nebraska State Patrol may recommend to the Legislature that the Legislature enact legislation for the inclusion of additional offenses for which DNA samples shall be collected and otherwise subjected to the DNA Identification Information Act. In determining whether to recommend additional offenses, the Nebraska State Patrol shall consider those offenses for which DNA testing will have a substantial impact on the detection and identification of sexual offenders and violent offenders.

Source: Laws 1997, LB 278, § 13; Laws 2006, LB 385, § 12.

29-4114 Rules and regulations.

The Nebraska State Patrol shall adopt and promulgate rules and regulations to carry out the DNA Identification Information Act.

Source: Laws 1997, LB 278, § 14; Laws 2006, LB 385, § 13.

29-4115 Act; how construed.

Except as provided in section 29-4105, the DNA Identification Information Act shall not limit or abrogate any existing authority of peace officers to collect, maintain, store, and utilize DNA samples for law enforcement purposes.

Source: Laws 1997, LB 278, § 15; Laws 2001, LB 432, § 8; Laws 2006, LB 385, § 14.

(b) DNA TESTING ACT

29-4116 Act, how cited.

Sections 29-4116 to 29-4125 shall be known and may be cited as the DNA Testing Act.

Source: Laws 2001, LB 659, § 1.

29-4117 Legislative intent.

It is the intent of the Legislature that wrongfully convicted persons have an opportunity to establish their innocence through deoxyribonucleic acid, DNA, testing.

Source: Laws 2001, LB 659, § 2.

29-4118 Legislative findings.

The Legislature finds and declares:

(1) Over the past decade, DNA testing has emerged as the most reliable forensic technique for identifying persons when biological material is found at a crime scene or transferred from the victim to the person responsible and transported from the crime scene;

(2) Because of its scientific precision and reliability, DNA testing can, in some cases, conclusively establish the guilt or innocence of a criminal defendant. In other cases, DNA may not conclusively establish guilt or innocence but may have significant probative value to a finder of fact;

(3) While DNA testing is increasingly commonplace in pretrial investigations currently, it was not widely available in cases prior to 1994. Moreover, new forensic DNA testing procedures, such as polymerase chain reaction amplification, DNA short tandem repeat analysis, and mitochondrial DNA analysis, make it possible to obtain results from minute samples that previously could not be tested and to obtain more informative and accurate results than earlier forms of forensic DNA testing could produce. As a result, in some cases, convicted inmates have been exonerated by new DNA tests after earlier tests had failed to produce definitive results;

(4) Because DNA testing is often feasible on relevant biological material that is decades old, it can in some circumstances prove that a conviction which predated the development of DNA testing was based upon incorrect factual findings. DNA evidence produced even decades after a conviction can provide a more reliable basis for establishing a correct verdict than any evidence proffered at the original trial. DNA testing, therefor, can and has resulted in postconviction exoneration of innocent men and women;

(5) In the past decade, there have been multiple postconviction exonerations in the United States and Canada based upon DNA testing. In addition, a disturbing number of persons sentenced to death have been exonerated through postconviction DNA testing, some of these exonerations coming within days of their execution date;

(6) DNA testing responds to serious concerns regarding wrongful convictions, especially those arising out of mistaken eyewitness identification testimony; and

(7) There is a compelling need to ensure the preservation of biological material for postconviction DNA testing, for a limited period.

Source: Laws 2001, LB 659, § 3.

29-4119 Exculpatory evidence, defined.

For purposes of the DNA Testing Act, exculpatory evidence means evidence which is favorable to the person in custody and material to the issue of the guilt of the person in custody.

Source: Laws 2001, LB 659, § 4.

29-4120 DNA testing; procedure.

(1) Notwithstanding any other provision of law, a person in custody pursuant to the judgment of a court may, at any time after conviction, file a motion, with or without supporting affidavits, in the court that entered the judgment requesting forensic DNA testing of any biological material that:

(a) Is related to the investigation or prosecution that resulted in such judgment;

(b) Is in the actual or constructive possession or control of the state or is in the possession or control of others under circumstances likely to safeguard the integrity of the biological material's original physical composition; and

(c) Was not previously subjected to DNA testing or can be subjected to retesting with more current DNA techniques that provide a reasonable likelihood of more accurate and probative results.

(2) Notice of such motion shall be served by the person in custody upon the county attorney of the county in which the prosecution was held.

(3) Upon receiving notice of a motion filed pursuant to subsection (1) of this section, the county attorney shall take such steps as are necessary to ensure that any remaining biological material that was secured by the state or a political subdivision in connection with the case is preserved pending the completion of proceedings under the DNA Testing Act.

(4) The county attorney shall prepare an inventory of all evidence that was secured by the state or a political subdivision in connection with the case and shall submit a copy of the inventory to the person or the person's counsel and to the court. If evidence is intentionally destroyed after notice of a motion filed pursuant to this section, the court shall impose appropriate sanctions, including criminal contempt.

(5) Upon consideration of affidavits or after a hearing, the court shall order DNA testing pursuant to a motion filed under subsection (1) of this section upon a determination that such testing was effectively not available at the time of trial, that the biological material has been retained under circumstances likely to safeguard the integrity of its original physical composition, and that such testing may produce noncumulative, exculpatory evidence relevant to the claim that the person was wrongfully convicted or sentenced.

(6) All forensic DNA tests shall be performed by a laboratory which is accredited by the American Society of Crime Laboratory Directors-LAB-Laboratory Accreditation Board or the National Forensic Science Technology Center or by any other national accrediting body or public agency which has requirements that are substantially equivalent to or more comprehensive than those of the society or center.

Source: Laws 2001, LB 659, § 5.

As an initial matter, DNA testing presupposes at least two samples of biological material. State v. Dean, 270 Neb. 972, 708 N.W.2d 640 (2006).

A motion for DNA testing is similar to a motion for new trial based on newly discovered evidence, as opposed to a collateral postconviction attack on a final judgment. State v. Lotter, 266 Neb. 758, 669 N.W.2d 438 (2003).

A motion for DNA testing under the DNA Testing Act is addressed to the discretion of the trial court and unless an abuse of discretion is shown, the determination of the trial court will not be disturbed on appeal. State v. Lotter, 266 Neb. 758, 669 N.W.2d 438 (2003).

DNA testing cannot be exculpatory for purposes of this section if a defendant merely seeks to use such evidence to show how blood was deposited on a specific item that is to be tested. State v. Lotter, 266 Neb. 758, 669 N.W.2d 438 (2003).

DNA testing could not produce noncumulative, exculpatory evidence relevant to the claim that the defendant was wrongfully sentenced when the record is barren of any evidence that the defendant was merely an accomplice or that his participation in the crime was relatively minor. State v. Lotter, 266 Neb. 758, 669 N.W.2d 438 (2003).

In an appeal from a proceeding under the DNA Testing Act, the trial court's findings of fact will be upheld unless such

findings are clearly erroneous. State v. Lotter, 266 Neb. 758, 669 N.W.2d 438 (2003).

Subsection (5) of this section requires that the specific DNA testing requested in the motion, as opposed to DNA testing in general, was effectively not available at the time of trial. State v. Lotter, 266 Neb. 758, 669 N.W.2d 438 (2003).

The requirements of this section are met if types of DNA testing are available that were effectively not available at the time of trial, and if such testing will produce more accurate and probative results. State v. Lotter, 266 Neb. 758, 669 N.W.2d 438 (2003).

29-4121 DNA testing; costs.

The cost of DNA testing ordered under subsection (5) of section 29-4120 shall be paid by the person filing the motion, unless the court determines such person to be indigent. If the person filing such motion is determined by the court to be indigent, the costs shall be paid by the state in the following manner:

(1) If the Commission on Public Advocacy has been appointed to represent the person filing the motion, as determined under section 29-4122, the costs of testing shall be paid by the commission from funds appropriated by the Legislature; and

(2) If the Commission on Public Advocacy has not been appointed to represent the person filing the motion, the court shall hold a hearing to determine the costs for DNA testing. The court shall order the commission to pay such costs. The order shall be forwarded by the clerk of the court to the commission, along with copies of all invoices for such DNA testing. Upon receipt, the commission shall pay such costs from funds appropriated by the Legislature.

Source: Laws 2001, LB 659, § 6; Laws 2002, LB 876, § 70.

Cross References

Commission on Public Advocacy, see the County Revenue Assistance Act, section 29-3919.

29-4122 Appointed counsel; when.

Upon a showing by the person that DNA testing may be relevant to the person's claim of wrongful conviction, the court shall appoint counsel for an indigent person as follows:

(1) The court shall first contact the chief counsel for the Commission on Public Advocacy to inquire if the commission is able to accept the appointment. If the chief counsel determines that the commission can accept the appointment, then the court shall appoint the commission pursuant to the County Revenue Assistance Act; and

(2) If the chief counsel declines the appointment because of a conflict of interest or the case would exceed the caseload standards set by the commission, then the court shall appoint an attorney licensed to practice law in this state with at least five years experience in felony litigation to represent the indigent person at all stages of the proceedings. Counsel appointed under this subdivision, other than the public defender, shall obtain leave of court before proceeding beyond an initial direct appeal to either the Court of Appeals or the Supreme Court to any further direct, collateral, or postconviction appeals to state or federal courts. Counsel appointed under this subdivision shall file an application for fees and expenses in the district court which appointed him or her for all fees and expenses reasonably necessary to permit him or her to effectively and competently represent the client. The court, upon hearing the application, shall fix reasonable attorney's fees and expenses. The court's order shall require that such fees and expenses be paid by the Commission on Public

Advocacy from funds appropriated by the Legislature. Upon receipt of the order, the commission shall pay such fees and expenses in the full amount determined by the court.

Source: Laws 2001, LB 659, § 7; Laws 2002, LB 876, § 71.

Cross References

Commission on Public Advocacy, see the County Revenue Assistance Act, section 29-3919.

29-4123 DNA testing results; effect.

(1) The results of the final DNA or other forensic testing ordered under subsection (5) of section 29-4120 shall be disclosed to the county attorney, to the person filing the motion, and to the person's attorney.

(2) Upon receipt of the results of such testing, any party may request a hearing before the court when such results exonerate or exculpate the person. Following such hearing, the court may, on its own motion or upon the motion of any party, vacate and set aside the judgment and release the person from custody based upon final testing results exonerating or exculpating the person.

(3) If the court does not grant the relief contained in subsection (2) of this section, any party may file a motion for a new trial under sections 29-2101 to 29-2103.

Source: Laws 2001, LB 659, § 8.

The DNA Testing Act establishes a clear procedural framework for movants seeking relief pursuant to the DNA Testing Act. First, a movant may obtain DNA testing if, inter alia, the testing may produce noncumulative, exculpatory evidence relevant to the claim that the person was wrongfully convicted or sentenced. Second, the court may vacate and set aside the judgment in circumstances where the DNA testing results are either completely exonerative or highly exculpatory-when the results, when considered with the evidence of the case which resulted in the underlying judgment, show a complete lack of evidence to establish an essential element of the crime charged. This requires a finding that guilt cannot be sustained because the evidence is doubtful in character and completely lacking in probative value. Third, in other circumstances where the evidence is merely exculpatory, the court may order a new trial if the newly discovered exculpatory DNA evidence is of such a nature that if it had been offered and admitted at the former trial, it probably would have produced a substantially different result. State v. Buckman, 267 Neb. 505, 675 N.W.2d 372 (2004).

A court may properly grant a motion to vacate and set aside the judgment under subsection (2) of this section when (1) the DNA testing results exonerate or exculpate the person and (2) the results, when considered with the evidence of the case which resulted in the underlying judgment, show a complete lack of evidence to establish an essential element of the crime charged. This requires a finding that guilt cannot be sustained because the evidence is doubtful in character and completely lacking in probative value. State v. Bronson, 267 Neb. 103, 672 N.W.2d 244 (2003).

The appeal of a ruling denying a motion to vacate and set aside the judgment under subsection (2) of this section of the DNA Testing Act does not deprive a trial court of jurisdiction to consider a motion for new trial filed under subsection (6) of section 29-2101 based on newly discovered evidence obtained under the DNA Testing Act. State v. Bronson, 267 Neb. 103, 672 N.W.2d 244 (2003).

The denial of a motion to vacate and set aside the judgment under subsection (2) of this section affects a substantial right in a special proceeding and is therefore an appealable order under section 25-1902. State v. Bronson, 267 Neb. 103, 672 N.W.2d 244 (2003).

29-4124 Act; how construed.

Nothing in the DNA Testing Act shall be construed to limit the circumstances under which a person may obtain DNA testing or other postconviction relief under any other provision of law.

Source: Laws 2001, LB 659, § 9.

29-4125 Biological material; secured; when.

(1) Notwithstanding any other provision of law and subject to subsection (2) or (4) of this section, state agencies and political subdivisions shall preserve any biological material secured in connection with a criminal case for such period of time as any person remains incarcerated in connection with that case.

(2) State agencies or political subdivisions that have secured biological material for use in criminal cases may dispose of biological material before expiration of the period of time specified in subsection (1) of this section if:

(a) The state agency or political subdivision which secured the biological material for use in a criminal case notifies any person who remains incarcerated in connection with the case, such person's counsel of record, or if there is no counsel of record, the public defender, if applicable, in the county in which the judgment of conviction of such person was entered. The notice shall include:

(i) The intention of the state agency or political subdivision to dispose of the material after ninety days after receipt of the notice; and

(ii) The provisions of the DNA Testing Act;

(b) The person, such person's counsel of record, or the public defender does not file a motion under section 29-4120 within ninety days after receipt of notice under this section; and

(c) No other provision of law or court order requires that such biological material be preserved.

(3) The person, such person's counsel of record, or the public defender who receives notice under subdivision (2)(a) of this section, may, in lieu of a motion under section 29-4120, request in writing to take possession of the biological material for the purpose of having the material available for any future discovery of scientific or forensic techniques. Copies of any such written request shall be provided to both the court and to the county attorney. The costs of acquisition, preservation, and storage of any such material shall be at the expense of the person.

(4) The Department of Health and Human Services shall preserve biological material obtained for the purpose of determining the concentration of alcohol in a person's blood for two years unless a request is made for the retention of such material beyond such period in connection with a pending legal action.

Source: Laws 2001, LB 659, § 10; Laws 2003, LB 245, § 2; Laws 2007, LB296, § 48.

(c) DNA SAMPLES

29-4126 Limitations on obtaining and using samples.

Notwithstanding any other provision of law:

(1) No DNA sample shall be obtained from any person for any law enforcement purpose in connection with an investigation of a crime without probable cause, a court order, or voluntary consent as described in subdivision (2) of this section;

(2) In the absence of probable cause, if any person is requested by a law enforcement person or agency to consent to the taking of a DNA sample in connection with a law enforcement investigation of a particular crime, such consent shall be deemed voluntary only if:

(a) The sample is knowingly and voluntarily given in connection with the investigation of a particular crime;

(b) The person was informed by a written advisory prepared by the law enforcement agency that the request may be refused and that such refusal does not provide probable cause or reasonable suspicion to believe that the person has committed a crime, and the person signs the advisory; and

(c) No threat, pressure, duress, or coercion of any kind was employed, whether (i) direct or indirect, (ii) express or implied, or (iii) physical or psychological;

(3) Any DNA sample obtained in violation of this section is not admissible in any proceeding for any purpose whatsoever;

(4) A person shall be notified in writing by the law enforcement agency immediately upon the determination that he or she has not been implicated by his or her DNA sample in the commission of the particular crime in connection with which the DNA sample was obtained;

(5) Except as authorized in subdivision (7) of this section, such sample and all identifying information pertaining to the person shall be delivered to the person within ten days after the notification required by subdivision (4) of this section with a written explanation that the materials are being turned over in compliance with this section;

(6) Except as authorized in subdivision (7) of this section, the law enforcement agency shall purge all records and identifiable information pertaining to the person specified in subdivisions (4) and (5) of this section;

(7) An accredited laboratory authorized to perform DNA testing under section 29-4105 shall be allowed to maintain the minimum records and supporting documentation of DNA tests that it has performed as needed for the sole purpose of complying with the laboratory accreditation standards as set forth by a national accrediting body or public agency;

(8) No record authorized for retention under subdivision (7) of this section shall be transferred, shared, or otherwise provided to any national, state, county, or local law enforcement agency unless such person has been implicated in the case by his or her DNA sample;

(9) Any aggrieved person may file an action in district court against any person, including any law enforcement agency, to enjoin such person or law enforcement agency from violating this section; and

(10) Any person aggrieved by a knowing violation of this section may bring an action in district court for damages. A person found by the court to be aggrieved by a violation of this section shall receive damages of not less than one thousand dollars and may recover reasonable costs and attorney's fees.

For purposes of this section, DNA means deoxyribonucleic acid.

Source: Laws 2005, LB 361, § 22; Laws 2006, LB 1113, § 34.

ARTICLE 42
AUDIOVISUAL COURT APPEARANCES

Section

29-4201. Legislative intent.
29-4202. Audiovisual court appearance; when permitted.
29-4203. Audiovisual court appearance; requirements.
29-4204. Audiovisual communication system and facilities; requirements.
29-4205. Audiovisual court appearance; procedures.
29-4206. District court; accept written waiver of arraignment and plea of not guilty; form.
29-4207. Rules of practice and procedure.

29-4201 Legislative intent.

It is the intent and purpose of sections 29-4201 to 29-4207 to authorize the usage of audiovisual court appearances and certain district court arraignments by writing in criminal proceedings consistent with the statutory and constitutional rights guaranteed by the Constitution of the United States and the Constitution of Nebraska.

Source: Laws 1999, LB 623, § 1.

29-4202 Audiovisual court appearance; when permitted.

(1) Except for trials, when the appearance of a detainee or prisoner is required in any court at a nonevidentiary criminal proceeding, the detainee or prisoner may make an audiovisual court appearance. However, a judge or magistrate is not required to allow an audiovisual court appearance and may order the detainee or prisoner to appear physically in the courtroom.

(2) An audiovisual court appearance shall meet the conditions required by sections 29-4201 to 29-4207.

Source: Laws 1999, LB 623, § 2; Laws 2006, LB 1115, § 21.

29-4203 Audiovisual court appearance; requirements.

When an audiovisual court appearance is made:

(1) The detainee or prisoner shall sign a written consent and waiver of his or her right to a physical personal appearance at the proceeding;

(2) The judge or magistrate shall verify the written consent and waiver and obtain an oral waiver of the detainee's or prisoner's right to a physical personal appearance at the commencement of the proceeding; and

(3) The audiovisual communication system and the facilities shall meet the requirements of section 29-4204.

Source: Laws 1999, LB 623, § 3; Laws 2006, LB 1115, § 22.

29-4204 Audiovisual communication system and facilities; requirements.

The audiovisual communication system and the facilities for an audiovisual court appearance shall:

(1) Operate so that the detainee or prisoner and the judge or magistrate can see each other simultaneously and converse with each other verbally and documents can be transmitted between the judge or magistrate and the detainee or prisoner;

(2) Operate so that the detainee or prisoner and his or her counsel, if any, are both physically in the same location during the audiovisual court appearance; or if the detainee or prisoner waives the right to have counsel physically present and the detainee or prisoner and his or her counsel are in different locations, operate so that the detainee or prisoner and counsel can communicate privately and confidentially and be allowed to confidentially transmit papers back and forth; and

(3) Be at locations conducive to judicial proceedings. Audiovisual court proceedings may be conducted in the courtroom, the judge's or magistrate's chambers, or any other location suitable for audiovisual communications. The locations shall be sufficiently lighted for use of the audiovisual equipment. The location provided for the judge or magistrate to preside shall be accessible to the public and shall be operated so that interested persons have an opportunity to observe the proceeding.

Source: Laws 1999, LB 623, § 4; Laws 2006, LB 1115, § 23.

29-4205 Audiovisual court appearance; procedures.

In a proceeding in which an audiovisual court appearance is made:

(1) Facsimile signatures or electronically reproduced signatures are acceptable for purposes of releasing the detainee or prisoner from custody; however, actual signed copies of the release documents must be promptly filed with the court and the detainee or prisoner must promptly be provided with a copy of all documents which the detainee or prisoner signs;

(2) The audiovisual appearance shall not be videotaped. The record of the court reporter or stenographer shall be the official and sole record of the proceeding; and

(3) On motion of the detainee or prisoner or the prosecuting attorney or in the court's discretion, the court may terminate an audiovisual appearance and require an appearance by the detainee or prisoner.

Source: Laws 1999, LB 623, § 5; Laws 2006, LB 1115, § 24.

29-4206 District court; accept written waiver of arraignment and plea of not guilty; form.

The district courts may accept a written waiver of arraignment and plea of not guilty from any defendant. The form shall contain the necessary consent and waiver of the right to a physical appearance, shall be signed by the defendant and his or her counsel of record, if any, and shall be filed with the clerk of the court.

Source: Laws 1999, LB 623, § 6; Laws 2006, LB 1115, § 25.

29-4207 Rules of practice and procedure.

The Supreme Court may promulgate rules of practice and procedure for implementation of sections 29-4201 to 29-4207.

Source: Laws 1999, LB 623, § 7; Laws 2006, LB 1115, § 26.

ARTICLE 43

SEXUAL ASSAULT AND DOMESTIC VIOLENCE

Cross References

Protection from Domestic Abuse Act, see section 42-901.
Uniform Interstate Enforcement of Domestic Violence Protection Orders Act, see section 42-932.

Section
29-4301. Legislative findings.
29-4302. Terms, defined.
29-4303. Confidential communications; disclosure; when.
29-4304. Confidential communications; waiver; sections, how construed.
29-4305. Law enforcement agencies, prosecuting attorneys, and Office of Probation Administration; duties.
29-4306. Collection of evidence; requirements.

29-4301 Legislative findings.

The Legislature finds that because of the fear and stigma that often results from crimes of sexual assault or domestic violence, and because of the risk of retaliatory violence by the perpetrator, many victims hesitate to seek help even when it is available at no cost to them. Without assurances that communications made while receiving assistance in overcoming the adverse effects of a sexual assault or domestic violence situation will be confidential and protected from disclosure, victims will be even more reluctant to seek assistance or to confide openly to their advocates and to explore legal and social remedies fully.

As a result, victims may fail to receive needed vital care and counseling and thus lack the support, resources, and information necessary to recover from the crime, to report the crime, to assist in the prosecution of the crime, to participate effectively in the justice system, to achieve legal protections, and to prevent future sexual assaults and domestic violence. This is a matter of statewide concern, and the prevention of violence is for the protection of the health, safety, and welfare of the public.

Source: Laws 2004, LB 613, § 1.

29-4302 Terms, defined.

For purposes of sections 29-4301 to 29-4304:

(1) Advocate means any employee or supervised volunteer of a domestic violence and sexual assault victim assistance program or of any other agency, business, or organization that is not affiliated with a law enforcement or prosecutor's office, whose primary purpose is assisting domestic violence and sexual assault victims;

(2) Victim means a person who communicates with an advocate for assistance in overcoming the adverse effects of domestic violence or sexual assault; and

(3) Confidential communication means any written or spoken information exchanged between a victim and an advocate in private or in the presence of a third party who is necessary to facilitate communication or further the advocacy process and which is disclosed to the advocate for the purposes of overcoming the adverse effects of domestic violence or sexual assault.

Source: Laws 2004, LB 613, § 2.

29-4303 Confidential communications; disclosure; when.

(1) A victim, an advocate without the consent of the victim, a third party as described in subdivision (3) of section 29-4302 without the consent of the victim, or a minor or incapacitated victim without the consent of a custodial guardian or a guardian ad litem appointed upon application of either party, shall not be compelled to give testimony or to produce records concerning a confidential communication for any purpose in any criminal, civil, legislative, administrative, or other proceeding, except as follows:

(a) The party seeking disclosure of a confidential communication shall, in a criminal, civil, or administrative proceeding, file a motion that sets forth specifically the issues on which disclosure is sought and enumerates the reasons why the party is seeking disclosure and why disclosure is necessary, accompanied by an affidavit or affidavits containing specific information which establishes that the confidential communication constitutes relevant and material evidence in the case; and

(b) If the party seeking disclosure has complied with subdivision (a) of this subsection, the court or a hearing officer shall review the confidential communication in camera and out of the presence and hearing of all persons, except the victim, the advocate, and any other person the victim is willing to have present, to determine whether a failure to disclose the confidential communication would violate the constitutional rights of the party seeking disclosure.

(2) An advocate, a victim, or a third party as described in subdivision (3) of section 29-4302 cannot be compelled to provide testimony in any criminal,

civil, legislative, administrative, or other proceeding that would identify the name, address, location, or telephone number of a safe house, abuse shelter, or other facility that provided temporary emergency shelter to the victim of the offense that is the subject of the proceeding unless the facility is a party to the proceeding.

Source: Laws 2004, LB 613, § 3.

29-4304 Confidential communications; waiver; sections, how construed.

(1) A victim does not waive the protections afforded by sections 29-4301 to 29-4304 by testifying in court about the offense, except that:

(a) If the victim partially discloses the contents of a confidential communication in the course of testifying, then either party may request the court to rule that justice requires the protections afforded by sections 29-4301 to 29-4304 be waived to the extent the protections apply to that portion of the confidential communication; and

(b) Any waiver shall apply only to the extent necessary to require any witness to respond to counsel's questions concerning a confidential communication that is relevant to the case.

(2) An advocate cannot waive the protections afforded a victim under sections 29-4301 to 29-4304. However, if a victim brings suit against an advocate or the agency, business, or organization in which the advocate was employed or served as a volunteer at the time of the advocacy relationship, the advocate may testify or produce records regarding confidential communications with the victim and is not in violation of sections 29-4301 to 29-4304.

(3) Sections 29-4301 to 29-4304 shall not relieve an advocate of any duty to report suspected adult abuse or neglect as required by section 28-372 or suspected child abuse or neglect as required by section 28-711 or any other legal duty to report a criminal or unlawful act.

(4) Sections 29-4301 to 29-4304 shall not be construed to limit any other testimonial privilege available to any person under the laws of this state.

Source: Laws 2004, LB 613, § 4.

29-4305 Law enforcement agencies, prosecuting attorneys, and Office of Probation Administration; duties.

On or before July 1, 2005, all law enforcement agencies, prosecuting attorneys, and the Office of Probation Administration shall develop, adopt, promulgate, and implement written policies and procedures regarding crimes between intimate partners as defined in section 28-323.

Source: Laws 2004, LB 613, § 11.

29-4306 Collection of evidence; requirements.

Every health care professional as defined in section 44-5418 or any person in charge of any emergency room in this state:

(1) Shall utilize a standardized sexual assault evidence collection kit approved by the Attorney General; and

(2) Shall collect forensic evidence with the consent of the sexual assault victim without separate authorization by a law enforcement agency.

Source: Laws 2005, LB 713, § 1.

ARTICLE 44

SPECIAL PROCEDURE IN CASES OF ABUSE

Section
29-4401. Presentence investigation; sentence suspension; probation; court orders; considerations.
29-4402. House arrest; prohibited.

29-4401 Presentence investigation; sentence suspension; probation; court orders; considerations.

(1) When any person is found guilty of a crime involving abuse as defined in section 42-903, the judge shall order a presentence investigation to be completed and returned to the court for consideration at the time of sentencing.

(2) At the time of sentencing, the court shall consider the safety and protection of the victim of abuse and any member of the victim's family or household when suspending a sentence or granting probation.

(3) The court may order the convicted person to complete a domestic abuse intervention program at the convicted person's expense in addition to any other penalties.

Source: Laws 2004, LB 613, § 9.

29-4402 House arrest; prohibited.

When a person is found guilty of a crime involving abuse as defined in section 42-903, a court shall not order house arrest for the person in the residence of the victim, regardless of the ownership of the residence.

Source: Laws 2004, LB 613, § 10.

ARTICLE 45

CUSTODIAL INTERROGATIONS

Section
29-4501. Legislative findings.
29-4502. Terms, defined.
29-4503. Electronic recordation of statements and waiver of rights required; when.
29-4504. Law enforcement officer; failure to comply with electronic recordation requirement; jury instruction.
29-4505. Defendant; testimony contrary to statement; use of statement authorized.
29-4506. Law enforcement officer; failure to comply with electronic recordation requirement; admissibility of evidence.
29-4507. Statement obtained out-of-state or by federal law enforcement officer; admissible; when.
29-4508. Inaudible portions; how treated.

29-4501 Legislative findings.

The Legislature finds that to electronically record statements made during a custodial interrogation is an effective way to document a free, knowing, voluntary, and intelligent waiver of a person's right to remain silent, to agree to answer questions, to decide to have an attorney present during such questioning, and to decide to have an attorney provided to such person if he or she cannot afford an attorney, as provided by the Constitution of the United States and the Constitution of Nebraska. Providing a record of the statement made during a custodial interrogation and any waiver of constitutional rights will

reduce speculation and claims that may arise as to the content of the statement. Such a record of the content of the statement will aid law enforcement officers in analyzing and rejecting untruthful statements and will aid the factfinder in determining whether a statement was freely, knowingly, voluntarily, and intelligently made.

Source: Laws 2008, LB179, § 1.
Effective date July 18, 2008.

29-4502 Terms, defined.

For purposes of sections 29-4501 to 29-4508:

(1) Custodial interrogation has the meaning prescribed to it under the Fourth and Fifth Amendments to the Constitution of the United States and Article I, sections 3 and 7, of the Constitution of Nebraska, as interpreted by the United States Supreme Court and the Nebraska Supreme Court;

(2) Electronically record means to record using an audio recording device, a digital recording device, or a video recording device;

(3) Place of detention means a police station, sheriff's office, troop headquarters, courthouse, county attorney's office, juvenile or adult correctional or holding facility, community correctional center, or building under the permanent control of law enforcement at which the person is in custody pursuant to the authority of a law enforcement officer; and

(4) Reasonable exception means circumstances in which:

(a) A statement was made when it was not practicable to electronically record the statement;

(b) Equipment to electronically record the statement could not be reasonably obtained;

(c) The person in custody refused to have the statement electronically recorded;

(d) The equipment used to electronically record the statement malfunctioned; or

(e) The law enforcement officer conducting the statement reasonably believed that the crime for which the person was taken into custody was not a crime described in subsection (2) of section 29-4503.

Source: Laws 2008, LB179, § 2.
Effective date July 18, 2008.

29-4503 Electronic recordation of statements and waiver of rights required; when.

(1) All statements relating to crimes described in subsection (2) of this section and statements regarding rights described in section 29-4501 or the waiver of such rights made during a custodial interrogation at a place of detention that are described in subsection (2) of this section shall be electronically recorded.

(2) Statements subject to subsection (1) of this section are those statements relating to:

(a) Crimes resulting in death or felonies involving (i) sexual assault, (ii) kidnapping, (iii) child abuse, or (iv) strangulation; or

(b) Offenses being investigated as part of the same course of conduct as the offenses described in subdivision (a) of this subsection.

Source: Laws 2008, LB179, § 3.
Effective date July 18, 2008.

29-4504 Law enforcement officer; failure to comply with electronic recordation requirement; jury instruction.

Except as otherwise provided in sections 29-4505 to 29-4507, if a law enforcement officer fails to comply with section 29-4503, a court shall instruct the jury that they may draw an adverse inference for the law enforcement officer's failure to comply with such section.

Source: Laws 2008, LB179, § 4.
Effective date July 18, 2008.

29-4505 Defendant; testimony contrary to statement; use of statement authorized.

(1) If a defendant testifies contrary to his or her statement made during a custodial interrogation at a place of detention which was not electronically recorded, such statement may be used for the purpose of impeachment if it is shown that the statement was freely, knowingly, voluntarily, and intelligently made.

(2) A jury instruction shall not be required if the prosecution proves, by a preponderance of the evidence, that there is a reasonable exception for there not being an electronic recording.

Source: Laws 2008, LB179, § 5.
Effective date July 18, 2008.

29-4506 Law enforcement officer; failure to comply with electronic recordation requirement; admissibility of evidence.

If a law enforcement officer fails to comply with section 29-4503, such failure shall not bar the use of any evidence derived from such statement if the court determines that the evidence is otherwise admissible.

Source: Laws 2008, LB179, § 6.
Effective date July 18, 2008.

29-4507 Statement obtained out-of-state or by federal law enforcement officer; admissible; when.

Any statement made during a custodial interrogation shall be admissible against such person in a criminal proceeding in this state if:

(1) The statement was obtained in another state and was obtained in compliance with the laws of that state; or

(2) The statement was obtained by a federal law enforcement officer in this state or another state, was obtained in compliance with the laws of the United States, and was not taken by a federal law enforcement officer in an attempt to circumvent sections 29-4501 to 29-4508.

Source: Laws 2008, LB179, § 7.
Effective date July 18, 2008.

29-4508 Inaudible portions; how treated.

The existence of inaudible portions of an electronic recording, which are not the result of bad faith by a law enforcement officer to produce an inaudible result, standing alone, shall not render a statement out of compliance with section 29-4503.

Source: Laws 2008, LB179, § 8.
Effective date July 18, 2008.

CHAPTER 30
DECEDENTS' ESTATES; PROTECTION OF PERSONS AND PROPERTY

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Workers' Compensation Act, Nebraska:
Death benefits, see sections 48-122 et seq. and 48-143.
Militia injury, see section 55-159.

ARTICLE 1
DESCENT OF PROPERTY

Section
30-101. Repealed. Laws 1974, LB 354, § 316.
30-102. Repealed. Laws 1974, LB 354, § 316.
30-103. Repealed. Laws 1974, LB 354, § 316.
30-103.01. Interest of surviving spouse; determination prior to payment of federal or state estate taxes.
30-104. Dower and curtesy, abolished.
30-105. Repealed. Laws 1974, LB 354, § 316.
30-106. Repealed. Laws 1974, LB 354, § 316.
30-107. Repealed. Laws 1974, LB 354, § 316.
30-108. Repealed. Laws 1974, LB 354, § 316.
30-109. Repealed. Laws 1974, LB 354, § 316.
30-110. Repealed. Laws 1974, LB 354, § 316.
30-111. Repealed. Laws 1974, LB 354, § 316.
30-112. Repealed. Laws 1974, LB 354, § 316.
30-113. Repealed. Laws 1974, LB 354, § 316.
30-114. Repealed. Laws 1974, LB 354, § 316.
30-115. Repealed. Laws 1974, LB 354, § 316.
30-116. Repealed. Laws 1974, LB 354, § 316.
30-117. Repealed. Laws 1974, LB 354, § 316.
30-118. Repealed. Laws 1974, LB 354, § 316.
30-119. Repealed. Laws 1974, LB 354, § 316.
30-120. Repealed. Laws 1974, LB 354, § 316.
30-121. Simultaneous death with no sufficient evidence of survivorship.
30-122. Simultaneous death of beneficiaries of another person's disposition of property.
30-123. Simultaneous death of joint tenants.
30-124. Simultaneous death of insured and beneficiary of insurance policy.
30-125. Simultaneous death; sections not retroactive.
30-126. Simultaneous death; sections not applicable if decedent provides otherwise.
30-127. Simultaneous death; sections, how construed.
30-128. Act, how cited.
30-129. Repealed. Laws 1974, LB 354, § 316.
30-130. Repealed. Laws 1974, LB 354, § 316.
30-131. Repealed. Laws 1974, LB 354, § 316.
30-132. Repealed. Laws 1974, LB 354, § 316.
30-133. Repealed. Laws 1974, LB 354, § 316.
30-134. Repealed. Laws 1974, LB 354, § 316.
30-135. Repealed. Laws 1974, LB 354, § 316.

30-101 Repealed. Laws 1974, LB 354, § 316.

30-102 Repealed. Laws 1974, LB 354, § 316.

30-103 Repealed. Laws 1974, LB 354, § 316.

30-103.01 Interest of surviving spouse; determination prior to payment of federal or state estate taxes.

The interest of any surviving spouse in any estate passing under Chapter 30, article 23, parts 1, 2, and 4, shall be determined prior to the payment of any federal or state estate taxes, and shall not be subject to or diminished by any

debt or charge against such estate by reason of any such federal or state estate tax.

Source: Laws 1953, c. 95, § 2, p. 270; Laws 1972, LB 1123, § 1; Laws 1977, LB 10, § 1.

Cross References

For state estate and generation-skipping transfer taxes, see Chapter 77, article 21.

30-104 Dower and curtesy, abolished.

The estates of dower and curtesy are hereby abolished.

Source: Laws 1907, c. 49, § 4, p. 197; R.S.1913, § 1268; C.S.1922, § 1223; C.S.1929, § 30-104.

Surviving husband is heir of deceased wife as to personal property. In re Hanson's Estate, 118 Neb. 208, 224 N.W. 2 (1929).

Interest of wife in property of her husband is cut off by foreclosure against her husband without making her a party to foreclosure. Filley v. Dickinson, 110 Neb. 356, 193 N.W. 914 (1923).

If the widow made no claim for dower under former statute and dower was not assigned, she has no interests in property, which was sold during her lifetime, to convey by will. Dovey v. Schlater, 104 Neb. 108, 175 N.W. 888 (1919).

Husband and wife are placed upon exact equality as to the rights of each in the property of the other. Richardson v. Johnson, 97 Neb. 749, 151 N.W. 314 (1915).

30-105 Repealed. Laws 1974, LB 354, § 316.

30-106 Repealed. Laws 1974, LB 354, § 316.

30-107 Repealed. Laws 1974, LB 354, § 316.

30-108 Repealed. Laws 1974, LB 354, § 316.

30-109 Repealed. Laws 1974, LB 354, § 316.

30-110 Repealed. Laws 1974, LB 354, § 316.

30-111 Repealed. Laws 1974, LB 354, § 316.

30-112 Repealed. Laws 1974, LB 354, § 316.

30-113 Repealed. Laws 1974, LB 354, § 316.

30-114 Repealed. Laws 1974, LB 354, § 316.

30-115 Repealed. Laws 1974, LB 354, § 316.

30-116 Repealed. Laws 1974, LB 354, § 316.

30-117 Repealed. Laws 1974, LB 354, § 316.

30-118 Repealed. Laws 1974, LB 354, § 316.

30-119 Repealed. Laws 1974, LB 354, § 316.

30-120 Repealed. Laws 1974, LB 354, § 316.

30-121 Simultaneous death with no sufficient evidence of survivorship.

Where the title to property or the devolution thereof depends upon priority of death and there is no sufficient evidence that the persons have died otherwise than simultaneously, the property of each person shall be disposed of as if he had survived, except as provided otherwise in sections 30-121 to 30-128.

Source: Laws 1947, c. 112, § 1, p. 305.

30-122 Simultaneous death of beneficiaries of another person's disposition of property.

Where two or more beneficiaries are designated to take successively by reason of survivorship under another person's disposition of property and there is no sufficient evidence that these beneficiaries have died otherwise than simultaneously the property thus disposed of shall be divided into as many equal portions as there are successive beneficiaries and these portions shall be distributed respectively to those who would have taken in the event that each designated beneficiary had survived.

Source: Laws 1947, c. 112, § 2, p. 306.

30-123 Simultaneous death of joint tenants.

Where there is no sufficient evidence that two joint tenants have died otherwise than simultaneously the property so held shall be distributed one-half as if one had survived and one-half as if the other had survived. If there are more than two joint tenants and all of them have so died the property thus distributed shall be in the proportion that one bears to the whole number of joint tenants.

Source: Laws 1947, c. 112, § 3, p. 306.

30-124 Simultaneous death of insured and beneficiary of insurance policy.

Where the insured and the beneficiary in a policy of life or accident insurance have died and there is no sufficient evidence that they have died otherwise than simultaneously, the proceeds of the policy shall be distributed as if the insured had survived the beneficiary.

Source: Laws 1947, c. 112, § 4, p. 306.

30-125 Simultaneous death; sections not retroactive.

Sections 30-121 to 30-128 shall not apply to the distribution of the property of a person who has died before it takes effect.

Source: Laws 1947, c. 112, § 5, p. 306.

30-126 Simultaneous death; sections not applicable if decedent provides otherwise.

Sections 30-121 to 30-128 shall not apply in the case of wills, living trusts, deeds, or contracts of insurance wherein provision has been made for distribution of property different from the provisions of sections 30-121 to 30-128.

Source: Laws 1947, c. 112, § 6, p. 306.

30-127 Simultaneous death; sections, how construed.

Sections 30-121 to 30-128 shall be so construed and interpreted as to effectuate their general purpose to make uniform the law in those states which enact them.

Source: Laws 1947, c. 112, § 7, p. 306.

30-128 Act, how cited.

Sections 30-121 to 30-128 may be cited as the Uniform Simultaneous Death Act.

Source: Laws 1947, c. 112, § 8, p. 306.

30-129 Repealed. Laws 1974, LB 354, § 316.

30-130 Repealed. Laws 1974, LB 354, § 316.

30-131 Repealed. Laws 1974, LB 354, § 316.

30-132 Repealed. Laws 1974, LB 354, § 316.

30-133 Repealed. Laws 1974, LB 354, § 316.

30-134 Repealed. Laws 1974, LB 354, § 316.

30-135 Repealed. Laws 1974, LB 354, § 316.

ARTICLE 2
WILLS

Cross References

Private writing as a last will and testament not read in evidence without proof, see section 25-1222.

Section
30-201. Repealed. Laws 1974, LB 354, § 316.
30-202. Repealed. Laws 1974, LB 354, § 316.
30-203. Repealed. Laws 1974, LB 354, § 316.
30-204. Repealed. Laws 1974, LB 354, § 316.
30-205. Repealed. Laws 1974, LB 354, § 316.
30-206. Repealed. Laws 1974, LB 354, § 316.
30-207. Repealed. Laws 1974, LB 354, § 316.
30-208. Repealed. Laws 1974, LB 354, § 316.
30-209. Repealed. Laws 1974, LB 354, § 316.
30-210. Repealed. Laws 1974, LB 354, § 316.
30-211. Repealed. Laws 1974, LB 354, § 316.
30-212. Repealed. Laws 1974, LB 354, § 316.
30-213. Repealed. Laws 1974, LB 354, § 316.
30-213.01. Repealed. Laws 1974, LB 354, § 316.
30-213.02. Repealed. Laws 1974, LB 354, § 316.
30-214. Repealed. Laws 1974, LB 354, § 316.
30-215. Repealed. Laws 1974, LB 354, § 316.
30-216. Repealed. Laws 1974, LB 354, § 316.
30-217. Repealed. Laws 1974, LB 354, § 316.
30-217.01. Repealed. Laws 1974, LB 354, § 316.
30-218. Repealed. Laws 1974, LB 354, § 316.
30-219. Repealed. Laws 1974, LB 354, § 316.
30-219.01. Repealed. Laws 1974, LB 354, § 316.
30-220. Repealed. Laws 1974, LB 354, § 316.
30-221. Repealed. Laws 1974, LB 354, § 316.
30-222. Repealed. Laws 1974, LB 354, § 316.
30-223. Repealed. Laws 1974, LB 354, § 316.
30-224. Repealed. Laws 1974, LB 354, § 316.
30-224.01. Repealed. Laws 1974, LB 354, § 316.
30-225. Repealed. Laws 1974, LB 354, § 316.
30-226. Repealed. Laws 1974, LB 354, § 316.
30-227. Repealed. Laws 1974, LB 354, § 316.
30-228. Repealed. Laws 1974, LB 354, § 316.
30-228.01. Repealed. Laws 1974, LB 354, § 316.
30-228.02. Repealed. Laws 1974, LB 354, § 316.

Section
30-228.03. Repealed. Laws 1974, LB 354, § 316.
30-229. Repealed. Laws 1974, LB 354, § 316.
30-230. Repealed. Laws 1974, LB 354, § 316.
30-231. Repealed. Laws 1974, LB 354, § 316.
30-232. Repealed. Laws 1974, LB 354, § 316.
30-233. Repealed. Laws 1974, LB 354, § 316.
30-234. Repealed. Laws 1974, LB 354, § 316.
30-235. Repealed. Laws 1974, LB 354, § 316.
30-236. Repealed. Laws 1974, LB 354, § 316.
30-237. Repealed. Laws 1974, LB 354, § 316.
30-238. Repealed. Laws 2001, LB 105, § 3.
30-239. Repealed. Laws 2003, LB 130, § 143.
30-240. Repealed. Laws 2003, LB 130, § 143.
30-241. Devise to state; acceptance; Governor; when.
30-242. Devise to state; acceptance; Governor; designation of department or agency.
30-243. Devise to state; money; deposited with State Treasurer.
30-244. Repealed. Laws 1974, LB 354, § 316.

30-201 Repealed. Laws 1974, LB 354, § 316.

30-202 Repealed. Laws 1974, LB 354, § 316.

30-203 Repealed. Laws 1974, LB 354, § 316.

30-204 Repealed. Laws 1974, LB 354, § 316.

30-205 Repealed. Laws 1974, LB 354, § 316.

30-206 Repealed. Laws 1974, LB 354, § 316.

30-207 Repealed. Laws 1974, LB 354, § 316.

30-208 Repealed. Laws 1974, LB 354, § 316.

30-209 Repealed. Laws 1974, LB 354, § 316.

30-210 Repealed. Laws 1974, LB 354, § 316.

30-211 Repealed. Laws 1974, LB 354, § 316.

30-212 Repealed. Laws 1974, LB 354, § 316.

30-213 Repealed. Laws 1974, LB 354, § 316.

30-213.01 Repealed. Laws 1974, LB 354, § 316.

30-213.02 Repealed. Laws 1974, LB 354, § 316.

30-214 Repealed. Laws 1974, LB 354, § 316.

30-215 Repealed. Laws 1974, LB 354, § 316.

30-216 Repealed. Laws 1974, LB 354, § 316.

30-217 Repealed. Laws 1974, LB 354, § 316.

30-217.01 Repealed. Laws 1974, LB 354, § 316.

30-218 Repealed. Laws 1974, LB 354, § 316.

30-219 Repealed. Laws 1974, LB 354, § 316.

30-219.01 Repealed. Laws 1974, LB 354, § 316.

30-220 Repealed. Laws 1974, LB 354, § 316.

30-221 Repealed. Laws 1974, LB 354, § 316.

30-222 Repealed. Laws 1974, LB 354, § 316.

30-223 Repealed. Laws 1974, LB 354, § 316.

30-224 Repealed. Laws 1974, LB 354, § 316.

30-224.01 Repealed. Laws 1974, LB 354, § 316.

30-225 Repealed. Laws 1974, LB 354, § 316.

30-226 Repealed. Laws 1974, LB 354, § 316.

30-227 Repealed. Laws 1974, LB 354, § 316.

30-228 Repealed. Laws 1974, LB 354, § 316.

30-228.01 Repealed. Laws 1974, LB 354, § 316.

30-228.02 Repealed. Laws 1974, LB 354, § 316.

30-228.03 Repealed. Laws 1974, LB 354, § 316.

30-229 Repealed. Laws 1974, LB 354, § 316.

30-230 Repealed. Laws 1974, LB 354, § 316.

30-231 Repealed. Laws 1974, LB 354, § 316.

30-232 Repealed. Laws 1974, LB 354, § 316.

30-233 Repealed. Laws 1974, LB 354, § 316.

30-234 Repealed. Laws 1974, LB 354, § 316.

30-235 Repealed. Laws 1974, LB 354, § 316.

30-236 Repealed. Laws 1974, LB 354, § 316.

30-237 Repealed. Laws 1974, LB 354, § 316.

30-238 Repealed. Laws 2001, LB 105, § 3.

30-239 Repealed. Laws 2003, LB 130, § 143.

30-240 Repealed. Laws 2003, LB 130, § 143.

30-241 Devise to state; acceptance; Governor; when.

With the exception of lands, money, or other property devised or bequeathed to this state for educational purposes which are controlled by Article VII, section 9, of the Constitution of Nebraska, the Governor, on behalf of the State of Nebraska, is authorized to accept devises of real estate or bequests of personal property, or both, made to the State of Nebraska, or any department

or agency thereof, if in his or her judgment, under the terms on which such devise or bequest is made it is for the best interests of the State of Nebraska to accept the same.

Source: Laws 1951, c. 89, § 1, p. 254; Laws 1996, LB 894, § 1.

30-242 Devise to state; acceptance; Governor; designation of department or agency.

The Governor, upon acceptance of any devise or bequest as provided in section 30-241, shall designate and assign to the appropriate department or agency of the state the duty of administering and carrying out such devise or bequest in accordance with the terms and conditions thereof.

Source: Laws 1951, c. 89, § 2, p. 255.

30-243 Devise to state; money; deposited with State Treasurer.

All money received from any such devise or bequest shall be deposited with the State Treasurer for disposition as may be provided in the devise or bequest.

Source: Laws 1951, c. 89, § 3, p. 255.

30-244 Repealed. Laws 1974, LB 354, § 316.

ARTICLE 3

SUBJECTS OF FOREIGN COUNTRY

Section
30-301. Repealed. Laws 1974, LB 354, § 316.
30-302. Repealed. Laws 1974, LB 354, § 316.
30-303. Repealed. Laws 1974, LB 354, § 316.
30-304. Repealed. Laws 1974, LB 354, § 316.
30-305. Repealed. Laws 1974, LB 354, § 316.
30-306. Repealed. Laws 1974, LB 354, § 316.
30-307. Repealed. Laws 1974, LB 354, § 316.
30-308. Repealed. Laws 1974, LB 354, § 316.
30-309. Repealed. Laws 1974, LB 354, § 316.
30-310. Repealed. Laws 1974, LB 354, § 316.
30-311. Repealed. Laws 1974, LB 354, § 316.
30-312. Repealed. Laws 1974, LB 354, § 316.
30-313. Repealed. Laws 1974, LB 354, § 316.
30-314. Repealed. Laws 1974, LB 354, § 316.
30-315. Repealed. Laws 1974, LB 354, § 316.
30-316. Repealed. Laws 1974, LB 354, § 316.
30-317. Repealed. Laws 1974, LB 354, § 316.
30-318. Repealed. Laws 1974, LB 354, § 316.
30-319. Repealed. Laws 1974, LB 354, § 316.
30-320. Repealed. Laws 1974, LB 354, § 316.
30-321. Repealed. Laws 1974, LB 354, § 316.
30-322. Repealed. Laws 1974, LB 354, § 316.
30-323. Repealed. Laws 1974, LB 354, § 316.
30-324. Repealed. Laws 1974, LB 354, § 316.
30-325. Repealed. Laws 1974, LB 354, § 316.
30-326. Repealed. Laws 1974, LB 354, § 316.
30-327. Repealed. Laws 1974, LB 354, § 316.
30-328. Repealed. Laws 1974, LB 354, § 316.
30-329. Repealed. Laws 1974, LB 354, § 316.
30-330. Repealed. Laws 1974, LB 354, § 316.
30-331. Repealed. Laws 1974, LB 354, § 316.

Section
30-332. Repealed. Laws 1974, LB 354, § 316.
30-333. Probate, administration, guardianship; subjects of foreign countries interested; notice to consular representative; when required.
30-334. Repealed. Laws 1974, LB 354, § 316.
30-335. Repealed. Laws 1974, LB 354, § 316.
30-336. Repealed. Laws 1974, LB 354, § 316.
30-336.01. Repealed. Laws 1974, LB 354, § 316.
30-336.02. Repealed. Laws 1974, LB 354, § 316.
30-337. Repealed. Laws 1974, LB 354, § 316.
30-338. Repealed. Laws 1974, LB 354, § 316.
30-339. Repealed. Laws 1974, LB 354, § 316.
30-340. Repealed. Laws 1974, LB 354, § 316.
30-341. Repealed. Laws 1974, LB 354, § 316.
30-342. Repealed. Laws 1974, LB 354, § 316.
30-343. Repealed. Laws 1974, LB 354, § 316.

30-301 Repealed. Laws 1974, LB 354, § 316.

30-302 Repealed. Laws 1974, LB 354, § 316.

30-303 Repealed. Laws 1974, LB 354, § 316.

30-304 Repealed. Laws 1974, LB 354, § 316.

30-305 Repealed. Laws 1974, LB 354, § 316.

30-306 Repealed. Laws 1974, LB 354, § 316.

30-307 Repealed. Laws 1974, LB 354, § 316.

30-308 Repealed. Laws 1974, LB 354, § 316.

30-309 Repealed. Laws 1974, LB 354, § 316.

30-310 Repealed. Laws 1974, LB 354, § 316.

30-311 Repealed. Laws 1974, LB 354, § 316.

30-312 Repealed. Laws 1974, LB 354, § 316.

30-313 Repealed. Laws 1974, LB 354, § 316.

30-314 Repealed. Laws 1974, LB 354, § 316.

30-315 Repealed. Laws 1974, LB 354, § 316.

30-316 Repealed. Laws 1974, LB 354, § 316.

30-317 Repealed. Laws 1974, LB 354, § 316.

30-318 Repealed. Laws 1974, LB 354, § 316.

30-319 Repealed. Laws 1974, LB 354, § 316.

30-320 Repealed. Laws 1974, LB 354, § 316.

30-321 Repealed. Laws 1974, LB 354, § 316.

30-322 Repealed. Laws 1974, LB 354, § 316.

30-323 Repealed. Laws 1974, LB 354, § 316.

30-324 Repealed. Laws 1974, LB 354, § 316.

30-325 Repealed. Laws 1974, LB 354, § 316.

30-326 Repealed. Laws 1974, LB 354, § 316.

30-327 Repealed. Laws 1974, LB 354, § 316.

30-328 Repealed. Laws 1974, LB 354, § 316.

30-329 Repealed. Laws 1974, LB 354, § 316.

30-330 Repealed. Laws 1974, LB 354, § 316.

30-331 Repealed. Laws 1974, LB 354, § 316.

30-332 Repealed. Laws 1974, LB 354, § 316.

30-333 Probate, administration, guardianship; subjects of foreign countries interested; notice to consular representative; when required.

Whenever, upon the filing of a petition for probate, administration or guardianship, or thereafter in the administration of any estate, it shall appear that subjects of any foreign country are or may be interested, either as heirs at law, devisees, legatees or otherwise, the county judge shall at once notify by mail the consular representative of such country for Nebraska of the pendency of such administration and of the probable interests of such foreign subjects; *Provided*, that such consular representative files his address with the county judge. This section shall in no way affect title to real estate.

Source: Laws 1923, c. 42, § 1, p. 157; C.S.1929, § 30-331.

30-334 Repealed. Laws 1974, LB 354, § 316.

30-335 Repealed. Laws 1974, LB 354, § 316.

30-336 Repealed. Laws 1974, LB 354, § 316.

30-336.01 Repealed. Laws 1974, LB 354, § 316.

30-336.02 Repealed. Laws 1974, LB 354, § 316.

30-337 Repealed. Laws 1974, LB 354, § 316.

30-338 Repealed. Laws 1974, LB 354, § 316.

30-339 Repealed. Laws 1974, LB 354, § 316.

30-340 Repealed. Laws 1974, LB 354, § 316.

30-341 Repealed. Laws 1974, LB 354, § 316.

30-342 Repealed. Laws 1974, LB 354, § 316.

30-343 Repealed. Laws 1974, LB 354, § 316.

ARTICLE 4
INVENTORY AND COLLECTION OF ASSETS

Section
30-401. Repealed. Laws 1974, LB 354, § 316.
30-402. Repealed. Laws 1974, LB 354, § 316.
30-403. Repealed. Laws 1974, LB 354, § 316.
30-404. Repealed. Laws 1974, LB 354, § 316.
30-405. Repealed. Laws 1974, LB 354, § 316.
30-406. Repealed. Laws 1974, LB 354, § 316.
30-407. Repealed. Laws 1974, LB 354, § 316.
30-408. Repealed. Laws 1974, LB 354, § 316.
30-409. Repealed. Laws 1974, LB 354, § 316.
30-409.01. Repealed. Laws 1974, LB 354, § 316.
30-410. Repealed. Laws 1974, LB 354, § 316.
30-411. Repealed. Laws 1974, LB 354, § 316.
30-412. Repealed. Laws 1974, LB 354, § 316.
30-413. Repealed. Laws 1974, LB 354, § 316.
30-414. Repealed. Laws 1974, LB 354, § 316.
30-415. Repealed. Laws 1974, LB 354, § 316.
30-416. Repealed. Laws 1974, LB 354, § 316.
30-417. Repealed. Laws 1974, LB 354, § 316.

30-401 Repealed. Laws 1974, LB 354, § 316.

30-402 Repealed. Laws 1974, LB 354, § 316.

30-403 Repealed. Laws 1974, LB 354, § 316.

30-404 Repealed. Laws 1974, LB 354, § 316.

30-405 Repealed. Laws 1974, LB 354, § 316.

30-406 Repealed. Laws 1974, LB 354, § 316.

30-407 Repealed. Laws 1974, LB 354, § 316.

30-408 Repealed. Laws 1974, LB 354, § 316.

30-409 Repealed. Laws 1974, LB 354, § 316.

30-409.01 Repealed. Laws 1974, LB 354, § 316.

30-410 Repealed. Laws 1974, LB 354, § 316.

30-411 Repealed. Laws 1974, LB 354, § 316.

30-412 Repealed. Laws 1974, LB 354, § 316.

30-413 Repealed. Laws 1974, LB 354, § 316.

30-414 Repealed. Laws 1974, LB 354, § 316.

30-415 Repealed. Laws 1974, LB 354, § 316.

30-416 Repealed. Laws 1974, LB 354, § 316.

30-417 Repealed. Laws 1974, LB 354, § 316.

ARTICLE 5
INTEREST OF DECEASED PARTNER

Section
30-501. Repealed. Laws 1974, LB 354, § 316.
30-502. Repealed. Laws 1974, LB 354, § 316.
30-503. Repealed. Laws 1974, LB 354, § 316.

30-501 Repealed. Laws 1974, LB 354, § 316.

30-502 Repealed. Laws 1974, LB 354, § 316.

30-503 Repealed. Laws 1974, LB 354, § 316.

ARTICLE 6
ALLOWANCE AND PAYMENT OF CLAIMS

Section
30-601. Repealed. Laws 1974, LB 354, § 316.
30-602. Repealed. Laws 1974, LB 354, § 316.
30-603. Repealed. Laws 1974, LB 354, § 316.
30-604. Repealed. Laws 1974, LB 354, § 316.
30-605. Repealed. Laws 1974, LB 354, § 316.
30-606. Repealed. Laws 1974, LB 354, § 316.
30-606.01. Repealed. Laws 1974, LB 354, § 316.
30-607. Repealed. Laws 1974, LB 354, § 316.
30-608. Repealed. Laws 1974, LB 354, § 316.
30-609. Repealed. Laws 1974, LB 354, § 316.
30-610. Repealed. Laws 1974, LB 354, § 316.
30-611. Repealed. Laws 1974, LB 354, § 316.
30-612. Repealed. Laws 1974, LB 354, § 316.
30-613. Repealed. Laws 1974, LB 354, § 316.
30-614. Repealed. Laws 1974, LB 354, § 316.
30-615. Repealed. Laws 1974, LB 354, § 316.
30-616. Repealed. Laws 1974, LB 354, § 316.
30-617. Repealed. Laws 1974, LB 354, § 316.
30-618. Repealed. Laws 1974, LB 354, § 316.
30-619. Repealed. Laws 1974, LB 354, § 316.
30-620. Repealed. Laws 1974, LB 354, § 316.
30-621. Repealed. Laws 1974, LB 354, § 316.
30-622. Repealed. Laws 1974, LB 354, § 316.
30-623. Repealed. Laws 1974, LB 354, § 316.
30-623.01. Repealed. Laws 1974, LB 354, § 316.
30-623.02. Repealed. Laws 1974, LB 354, § 316.
30-624. Repealed. Laws 1974, LB 354, § 316.

30-601 Repealed. Laws 1974, LB 354, § 316.

30-602 Repealed. Laws 1974, LB 354, § 316.

30-603 Repealed. Laws 1974, LB 354, § 316.

30-604 Repealed. Laws 1974, LB 354, § 316.

30-605 Repealed. Laws 1974, LB 354, § 316.

30-606 Repealed. Laws 1974, LB 354, § 316.

30-606.01 Repealed. Laws 1974, LB 354, § 316.

30-607 Repealed. Laws 1974, LB 354, § 316.

30-608 Repealed. Laws 1974, LB 354, § 316.

30-609 Repealed. Laws 1974, LB 354, § 316.

30-610 Repealed. Laws 1974, LB 354, § 316.

30-611 Repealed. Laws 1974, LB 354, § 316.

30-612 Repealed. Laws 1974, LB 354, § 316.

30-613 Repealed. Laws 1974, LB 354, § 316.

30-614 Repealed. Laws 1974, LB 354, § 316.

30-615 Repealed. Laws 1974, LB 354, § 316.

30-616 Repealed. Laws 1974, LB 354, § 316.

30-617 Repealed. Laws 1974, LB 354, § 316.

30-618 Repealed. Laws 1974, LB 354, § 316.

30-619 Repealed. Laws 1974, LB 354, § 316.

30-620 Repealed. Laws 1974, LB 354, § 316.

30-621 Repealed. Laws 1974, LB 354, § 316.

30-622 Repealed. Laws 1974, LB 354, § 316.

30-623 Repealed. Laws 1974, LB 354, § 316.

30-623.01 Repealed. Laws 1974, LB 354, § 316.

30-623.02 Repealed. Laws 1974, LB 354, § 316.

30-624 Repealed. Laws 1974, LB 354, § 316.

ARTICLE 7
CONTINGENT CLAIMS

Section
30-701. Repealed. Laws 1974, LB 354, § 316.
30-702. Repealed. Laws 1974, LB 354, § 316.
30-703. Repealed. Laws 1974, LB 354, § 316.
30-704. Repealed. Laws 1974, LB 354, § 316.
30-705. Repealed. Laws 1974, LB 354, § 316.
30-706. Repealed. Laws 1974, LB 354, § 316.
30-707. Repealed. Laws 1974, LB 354, § 316.
30-708. Repealed. Laws 1974, LB 354, § 316.
30-709. Repealed. Laws 1974, LB 354, § 316.
30-710. Repealed. Laws 1974, LB 354, § 316.
30-711. Repealed. Laws 1974, LB 354, § 316.
30-712. Repealed. Laws 1974, LB 354, § 316.
30-713. Repealed. Laws 1974, LB 354, § 316.
30-714. Repealed. Laws 1974, LB 354, § 316.
30-715. Repealed. Laws 1974, LB 354, § 316.

30-701 Repealed. Laws 1974, LB 354, § 316.

30-702 Repealed. Laws 1974, LB 354, § 316.

30-703 Repealed. Laws 1974, LB 354, § 316.

30-704 Repealed. Laws 1974, LB 354, § 316.

30-705 Repealed. Laws 1974, LB 354, § 316.

30-706 Repealed. Laws 1974, LB 354, § 316.

30-707 Repealed. Laws 1974, LB 354, § 316.

30-708 Repealed. Laws 1974, LB 354, § 316.

30-709 Repealed. Laws 1974, LB 354, § 316.

30-710 Repealed. Laws 1974, LB 354, § 316.

30-711 Repealed. Laws 1974, LB 354, § 316.

30-712 Repealed. Laws 1974, LB 354, § 316.

30-713 Repealed. Laws 1974, LB 354, § 316.

30-714 Repealed. Laws 1974, LB 354, § 316.

30-715 Repealed. Laws 1974, LB 354, § 316.

ARTICLE 8
WRONGFUL DEATH ACTIONS

Cross References

Action in own name, executor or administrator may bring, see section 25-304.
Revivor of actions, see sections 25-1403 to 25-1420.

Section
30-801. Repealed. Laws 1974, LB 354, § 316.
30-802. Repealed. Laws 1974, LB 354, § 316.
30-803. Repealed. Laws 1974, LB 354, § 316.
30-804. Repealed. Laws 1974, LB 354, § 316.
30-805. Repealed. Laws 1974, LB 354, § 316.
30-806. Repealed. Laws 1974, LB 354, § 316.
30-807. Repealed. Laws 1974, LB 354, § 316.
30-808. Repealed. Laws 1974, LB 354, § 316.
30-809. Wrongful death; action authorized.
30-810. Action for wrongful death; limitation; in whose name brought; judgment; disposition of avails; compromise of claim; procedure.

30-801 Repealed. Laws 1974, LB 354, § 316.

30-802 Repealed. Laws 1974, LB 354, § 316.

30-803 Repealed. Laws 1974, LB 354, § 316.

30-804 Repealed. Laws 1974, LB 354, § 316.

30-805 Repealed. Laws 1974, LB 354, § 316.

30-806 Repealed. Laws 1974, LB 354, § 316.

30-807 Repealed. Laws 1974, LB 354, § 316.

30-808 Repealed. Laws 1974, LB 354, § 316.

30-809 Wrongful death; action authorized.

(1) Whenever the death of a person, including an unborn child in utero at any stage of gestation, is caused by the wrongful act, neglect, or default of any person, company, or corporation, and the act, neglect, or default is such as would, if death had not ensued, have entitled the person injured to maintain an action and recover damages in respect thereof, then, and in every such case, the person who, or company or corporation which, would have been liable if death had not ensued, is liable in an action for damages, notwithstanding the death of the person injured, and although the death was caused under such circumstances as amount in law to felony.

(2) No action for damages for the death of a person who is an unborn child shall be brought under this section against:

(a) The mother of the unborn child;

(b) A physician or other licensed health care provider if the death was the intended result of a medical procedure performed by the physician or health care provider and the requisite consent was given; or

(c) A person who dispenses or administers a drug or device in accordance with law if the death was the intended result of the dispensation or administration of the drug or device.

Source: G.S.1873, c. 15, § 1, p. 272; R.S.1913, § 1428; C.S.1922, § 1382; C.S.1929, § 30-809; R.S.1943, § 30-809; Laws 2003, LB 294, § 1.

1. Elements of recovery
2. Joinder of actions
3. By whom brought
4. Defense
5. Amount recovered
6. Evidence
7. Negligence

1. Elements of recovery

This section is intended to authorize an action to recover damages from a tort-feasor for negligence or some other action resulting in the death of another person. Olsen v. Farm Bureau Ins. Co. of Nebraska, 259 Neb. 329, 609 N.W.2d 664 (2000).

The loss contemplated by the wrongful death statute is a pecuniary loss, and damages on account of mental suffering or bereavement or as a solace to the next of kin on account of the death are not recoverable, as neither are damages for mental anguish suffered by the decedent prior to his death. Nelson v. Dolan, 230 Neb. 848, 434 N.W.2d 25 (1989).

Measure of damages for wrongful death of minor child includes loss of society, comfort, and companionship. Overrules prior decisions in conflict. Selders v. Armentrout, 190 Neb. 275, 207 N.W.2d 686 (1973).

Medical and funeral expenses resulting from wrongful death may be recovered when beneficiaries have paid or have become legally obligated to pay same. State Farm Mut. Auto. Ins. Co. v. Selders, 187 Neb. 342, 190 N.W.2d 789 (1971); Kroeger v. Safranek, 161 Neb. 182, 72 N.W.2d 831 (1955); Shields v. County of Buffalo, 161 Neb. 34, 71 N.W.2d 701 (1955).

This section creates a new cause of action unknown at the common law. Mabe v. Gross, 167 Neb. 593, 94 N.W.2d 12 (1959); Murray v. Omaha Transfer Co., 95 Neb. 175, 145 N.W. 360 (1914), 7 A.L.R. 1343 (1914).

Insofar as disbursements provided by this section are inconsistent with Workmen's Compensation Act, the latter act controls. Bronder v. Otis Elevator Co., 121 Neb. 581, 237 N.W. 671 (1931).

Pecuniary loss is presumed to exist in favor of party legally entitled to service or support of person killed by wrongful or negligent act of another. Killion v. Dinklage, 121 Neb. 322, 236 N.W. 757 (1931).

Personal representative of decedent is not precluded by judgment against carrier under federal Employers' Liability Act for benefit of widow from maintaining later action against joint tort-feasor as provided herein for benefit of another. Moore v. Omaha Warehouse Co., 106 Neb. 116, 182 N.W. 597 (1921).

Act creating cause of action for wrongful death is not amendatory of or in conflict with act providing for suits by passengers injured or killed as result of negligence of railroad. Chicago, R. I. & P. Ry. Co. v. Zernecke, 59 Neb. 689, 82 N.W. 26 (1900).

Courts will not give this section a narrow or technical construction. Kearney Electric Co. v. Laughlin, 45 Neb. 390, 63 N.W. 941 (1895).

Value of services which next of kin could expect deceased to earn, and expectancy of life may be shown. Missouri P. Ry. v. Baier, 37 Neb. 235, 55 N.W. 913 (1893).

''Damages'' are such sum as will compensate next of kin for pecuniary loss sustained. Anderson v. Chicago, B. & Q. R. Co., 35 Neb. 95, 52 N.W. 840 (1892).

Under certain circumstances, a breach of the terms of an insurance policy by the insurer can be a tort, and recovery can be had for such tort under the wrongful death statute. Weatherly v. Blue Cross Blue Shield, 2 Neb. App. 669, 513 N.W.2d 347 (1994).

A parent cannot recover damages for mental distress and physical injury resulting from witnessing the suffering of his child caused by negligence of physicians and hospital personnel. Owens v. Childrens Memorial Hospital, 480 F.2d 465 (8th Cir. 1973).

Deceased's beneficiaries cannot recover for their mental suffering, pain, anguish, and loss of companionship. Owens v. Childrens Memorial Hospital, 347 F.Supp. 663 (D. Neb. 1972).

2. Joinder of actions

Action for pain and suffering may be revived and joined with action for wrongful death in same proceeding. Rasmussen v. Benson, 133 Neb. 449, 275 N.W. 674 (1937), affirmed on rehearing, 135 Neb. 232, 280 N.W. 890 (1938).

Action for wrongful death and action for pain and suffering sustained by deceased may be pursued in different suits or joined in one suit and separate verdicts returned. Hindmarsh v. Sulpho Saline Bath Co., 108 Neb. 168, 187 N.W. 806 (1922).

3. By whom brought

Wrongful death statutes create a cause of action unknown at common law, but that cause of action is for the exclusive benefit of the decedent's next of kin. Rhein v. Caterpillar Tractor Co., 210 Neb. 321, 314 N.W.2d 19 (1982).

The personal representative of a deceased wife could maintain a wrongful death action against the personal representative of her deceased husband based upon the alleged negligence of the deceased husband. Imig v. March, 203 Neb. 537, 279 N.W.2d 382 (1979).

An action for wrongful death of stillborn fetus may not be maintained hereunder. Egbert v. Wenzl, 199 Neb. 573, 260 N.W.2d 480 (1977); Drabbels v. Skelly Oil Co., 155 Neb. 17, 50 N.W.2d 229 (1951).

Coadministrators of deceased's estate entitled to file wrongful death claim in the estate of alleged tort-feasor. Gilbert v. Vogler, 197 Neb. 454, 249 N.W.2d 729 (1977).

An employer can bring an action directly against a third party tort-feasor for injuries suffered by an employee, but only a personal representative of a deceased employee can bring an action for wrongful death, which action must be filed within two years after death. United Materials, Inc. v. Landreth, 196 Neb. 525, 244 N.W.2d 164 (1976).

Where as administrator of wife's estate, widower brought action for wrongful death and was unsuccessful, he was not barred under doctrines of res judicata or issue preclusion from prosecuting action for his own personal injuries and damages suffered in same collision. Hickman v. Southwest Dairy Suppliers, Inc., 194 Neb. 17, 230 N.W.2d 99 (1975).

Action to recover damages sustained by surviving spouse and next of kin of decedent is authorized. Wieck v. Blessin, 165 Neb. 282, 85 N.W.2d 628 (1957).

Action for wrongful death requires that it be brought by the personal representative of the deceased for the exclusive benefit of the widow or widower and next of kin. Bush v. James, 152 Neb. 189, 40 N.W.2d 667 (1950).

Action for damages commenced by administrator after death of his intestate, for pain and suffering inflicted upon the deceased, is maintainable. Wilfong v. Omaha & C. B. St. Ry. Co., 129 Neb. 600, 262 N.W. 537 (1935).

Action for employee's death must be brought by personal representative, and provision of Workmen's Compensation Act regarding employer's interest merely relates to distribution of proceeds of sale. Goeres v. Goeres, 124 Neb. 720, 248 N.W. 75 (1933); Luckey v. Union Pacific Ry. Co., 117 Neb. 85, 219 N.W. 802 (1928).

Action against county for damages for wrongful death must be brought in the name of the administrator. Swift v. Sarpy County, 102 Neb. 378, 167 N.W. 458 (1918).

Parent may recover for loss of expected services of children not only during minority but afterwards. Draper v. Tucker, 69 Neb. 434, 95 N.W. 1026 (1903).

A person sued by administrator for wrongful death is not thereby given a sufficient interest to petition county court for removal of administrator. Missouri P. Ry. Co. v. Jay, 53 Neb. 747, 74 N.W. 259 (1898).

Conservator domiciled in Colorado who undertook no duties or obligations with respect to beneficiary domiciled in Nebraska, except to file suit for beneficiary's injury in accident in Nebraska, could not sue in federal court on basis of diversity of citizenship. Rogers v. Bates, 431 F.2d 16 (8th Cir. 1970).

A wrongful death action must be maintained by the legal representative of the deceased. Russell v. New Amsterdam Casualty Co., 303 F.2d 674 (8th Cir. 1962).

Action for wrongful death was properly brought in federal court on the basis of diversity of citizenship even though plaintiff had been appointed administratrix by Nebraska court. Janzen v. Goos, 302 F.2d 421 (8th Cir. 1962).

Action under Lord Campbell's Act must be brought within two years after death of deceased. McDonnell v. Wasenmiller, 74 F.2d 320 (8th Cir. 1934).

4. Defense

County was not liable for wrongful death due to latent defect in bridge. Wittwer v. County of Richardson, 153 Neb. 200, 43 N.W.2d 505 (1950).

In action for wrongful death by wife of deceased, settlement made by administrator of estate, with acquiescence of wife, barred recovery. Boell v. Overbaugh, 141 Neb. 264, 3 N.W.2d 439 (1942).

In action for wrongful death, negligence of taxicab driver in which deceased was riding was no defense. Koehn v. City of Hastings, 114 Neb. 106, 206 N.W. 19 (1925).

Streetcar company was not liable for wrongful death of person injured in collision who committed suicide knowing purpose and effect of his act. Long v. Omaha & C. B. St. Ry. Co., 108 Neb. 342, 187 N.W. 930 (1922).

Charitable institutions are not liable for negligence or neglect of nurses, even though compensated. Duncan v. Nebraska Sanitarium & Benevolent Assn., 92 Neb. 162, 137 N.W. 1120 (1912).

Receipt of benefits by widow under contract of membership in relief department of railroad would not bar action by her as administratrix for wrongful death. Chicago, B. & Q. Ry. Co. v. Healy, 76 Neb. 783, 107 N.W. 1005 (1906), affirmed on rehearing 76 Neb. 786, 111 N.W. 598 (1907), overruling Walters v. Chicago, B. & Q. Ry. Co., 74 Neb. 551, 104 N.W. 1066 (1905).

Electric companies owe a duty toward the public, individuals and employees in regard to its charged wires. New Omaha Thompson-Houston Electric Light Co. v. Rombold, 68 Neb. 54, 93 N.W. 966 (1903), reversed on rehearing New Omaha Thompson-Houston Electric Light Co. v. Rombold, 68 Neb. 71, 97 N.W. 1030 (1904); New Omaha Thomson-Houston Electric Light Co. v. Johnson, 67 Neb. 393, 93 N.W. 778 (1903).

Railway company is not liable for injuries caused by a team taking fright at the ordinary operation of trains. Hendricks v. Fremont, E. & M. V. R. R. Co., 67 Neb. 120, 93 N.W. 141 (1903).

Whatever would have been a defense had the deceased survived and brought suit is a defense in an action brought by the administrator of his estate. Seyfer v. Otoe County, 66 Neb. 566, 92 N.W. 756 (1902).

Where railroad company had paid judgment for damages for wrongful death, beneficiary under contract with relief department of railroad could not recover on certificate. Oyster v. Burlington Relief Dept. of Chicago, B. & Q. R. R. Co., 65 Neb. 789, 91 N.W. 699 (1902).

Rules of company are not binding unless employee had actual notice. Chicago, B. & Q. R. R. Co. v. Oyster, 58 Neb. 1, 78 N.W. 359 (1899).

In action for wrongful death arising from use of defective material in building, owner was not liable where proximate cause of injury was a fire which caused wall to fall. Downs v. Kitchen, 53 Neb. 423, 73 N.W. 945 (1898); Kitchen v. Carter, 47 Neb. 776, 66 N.W. 855 (1896).

City is not liable for death in pond on private property, not in proximity to streets or alleys. City of Omaha v. Bowman, 52 Neb. 293, 72 N.W. 316 (1897).

Owner of building was not liable for death by falling walls caused by severe storm. Olsen v. Meyer, 46 Neb. 240, 64 N.W. 954 (1895).

Owner of vacant lot allowing pond of water to accumulate, is not liable for death of person drowned. Richards v. Connell, 45 Neb. 467, 63 N.W. 915 (1895).

A servant assumes risk by continued use of defective machinery; it is the duty of master to furnish appliances that are reasonably safe and fit for performance of work. Missouri P. Ry. Co. v. Baxter, 42 Neb. 793, 60 N.W. 1044 (1894).

It is no defense that decedent was killed while working for defendant on Sunday. Johnson v. Missouri P. Ry. Co., 18 Neb. 690, 26 N.W. 347 (1886).

5. Amount recovered

Verdict in action for wrongful death was not excessive. Langford v. Ritz Taxicab Co., 172 Neb. 153, 109 N.W.2d 120 (1961).

Evidence was sufficient to sustain judgment for five thousand five hundred dollars on account of wrongful death arising out of automobile collision. Moslander v. Carroll, 140 Neb. 358, 299 N.W. 479 (1941).

Verdict in favor of plaintiff for twenty thousand dollars was excessive. Hoffman v. Chicago & N. W. Ry. Co., 91 Neb. 783, 137 N.W. 878 (1912).

In ascertaining the amount of damages, evidence of circumstances of the decedent, age and condition of the family is considered. Crabtree v. Missouri P. Ry. Co., 86 Neb. 33, 124 N.W. 932 (1910).

Table of expectancy is not true measure of life where deceased had, prior to injury sued on, received serious injuries. Davis v. Borland, 83 Neb. 281, 119 N.W. 454 (1909).

6. Evidence

Presumption obtains that person killed was in the exercise of due care. Bailey v. Spindler, 161 Neb. 563, 74 N.W.2d 344 (1956).

In action brought under this section, admission of evidence that school teachers were needed and what salary scale of teachers was constituted error. Piechota v. Rapp, 148 Neb. 442, 27 N.W.2d 682 (1947).

In action for wrongful death, admission of defendant's testimony on coroner's inquest was not error. Smoke v. Carter, 105 Neb. 520, 181 N.W. 526 (1921).

Contributory negligence and presumption discussed. Armstrong v. Union Stock Yards Co., 93 Neb. 258, 140 N.W. 158 (1913).

Contributory negligence is not proximate cause of injury if defendant could by reasonable care, have avoided injury after seeing position of deceased. Zelenka v. Union Stock Yards Co., 82 Neb. 511, 118 N.W. 103 (1908).

Presumption is that one killed or injured was exercising ordinary care; burden of establishing assumption of risk is on master. Grimm v. Omaha Electric Light & Power Co., 79 Neb. 395, 114 N.W. 769 (1908).

In action for wrongful death of employee, declarations of engineer made at time of accident were admissible in evidence. Union P. R. R. Co. v. Edmondson, 77 Neb. 682, 110 N.W. 650 (1906).

Presumption that next of kin were alive at date of verdict is raised by their deposition given five years prior thereto. Chicago, R. I. & P. Ry. Co. v. Young, 67 Neb. 568, 93 N.W. 922 (1903).

Evidence was insufficient to show negligence. Nelson v. Swift & Co., 55 Neb. 598, 75 N.W. 1107 (1898); Union P. Ry. Co. v. Clark, 51 Neb. 220, 70 N.W. 923 (1897).

Claim for damages is not an asset of the estate; ''Carlisle Tables'' of expectancy are admissible. City of Friend v. Burleigh, 53 Neb. 674, 74 N.W. 50 (1898).

''Carlisle Tables'' of expectancy are admissible in evidence. Value of estate of decedent cannot be shown. Chicago, R. I. & P. Ry. Co. v. Hambel, 2 Neb. Unof. 607, 89 N.W. 643 (1902).

Witnesses who were acquainted with deceased, and knew his earning capacity, for years prior, may testify thereto. Chicago, R. I. & P. Ry. Co. v. Sizer, 1 Neb. Unof. 32, 95 N.W. 498 (1901).

In action for wrongful death, negligence could be proved by circumstantial evidence. National Alfalfa Dehydrating & Mill. Co. v. Sorensen, 220 F.2d 858 (8th Cir. 1955).

7. Negligence

Plaintiff must show that death was caused by some negligent act attributable to the defendant. Britton v. Samuelson, 147 Neb. 318, 23 N.W.2d 267 (1946).

It is the duty of the master to warn servant of hazards of employment. Central Granaries Co. v. Ault, 75 Neb. 249, 106 N.W. 418 (1905), modified on rehearing, 75 Neb. 249, 107 N.W. 1015 (1905); Dehning v. Detroit Bridge & Iron Works, 46 Neb. 556, 65 N.W. 186 (1895).

One, by negligently exposing himself to known danger, does not assume responsibility for unknown and undiscovered dangers. Holmes v. Chicago, R. I. & P. Ry. Co., 73 Neb. 489, 103 N.W. 77 (1905).

Where different conclusions may be drawn from conduct on which negligence is predicated, such question is for jury, not for court. McLean v. Omaha & C. B. Ry. & B. Co., 72 Neb. 447, 100 N.W. 935 (1904), affirmed on rehearing 72 Neb. 450, 103 N.W. 285 (1905).

Master in bridling a horse and allowing servant to control it with halter, resulting in death, was not negligent. Fifer v. Burch, 68 Neb. 217, 94 N.W. 107 (1903).

In this class of cases presumption is that deceased was injured by carrier's negligence. Chicago, R. I. & P. Ry. Co. v. Young, 58 Neb. 678, 79 N.W. 556 (1899).

Assumption of risk, and contributory negligence, was discussed. Dailey v. Burlington & M. R. R. R. Co., 58 Neb. 396, 78 N.W. 722 (1899).

Liability of railway for injuries to stockmen traveling on passes is that of a common carrier for hire. Missouri P. Ry. Co. v. Tietken, 49 Neb. 130, 68 N.W. 336 (1896).

Street railway companies must exercise the highest degree of care in regard to safety of passengers in operating their cars. Omaha & C. B. Ry. & B. Co. v. Levinston, 49 Neb. 17, 67 N.W. 887 (1896).

Plaintiff must show and prove that negligence complained of was the proximate cause of death. Brotherton v. Manhattan Beach Imp. Co., 48 Neb. 563, 67 N.W. 479 (1896), affirmed on rehearing 50 Neb. 214, 69 N.W. 757 (1897).

In action for wrongful death to passenger on railroad, there is a presumption of negligence. Chicago, B. & Q. R. R. Co. v. Hague, 48 Neb. 97, 66 N.W. 1000 (1896).

If plaintiff proves his case without disclosing negligence of intestate, burden of proof is on defendant to show contributory negligence. Anderson v. Chicago, B. & Q. R. Co., 35 Neb. 95, 52 N.W. 840 (1892).

Where common sense would have been sufficient to have warned plaintiff of danger, question of whether he was negligent is for the court. Chicago, B. & Q. R. R. Co. v. Lilley, 4 Neb. Unof. 286, 93 N.W. 1012 (1903).

30-810 Action for wrongful death; limitation; in whose name brought; judgment; disposition of avails; compromise of claim; procedure.

Every such action, as described in section 30-809, shall be commenced within two years after the death of such person. It shall be brought by and in the name of the person's personal representative for the exclusive benefit of the widow or widower and next of kin. The verdict or judgment should be for the amount of damages which the persons in whose behalf the action is brought have sustained. The avails thereof shall be paid to and distributed among the widow or widower and next of kin in the proportion that the pecuniary loss suffered by each bears to the total pecuniary loss suffered by all such persons. A personal representative shall not compromise or settle a claim for damages hereunder until the court by which he or she was appointed shall first have consented to and approved the terms thereof. The amount so received in settlement or recovered by judgment shall be reported to and, if so ordered, paid into such court for distribution, subject to the order of such court, to the persons entitled thereto after a hearing thereon and after notice of such hearing and of the time and place thereof has been given to all persons interested by publication three successive weeks in a legal newspaper published within the county or, if no legal newspaper is published within the county, then in a legal newspaper published in an adjoining county, except that the court for good cause shown may provide for a different method or time of giving notice and a person, including a guardian ad litem, conservator, or other fiduciary, may waive notice or any other requirement for the mailing or receipt of instruments by a writing signed by him or her and filed in the proceeding. Such amount shall not be subject to any claims against the estate of such decedent. When the amount of such settlement or judgment is ordered to be paid into the court and is five thousand dollars or more, the county court shall forthwith upon such settlement or payment of such judgment place such amount in interest-bearing certificates of deposit or a savings account in a banking institution pending the entry of an order of distribution by the court, and such interest that may accumulate pending the entry of such order shall be distributed in the same proportions as the settlement or judgment. The hearing to approve the terms of the compromise or settlement and the hearing for distribution of the amount so received in settlement or recovered by judgment may be combined into one hearing.

Source: G.S.1873, c. 15, § 2, p. 273; Laws 1907, c. 47, § 1, p. 190; R.S.1913, § 1429; Laws 1919, c. 92, § 1, p. 235; C.S.1922, § 1383; C.S.1929, § 30-810; Laws 1937, c. 75, § 1, p. 264; C.S.Supp.,1941, § 30-810; R.S.1943, § 30-810; Laws 1945, c. 66, § 1, p. 263; Laws 1971, LB 441, § 1; Laws 1990, LB 579, § 1.

Cross References

Mailing copy of published notice to parties required, see section 25-520.01 et seq.

1. By whom brought
2. Petition
3. Damages
4. Action by personal representative
5. Procedure
6. Disposition of avails
7. Miscellaneous

1. By whom brought

The use of the word ''shall'' in this section precludes anyone but the personal representative from bringing an action for wrongful death. A wrongful death cause of action cannot be assigned. Spradlin v. Dairyland Ins. Co., 263 Neb. 688, 641 N.W.2d 634 (2002).

Decedent's daughter who was born out of wedlock was entitled to recover in case brought under wrongful death act. Millman v. County of Butler, 244 Neb. 125, 504 N.W.2d 820 (1993).

2. Petition

Petition must allege facts showing pecuniary loss to next of kin. Union Pac. R. Co. v. Roeser, 69 Neb. 62, 95 N.W. 68 (1903); Tucker v. Draper, 62 Neb. 66, 86 N.W. 917 (1901); Chicago, B. & Q. R. Co. v. Bond, 58 Neb. 385, 78 N.W. 710 (1899); Chicago, B. & Q. R. Co. v. Van Buskirk, 58 Neb. 252, 78 N.W. 514 (1899).

Petition may be amended regarding special particulars of pecuniary loss, notwithstanding statutory period for commencing action has expired. Chicago, R. I. & P. Ry. Co. v. Young, 67 Neb. 568, 93 N.W. 922 (1903).

Petition is sufficient if it names children dependent upon deceased, even if it omits widow. Chicago, B. & Q. R. Co. v. Oyster, 58 Neb. 1, 78 N.W. 359 (1899).

Petition alleging that deceased left widow and minor children is sufficient to raise a presumption of pecuniary loss. Omaha & R. V. Ry. Co. v. Crow, 54 Neb. 747, 74 N.W. 1066 (1898).

Petition averring that defendant's acts caused death of deceased, that he left a widow and children and that plaintiff is his administrator, is sufficient. City of Friend v. Burleigh, 53 Neb. 674, 74 N.W. 50 (1898).

3. Damages

The loss contemplated by the wrongful death statute is a pecuniary loss, and damages on account of mental suffering or bereavement or as a solace to the next of kin on account of the death are not recoverable, as neither are damages for mental anguish suffered by the decedent prior to his death. Nelson v. Dolan, 230 Neb. 848, 434 N.W.2d 25 (1989).

There is no requirement in a wrongful death case that there be evidence of the dollar value of companionship, counseling, or advice. Maloney v. Kaminski, 220 Neb. 55, 368 N.W.2d 447 (1985).

Measure of damages for wrongful death of minor child includes loss of society, comfort, and companionship. Overrules prior decisions in conflict. Selders v. Armentrout, 190 Neb. 275, 207 N.W.2d 686 (1973).

Where evidence is clear that only person in class for which action may be brought hereunder is guilty of negligence more than slight as a matter of law, verdict should be directed for defendant. Weber v. Southwest Nebraska Dairy Suppliers, Inc., 187 Neb. 606, 193 N.W.2d 274 (1971).

Medical and funeral expenses resulting from wrongful death may be recovered when beneficiaries have paid or have become legally obligated to pay same. State Farm Mut. Auto. Ins. Co. v. Selders, 187 Neb. 342, 190 N.W.2d 789 (1971).

In an action for wrongful death, the measure of damage is the pecuniary loss to the statutory beneficiaries. Darnell v. Panhandle Coop. Assn., 175 Neb. 40, 120 N.W.2d 278 (1963).

Supreme Court will not interfere with amount of verdict and judgment unless clearly wrong. Langford v. Ritz Taxicab Co., 172 Neb. 153, 109 N.W.2d 120 (1961).

Where surviving spouse is sole beneficiary, his contributory negligence may bar recovery. Wieck v. Blessin, 165 Neb. 282, 85 N.W.2d 628 (1957).

Situations may exist where recovery may be had for probable contributions after child has attained majority. Bailey v. Spindler, 161 Neb. 563, 74 N.W.2d 344 (1956).

While damages are limited to pecuniary loss of certain designated persons, distribution is made in the same proportions as personal property. Tate v. Barry, 144 Neb. 517, 13 N.W.2d 879 (1944).

Action for damages commenced by administrator after death of his intestate, for pain and suffering inflicted upon the deceased is maintainable. Wilfong v. Omaha & C. B. St. Ry. Co., 129 Neb. 600, 262 N.W. 537 (1935).

Parent can recover funeral expenses incurred for an unmarried minor child whose death was caused by defendant's negligence. Killion v. Dinklage, 121 Neb. 322, 236 N.W. 757 (1931).

Damages are measured by pecuniary loss sustained by survivors by being deprived of what they would have received from the earnings of injured party had he lived out his expectancy. Hindmarsh v. Sulpho Saline Bath Co., 108 Neb. 168, 187 N.W. 806 (1922).

On death of a child, a parent may recover for the loss of expected services not only during minority, but afterwards, on evidence justifying a reasonable expectation of pecuniary benefit. Draper v. Tucker, 69 Neb. 434, 95 N.W. 1026 (1903).

The fact that wife remarried and obtained a new source of income does not affect amount of recovery of pecuniary loss suffered by death of first husband. Chicago, St. P., M. & O. Ry. Co. v. Lagerkrans, 65 Neb. 566, 91 N.W. 358 (1902), affirmed on rehearing, 65 Neb. 580, 95 N.W. 2 (1903).

Evidence that next of kin were poor and deceased was earning good wages was sufficient to show pecuniary loss, even though proof of contributions to next of kin was not shown. Post v. Olmsted, 47 Neb. 893, 66 N.W. 828 (1896).

4. Action by personal representative

Wrongful death statutes create a cause of action unknown at common law, but that cause of action is for the exclusive benefit of the decedent's next of kin. Rhein v. Caterpillar Tractor Co., 210 Neb. 321, 314 N.W.2d 19 (1982).

An employer can bring an action directly against a third party tort-feasor for injuries suffered by an employee, but only a personal representative of a deceased employee can bring an action for wrongful death, which action must be filed within two years after death. United Materials, Inc. v. Landreth, 196 Neb. 525, 244 N.W.2d 164 (1976).

Mother of child born out of wedlock is next of kin and may bring action for wrongful death of child. Piechota v. Rapp, 148 Neb. 442, 27 N.W.2d 682 (1947).

Right of action under the federal act and state statute is vested in the personal representative of deceased, but differing in each case as to the beneficiaries. Moore v. Omaha Warehouse Co., 106 Neb. 116, 182 N.W. 597 (1921).

Action must be brought by personal representative of deceased. Swift v. Sarpy County, 102 Neb. 378, 167 N.W. 458 (1918); Butera v. Mardis Co., 99 Neb. 815, 157 N.W. 1024 (1916); Murphy v. Willow Springs Brewing Co., 81 Neb. 219, 115 N.W. 763 (1908).

The legal representatives have a right of action in all cases wherein decedent might have maintained action had he lived. Chicago, R. I. & P. Ry. Co. v. Young, 58 Neb. 678, 79 N.W. 556 (1899).

Cause of action for death of decedent constituted an estate sufficient for granting administration. Missouri P. Ry. Co. v. Bradley, 51 Neb. 596, 71 N.W. 283 (1897).

Action against county for death caused by defective highway must be brought in name of administrator. Sarpy County v. Galvin, 251 F. 888 (8th Cir. 1918).

5. Procedure

Relation back of amendments to pleadings in actions for wrongful death are permitted to the same extent that relation back operates with respect to amendments made to pleadings in other causes of action. Genthon v. Kratville, 270 Neb. 74, 701 N.W.2d 334 (2005).

In an action for wrongful death of a child, ''money value'' of parental loss is not limited to, always equated with, or necessar-

ily dependent on deprivation of the child's monetary contribution toward parental well-being. Williams v. Monarch Transp., 238 Neb. 354, 470 N.W.2d 751 (1991).

Fraudulent concealment, if proven by a plaintiff, estops the defendant from asserting the statute of limitations as a defense to a plaintiff's wrongful death action under this section. Muller v. Thaut, 230 Neb. 244, 430 N.W.2d 884 (1988).

The 2-year limitation in this section is a statute of limitations. Muller v. Thaut, 230 Neb. 244, 430 N.W.2d 884 (1988).

Where as administrator of wife's estate, widower brought action for wrongful death and was unsuccessful, he was not barred under doctrines of res judicata or issue preclusion from prosecuting action for his own personal injuries and damages suffered in same collision. Hickman v. Southwest Dairy Suppliers, Inc., 194 Neb. 17, 230 N.W.2d 99 (1975).

Instruction submitted respecting requirement of bringing action for exclusive benefit of widow and next of kin was subject to criticism but was not prejudicially erroneous. Bush v. James, 152 Neb. 189, 40 N.W.2d 667 (1950).

In action for wrongful death, settlement made by administrator was binding on husband of deceased wife. Boell v. Overbaugh, 141 Neb. 264, 3 N.W.2d 439 (1942).

Allowance of amendment to petition introducing new cause of action, barred by limitations, was error. Emel v. Standard Oil Co., 117 Neb. 418, 220 N.W. 685 (1928).

Civil liability of third person for negligently causing death of another was not changed by Workmen's Compensation Act. Luckey v. Union Pac. R. Co., 117 Neb. 85, 219 N.W. 802 (1928).

Limitation imposed is independent of general statute of limitations. Gengo v. Mardis, 103 Neb. 164, 170 N.W. 841 (1919).

Conservator domiciled in Colorado who undertook no duties or obligations with respect to beneficiary domiciled in Nebraska, except to file suit for beneficiary's injury in accident in Nebraska, could not sue in federal court on basis of diversity of citizenship. Rogers v. Bates, 431 F.2d 16 (8th Cir. 1970).

Action under Lord Campbell's Act must be brought within two years after death of deceased. McDonnell v. Wasenmiller, 74 F.2d 320 (8th Cir. 1934).

Where action was brought by railroad employee for wrongful death, special section applying to actions by railroad employees was applicable and not this section. Jackson v. Chicago, R. I. & P. Ry. Co., 178 F. 432 (8th Cir. 1910).

6. Disposition of avails

When proceeds of wrongful death settlement are placed in trust by court order for later benefit of surviving children otherwise eligible for AFDC payments, Department of Public Welfare may not deny assistance pending proceedings to make such funds available for present needs of children. Godden v. Department of Public Welfare, 193 Neb. 269, 226 N.W.2d 627 (1975).

Next of kin means the class of persons nearest in degree of blood surviving the deceased. Mabe v. Gross, 167 Neb. 593, 94 N.W.2d 12 (1959).

It is a function of the district court to ascertain the amount to be distributed. Peetz v. Masek Auto Supply Co., 161 Neb. 588, 74 N.W.2d 474 (1956).

Damages recovered for wrongful death must be distributed among such relatives as suffer pecuniary loss from death. In re Lucht's Estate, 139 Neb. 139, 296 N.W. 749 (1941).

Provisions of Workmen's Compensation Act, where conflicting with this section, control distribution of proceeds of recovery for wrongful death. Goeres v. Goeres, 124 Neb. 720, 248 N.W. 75 (1933); Bronder v. Otis Elevator Co., 121 Neb. 581, 237 N.W. 671 (1931).

7. Miscellaneous

While this section includes a general statute of limitations applicable to wrongful death actions, section 44-2828 is a subsequently enacted special statute of limitations applicable to all personal injury and wrongful death actions against health care providers who have taken the necessary steps to qualify under the Nebraska Hospital-Medical Liability Act. Alegent Health Bergan Mercy Med. Ctr. v. Haworth, 260 Neb. 63, 615 N.W.2d 460 (2000).

ARTICLE 9

DECEDENT'S CONTRACT FOR SALE OF LAND; SPECIFIC PERFORMANCE UPON PETITION OF PURCHASER

Section

30-901. Repealed. Laws 1974, LB 354, § 316.
30-902. Repealed. Laws 1974, LB 354, § 316.
30-903. Repealed. Laws 1974, LB 354, § 316.
30-904. Repealed. Laws 1974, LB 354, § 316.
30-905. Repealed. Laws 1974, LB 354, § 316.
30-906. Repealed. Laws 1974, LB 354, § 316.
30-907. Repealed. Laws 1974, LB 354, § 316.

30-901 Repealed. Laws 1974, LB 354, § 316.

30-902 Repealed. Laws 1974, LB 354, § 316.

30-903 Repealed. Laws 1974, LB 354, § 316.

30-904 Repealed. Laws 1974, LB 354, § 316.

30-905 Repealed. Laws 1974, LB 354, § 316.

30-906 Repealed. Laws 1974, LB 354, § 316.

30-907 Repealed. Laws 1974, LB 354, § 316.

ARTICLE 10

DECEDENT'S CONTRACT FOR SALE OF LAND; SPECIFIC PERFORMANCE UPON PETITION OF PERSONAL REPRESENTATIVE

Section
30-1001. Repealed. Laws 1974, LB 354, § 316.
30-1002. Repealed. Laws 1974, LB 354, § 316.
30-1003. Repealed. Laws 1974, LB 354, § 316.

30-1001 Repealed. Laws 1974, LB 354, § 316.

30-1002 Repealed. Laws 1974, LB 354, § 316.

30-1003 Repealed. Laws 1974, LB 354, § 316.

ARTICLE 11

SALE OF LAND FOR PAYMENT OF DEBTS AND LEGACIES

Section
30-1101. Repealed. Laws 1974, LB 354, § 316.
30-1102. Repealed. Laws 1974, LB 354, § 316.
30-1103. Repealed. Laws 1974, LB 354, § 316.
30-1104. Repealed. Laws 1974, LB 354, § 316.
30-1105. Repealed. Laws 1974, LB 354, § 316.
30-1106. Repealed. Laws 1974, LB 354, § 316.
30-1107. Repealed. Laws 1974, LB 354, § 316.
30-1108. Repealed. Laws 1974, LB 354, § 316.
30-1109. Repealed. Laws 1974, LB 354, § 316.
30-1110. Repealed. Laws 1974, LB 354, § 316.
30-1111. Repealed. Laws 1974, LB 354, § 316.
30-1112. Repealed. Laws 1974, LB 354, § 316.
30-1113. Repealed. Laws 1974, LB 354, § 316.
30-1114. Repealed. Laws 1974, LB 354, § 316.
30-1115. Repealed. Laws 1974, LB 354, § 316.
30-1116. Repealed. Laws 1974, LB 354, § 316.
30-1117. Repealed. Laws 1974, LB 354, § 316.
30-1118. Repealed. Laws 1974, LB 354, § 316.
30-1119. Repealed. Laws 1974, LB 354, § 316.
30-1120. Repealed. Laws 1974, LB 354, § 316.
30-1121. Repealed. Laws 1974, LB 354, § 316.
30-1122. Repealed. Laws 1974, LB 354, § 316.
30-1123. Repealed. Laws 1974, LB 354, § 316.
30-1124. Repealed. Laws 1974, LB 354, § 316.
30-1125. Repealed. Laws 1974, LB 354, § 316.
30-1126. Repealed. Laws 1974, LB 354, § 316.
30-1127. Repealed. Laws 1974, LB 354, § 316.
30-1128. Repealed. Laws 1974, LB 354, § 316.
30-1129. Repealed. Laws 1974, LB 354, § 316.
30-1130. Repealed. Laws 1974, LB 354, § 316.
30-1131. Repealed. Laws 1974, LB 354, § 316.
30-1132. Repealed. Laws 1974, LB 354, § 316.
30-1133. Repealed. Laws 1974, LB 354, § 316.
30-1134. Repealed. Laws 1974, LB 354, § 316.
30-1135. Repealed. Laws 1974, LB 354, § 316.
30-1136. Repealed. Laws 1974, LB 354, § 316.
30-1137. Repealed. Laws 1974, LB 354, § 316.

Section
30-1138. Repealed. Laws 1974, LB 354, § 316.
30-1139. Repealed. Laws 1974, LB 354, § 316.
30-1140. Repealed. Laws 1974, LB 354, § 316.
30-1141. Repealed. Laws 1974, LB 354, § 316.
30-1142. Repealed. Laws 1974, LB 354, § 316.
30-1143. Repealed. Laws 1974, LB 354, § 316.
30-1144. Repealed. Laws 1974, LB 354, § 316.
30-1145. Repealed. Laws 1974, LB 354, § 316.

30-1101 Repealed. Laws 1974, LB 354, § 316.

30-1102 Repealed. Laws 1974, LB 354, § 316.

30-1103 Repealed. Laws 1974, LB 354, § 316.

30-1104 Repealed. Laws 1974, LB 354, § 316.

30-1105 Repealed. Laws 1974, LB 354, § 316.

30-1106 Repealed. Laws 1974, LB 354, § 316.

30-1107 Repealed. Laws 1974, LB 354, § 316.

30-1108 Repealed. Laws 1974, LB 354, § 316.

30-1109 Repealed. Laws 1974, LB 354, § 316.

30-1110 Repealed. Laws 1974, LB 354, § 316.

30-1111 Repealed. Laws 1974, LB 354, § 316.

30-1112 Repealed. Laws 1974, LB 354, § 316.

30-1113 Repealed. Laws 1974, LB 354, § 316.

30-1114 Repealed. Laws 1974, LB 354, § 316.

30-1115 Repealed. Laws 1974, LB 354, § 316.

30-1116 Repealed. Laws 1974, LB 354, § 316.

30-1117 Repealed. Laws 1974, LB 354, § 316.

30-1118 Repealed. Laws 1974, LB 354, § 316.

30-1119 Repealed. Laws 1974, LB 354, § 316.

30-1120 Repealed. Laws 1974, LB 354, § 316.

30-1121 Repealed. Laws 1974, LB 354, § 316.

30-1122 Repealed. Laws 1974, LB 354, § 316.

30-1123 Repealed. Laws 1974, LB 354, § 316.

30-1124 Repealed. Laws 1974, LB 354, § 316.

30-1125 Repealed. Laws 1974, LB 354, § 316.

30-1126 Repealed. Laws 1974, LB 354, § 316.

30-1127 Repealed. Laws 1974, LB 354, § 316.

30-1128 Repealed. Laws 1974, LB 354, § 316.

30-1129 Repealed. Laws 1974, LB 354, § 316.

30-1130 Repealed. Laws 1974, LB 354, § 316.

30-1131 Repealed. Laws 1974, LB 354, § 316.

30-1132 Repealed. Laws 1974, LB 354, § 316.

30-1133 Repealed. Laws 1974, LB 354, § 316.

30-1134 Repealed. Laws 1974, LB 354, § 316.

30-1135 Repealed. Laws 1974, LB 354, § 316.

30-1136 Repealed. Laws 1974, LB 354, § 316.

30-1137 Repealed. Laws 1974, LB 354, § 316.

30-1138 Repealed. Laws 1974, LB 354, § 316.

30-1139 Repealed. Laws 1974, LB 354, § 316.

30-1140 Repealed. Laws 1974, LB 354, § 316.

30-1141 Repealed. Laws 1974, LB 354, § 316.

30-1142 Repealed. Laws 1974, LB 354, § 316.

30-1143 Repealed. Laws 1974, LB 354, § 316.

30-1144 Repealed. Laws 1974, LB 354, § 316.

30-1145 Repealed. Laws 1974, LB 354, § 316.

ARTICLE 12

MORTGAGES BY EXECUTORS, ADMINISTRATORS, AND GUARDIANS

Section

30-1201. Repealed. Laws 1974, LB 354, § 316.
30-1202. Repealed. Laws 1974, LB 354, § 316.
30-1203. Repealed. Laws 1974, LB 354, § 316.
30-1204. Repealed. Laws 1974, LB 354, § 316.
30-1205. Repealed. Laws 1974, LB 354, § 316.
30-1206. Repealed. Laws 1974, LB 354, § 316.
30-1207. Repealed. Laws 1974, LB 354, § 316.
30-1208. Repealed. Laws 1974, LB 354, § 316.

30-1201 Repealed. Laws 1974, LB 354, § 316.

30-1202 Repealed. Laws 1974, LB 354, § 316.

30-1203 Repealed. Laws 1974, LB 354, § 316.

30-1204 Repealed. Laws 1974, LB 354, § 316.

30-1205 Repealed. Laws 1974, LB 354, § 316.

30-1206 Repealed. Laws 1974, LB 354, § 316.

30-1207 Repealed. Laws 1974, LB 354, § 316.

30-1208 Repealed. Laws 1974, LB 354, § 316.

ARTICLE 13

DISTRIBUTION OF ESTATE

Section
30-1301. Repealed. Laws 1974, LB 354, § 316.
30-1302. Repealed. Laws 1974, LB 354, § 316.
30-1303. Repealed. Laws 1974, LB 354, § 316.
30-1304. Repealed. Laws 1974, LB 354, § 316.
30-1305. Repealed. Laws 1974, LB 354, § 316.
30-1306. Repealed. Laws 1974, LB 354, § 316.
30-1307. Repealed. Laws 1974, LB 354, § 316.
30-1308. Repealed. Laws 1974, LB 354, § 316.

30-1301 Repealed. Laws 1974, LB 354, § 316.

30-1302 Repealed. Laws 1974, LB 354, § 316.

30-1303 Repealed. Laws 1974, LB 354, § 316.

30-1304 Repealed. Laws 1974, LB 354, § 316.

30-1305 Repealed. Laws 1974, LB 354, § 316.

30-1306 Repealed. Laws 1974, LB 354, § 316.

30-1307 Repealed. Laws 1974, LB 354, § 316.

30-1308 Repealed. Laws 1974, LB 354, § 316.

ARTICLE 14

ACCOUNTING AND SETTLEMENT BY EXECUTORS, ADMINISTRATORS, GUARDIANS, AND TRUSTEES

Section
30-1401. Repealed. Laws 1974, LB 354, § 316.
30-1402. Repealed. Laws 1974, LB 354, § 316.
30-1403. Repealed. Laws 1974, LB 354, § 316.
30-1404. Repealed. Laws 1974, LB 354, § 316.
30-1405. Repealed. Laws 1974, LB 354, § 316.
30-1406. Repealed. Laws 1974, LB 354, § 316.
30-1407. Repealed. Laws 1974, LB 354, § 316.
30-1408. Repealed. Laws 1974, LB 354, § 316.
30-1409. Repealed. Laws 1974, LB 354, § 316.
30-1410. Repealed. Laws 1974, LB 354, § 316.
30-1411. Repealed. Laws 1974, LB 354, § 316.
30-1412. Repealed. Laws 1974, LB 354, § 316.
30-1413. Repealed. Laws 1974, LB 354, § 316.
30-1414. Repealed. Laws 1974, LB 354, § 316.
30-1415. Repealed. Laws 1974, LB 354, § 316.

30-1401 Repealed. Laws 1974, LB 354, § 316.

30-1402 Repealed. Laws 1974, LB 354, § 316.

30-1403 Repealed. Laws 1974, LB 354, § 316.

30-1404 Repealed. Laws 1974, LB 354, § 316.

30-1405 Repealed. Laws 1974, LB 354, § 316.

30-1406 Repealed. Laws 1974, LB 354, § 316.

30-1407 Repealed. Laws 1974, LB 354, § 316.

30-1408 Repealed. Laws 1974, LB 354, § 316.

30-1409 Repealed. Laws 1974, LB 354, § 316.

30-1410 Repealed. Laws 1974, LB 354, § 316.

30-1411 Repealed. Laws 1974, LB 354, § 316.

30-1412 Repealed. Laws 1974, LB 354, § 316.

30-1413 Repealed. Laws 1974, LB 354, § 316.

30-1414 Repealed. Laws 1974, LB 354, § 316.

30-1415 Repealed. Laws 1974, LB 354, § 316.

ARTICLE 15
ADMINISTRATION BONDS AND LIABILITY

Section
30-1501. Repealed. Laws 1974, LB 354, § 316.
30-1502. Repealed. Laws 1974, LB 354, § 316.
30-1503. Repealed. Laws 1974, LB 354, § 316.
30-1504. Repealed. Laws 1974, LB 354, § 316.
30-1505. Repealed. Laws 1974, LB 354, § 316.
30-1506. Repealed. Laws 1974, LB 354, § 316.
30-1507. Repealed. Laws 1974, LB 354, § 316.
30-1508. Repealed. Laws 1974, LB 354, § 316.
30-1509. Repealed. Laws 1974, LB 354, § 316.
30-1510. Repealed. Laws 1974, LB 354, § 316.
30-1511. Repealed. Laws 1974, LB 354, § 316.

30-1501 Repealed. Laws 1974, LB 354, § 316.

30-1502 Repealed. Laws 1974, LB 354, § 316.

30-1503 Repealed. Laws 1974, LB 354, § 316.

30-1504 Repealed. Laws 1974, LB 354, § 316.

30-1505 Repealed. Laws 1974, LB 354, § 316.

30-1506 Repealed. Laws 1974, LB 354, § 316.

30-1507 Repealed. Laws 1974, LB 354, § 316.

30-1508 Repealed. Laws 1974, LB 354, § 316.

30-1509 Repealed. Laws 1974, LB 354, § 316.

30-1510 Repealed. Laws 1974, LB 354, § 316.

30-1511 Repealed. Laws 1974, LB 354, § 316.

ARTICLE 16
APPEALS IN PROBATE MATTERS

Section
30-1601. Appeal; procedure; operate as supersedeas; when; appellant; pay costs; when.
30-1602. Repealed. Laws 1981, LB 42, § 27.
30-1603. Repealed. Laws 1981, LB 42, § 27.
30-1604. Repealed. Laws 1981, LB 42, § 27.
30-1605. Repealed. Laws 1981, LB 42, § 27.
30-1606. Repealed. Laws 1981, LB 42, § 27.
30-1607. Repealed. Laws 1981, LB 42, § 27.
30-1608. Repealed. Laws 1981, LB 42, § 27.
30-1609. Repealed. Laws 1981, LB 42, § 27.
30-1610. Repealed. Laws 1981, LB 42, § 27.

30-1601 Appeal; procedure; operate as supersedeas; when; appellant; pay costs; when.

(1) In all matters arising under the Nebraska Probate Code and in all matters in county court arising under the Nebraska Uniform Trust Code, appeals may be taken to the Court of Appeals in the same manner as an appeal from district court to the Court of Appeals.

(2) An appeal may be taken by any party and may also be taken by any person against whom the final judgment or final order may be made or who may be affected thereby.

(3) When the appeal is by someone other than a personal representative, conservator, trustee, guardian, or guardian ad litem, the appealing party shall, within thirty days after the entry of the judgment or final order complained of, deposit with the clerk of the county court a supersedeas bond or undertaking in such sum as the court shall direct, with at least one good and sufficient surety approved by the court, conditioned that the appellant will satisfy any judgment and costs that may be adjudged against him or her, including costs under subsection (6) of this section, unless the court directs that no bond or undertaking need be deposited. If an appellant fails to comply with this subsection, the Court of Appeals on motion and notice may take such action, including dismissal of the appeal, as is just.

(4) The appeal shall be a supersedeas for the matter from which the appeal is specifically taken, but not for any other matter. In appeals pursuant to sections 30-2601 to 30-2661, upon motion of any party to the action, the county court may remove the supersedeas or require the appealing party to deposit with the clerk of the county court a bond or other security approved by the court in an amount and conditioned in accordance with sections 30-2640 and 30-2641. Once the appeal is perfected, the court having jurisdiction over the appeal may, upon motion of any party to the action, reimpose or remove the supersedeas or require the appealing party to deposit with the clerk of the court a bond or other security approved by the court in an amount and conditioned in accordance with sections 30-2640 and 30-2641. Upon motion of any interested party or upon the court's own motion, the county court may appoint a special guardian or conservator pending appeal despite any supersedeas order.

(5) The judgment of the Court of Appeals shall not vacate the judgment in the county court. The judgment of the Court of Appeals shall be certified without cost to the county court for further proceedings consistent with the determination of the Court of Appeals.

(6) If it appears to the Court of Appeals that an appeal was taken vexatiously or for delay, the court shall adjudge that the appellant shall pay the cost thereof, including an attorney's fee, to the adverse party in an amount fixed by the Court of Appeals, and any bond required under subsection (3) of this section shall be liable for the costs.

Source: Laws 1881, c. 47, § 1, p. 227; R.S.1913, § 1526; C.S.1922, § 1471; C.S.1929, § 30-1601; R.S.1943, § 30-1601; Laws 1975, LB 481, § 14; Laws 1981, LB 42, § 17; Laws 1995, LB 538, § 7; Laws 1997, LB 466, § 1; Laws 1999, LB 43, § 18; Laws 2003, LB 130, § 119.

Cross References

Nebraska Probate Code, see section 30-2201.
Nebraska Uniform Trust Code, see section 30-3801.

1. Scope
2. When appeal allowed
3. Procedure
4. Who may appeal

1. Scope

In probate proceedings, the Supreme Court's scope of review is limited to error appearing on the record. In re Estate of Massie, 218 Neb. 103, 353 N.W.2d 735 (1984).

Provisions relating to appeal in probate matters apply to actions involving appointment of guardians and administration of their wards' estates. In re Guardianship of Hergenrother, 141 Neb. 858, 5 N.W.2d 118 (1942); In re Guardianship of Warner, 137 Neb. 25, 288 N.W. 39 (1939).

This section is not applicable to appeals from decree of partition and distribution of estates; executors cannot appeal unless pecuniarily affected. Merrick v. Kennedy, 46 Neb. 264, 64 N.W. 989 (1895).

2. When appeal allowed

Party aggrieved by final order of county court in probate matter is not confined to remedy of appeal, but may resort to error proceedings. In re Berg's Estate, 139 Neb. 99, 296 N.W. 460 (1941).

Orders made during progress of probate proceedings allowing fees and partial distribution of estate are interlocutory and not final, and are not appealable. In re Estate of Lehman, 135 Neb. 592, 283 N.W. 199 (1939).

Party not prejudiced by judgment cannot appeal therefrom; order of county court requiring executor to retain sufficient funds to pay contingent claim when absolute is not appealable. In re Estate of Bolton, 121 Neb. 737, 238 N.W. 358 (1931).

Order of county court approving executor's account, not discharging executor, but continuing proceedings to future date for further report, is not final order and not appealable. In re Hansen's Estate, 117 Neb. 551, 221 N.W. 694 (1928).

Appeal may be had by one affected whose name does not appear as party. In re Strelow's Guardianship, 116 Neb. 873, 219 N.W. 387 (1928).

Order of distribution is appealable; proceeding being in rem, all persons interested are parties. In re Estate of Creighton, 91 Neb. 654, 136 N.W. 1001 (1912).

Appeal lies from judgment of probate court granting or refusing an allowance to widow out of estate of her husband. Rieger v. Schaible, 81 Neb. 33, 115 N.W. 560 (1908).

Appeal lies from all final orders and judgments in probate matters. Weeke v. Wortmann, 77 Neb. 407, 109 N.W. 503 (1906).

Order that administrator turn over to his successor money claimed by him as gift from testator is appealable. Foster v. Murphy, 76 Neb. 576, 107 N.W. 843 (1906).

Order removing special administrator and appointing another to serve instead is final order and appealable. In re Estate of Pope, 75 Neb. 550, 106 N.W. 659 (1906).

An order refusing permission to file claim after expiration of time allowed is appealable. Ribble v. Furmin, 71 Neb. 108, 98 N.W. 420 (1904).

Appeal lies from order allowing claim against estate though no answer was filed against claim, and order was made in absence of administrator. Herman v. Beck, 68 Neb. 566, 94 N.W. 512 (1903).

Order allowing claim is appealable. Estate of McKenna v. McCormick, 60 Neb. 595, 83 N.W. 844 (1900).

Appeal from probate of will may be made without consent of court and without notice. Bazzo v. Wallace, 16 Neb. 293, 20 N.W. 314 (1884).

3. Procedure

Right of appeal is statutory. In re Estate of Bednar, 151 Neb. 242, 37 N.W.2d 195 (1949).

Where account is allowed in part and appeal taken and bond given solely for part disallowed, appeal did not bring up entire account for review. In re Estate of Wilson, 83 Neb. 252, 119 N.W. 522 (1909).

Where same person was administrator of one estate and guardian of two other estates, and appeal was taken from objections to reports, cases were properly consolidated on appeal. Etmund v. Etmund, 83 Neb. 151, 119 N.W. 239 (1909).

Taking second appeal does not of itself constitute abandonment of first one. Drexel v. Reed, 65 Neb. 231, 91 N.W. 254 (1902).

Administrator, appealing from allowance of claim, thereby waives irregularities before judgment and brings whole controversy before the court. Dredla v. Baache, 60 Neb. 655, 83 N.W. 916 (1900).

4. Who may appeal

An heir is a party affected by contest of will and may appeal. Clutter v. Merrick, 162 Neb. 825, 77 N.W.2d 572 (1956).

Where bequest was made in trust to executors which county court declared invalid, executors have right to appeal. In re Estate of Creighton, 91 Neb. 654, 136 N.W. 1001 (1912).

Heirs cannot appeal from judgments or orders to which they have consented. In re Estate of Whiton, 86 Neb. 367, 125 N.W. 606 (1910).

Heirs depending upon an incompetent person for support may appeal from order dismissing their petition for appointment of guardian of incompetent. Tierney v. Tierney, 81 Neb. 193, 115 N.W. 764 (1908).

Appeal may be taken by any person affected. Gannon v. Phelan, 64 Neb. 220, 89 N.W. 1028 (1902).

Administrator who makes general objection to claim in probate court, and on appeal answers charging that claim is fraudulent, raises no new issue. Graham v. Estate of Townsend, 62 Neb. 364, 87 N.W. 169 (1901).

An heir may be substituted for administrator, where administrator had wrongfully compromised claims, to set aside order and prosecute action to recover claim due estate. Tecumseh Nat. Bank v. McGee, 61 Neb. 709, 85 N.W. 949 (1901).

One not prejudiced cannot appeal from order discharging executor. Cowherd v. Kitchen, 57 Neb. 426, 77 N.W. 1107 (1899).

One sued by administrator cannot petition to vacate appointment, and not being affected, cannot appeal. Missouri P. Ry. Co. v. Jay, 53 Neb. 747, 74 N.W. 259 (1898).

One of several defendants, who have separate and distinct defenses, may appeal; if interests are inseparably connected, appeal brings up whole case. Polk v. Covell, 43 Neb. 884, 62 N.W. 240 (1895).

30-1602 Repealed. Laws 1981, LB 42, § 27.

30-1603 Repealed. Laws 1981, LB 42, § 27.

30-1604 Repealed. Laws 1981, LB 42, § 27.

30-1605 Repealed. Laws 1981, LB 42, § 27.

30-1606 Repealed. Laws 1981, LB 42, § 27.

30-1607 Repealed. Laws 1981, LB 42, § 27.

30-1608 Repealed. Laws 1981, LB 42, § 27.

30-1609 Repealed. Laws 1981, LB 42, § 27.

30-1610 Repealed. Laws 1981, LB 42, § 27.

ARTICLE 17

PROCEEDINGS TO ESTABLISH TITLE OF HEIRS IN CERTAIN CASES

Section
30-1701. Repealed. Laws 1974, LB 354, § 316.
30-1702. Repealed. Laws 1974, LB 354, § 316.
30-1703. Repealed. Laws 1974, LB 354, § 316.
30-1704. Repealed. Laws 1974, LB 354, § 316.
30-1705. Repealed. Laws 1974, LB 354, § 316.
30-1706. Repealed. Laws 1974, LB 354, § 316.
30-1707. Repealed. Laws 1974, LB 354, § 316.
30-1708. Repealed. Laws 1974, LB 354, § 316.
30-1709. Repealed. Laws 1974, LB 354, § 316.
30-1710. Repealed. Laws 1974, LB 354, § 316.
30-1711. Repealed. Laws 1974, LB 354, § 316.
30-1712. Repealed. Laws 1974, LB 354, § 316.
30-1713. Repealed. Laws 1974, LB 354, § 316.
30-1714. Repealed. Laws 1974, LB 354, § 316.
30-1715. Repealed. Laws 1974, LB 354, § 316.
30-1716. Repealed. Laws 1974, LB 354, § 316.

30-1701 Repealed. Laws 1974, LB 354, § 316.

30-1702 Repealed. Laws 1974, LB 354, § 316.

30-1703 Repealed. Laws 1974, LB 354, § 316.

30-1704 Repealed. Laws 1974, LB 354, § 316.

30-1705 Repealed. Laws 1974, LB 354, § 316.

30-1706 Repealed. Laws 1974, LB 354, § 316.

30-1707 Repealed. Laws 1974, LB 354, § 316.

30-1708 Repealed. Laws 1974, LB 354, § 316.

30-1709 Repealed. Laws 1974, LB 354, § 316.

30-1710 Repealed. Laws 1974, LB 354, § 316.

30-1711 Repealed. Laws 1974, LB 354, § 316.

30-1712 Repealed. Laws 1974, LB 354, § 316.

30-1713 Repealed. Laws 1974, LB 354, § 316.

30-1714 Repealed. Laws 1974, LB 354, § 316.

30-1715 Repealed. Laws 1974, LB 354, § 316.

30-1716 Repealed. Laws 1974, LB 354, § 316.

ARTICLE 18

TRUST ESTATES; COUNTY COURT JURISDICTION

Section
30-1801. Repealed. Laws 1974, LB 354, § 316.
30-1802. Repealed. Laws 1974, LB 354, § 316.
30-1803. Repealed. Laws 1974, LB 354, § 316.
30-1804. Repealed. Laws 1974, LB 354, § 316.
30-1805. Repealed. Laws 1974, LB 354, § 316.
30-1806. Repealed. Laws 1974, LB 354, § 316.
30-1807. Repealed. Laws 1974, LB 354, § 316.

30-1801 Repealed. Laws 1974, LB 354, § 316.

30-1802 Repealed. Laws 1974, LB 354, § 316.

30-1803 Repealed. Laws 1974, LB 354, § 316.

30-1804 Repealed. Laws 1974, LB 354, § 316.

30-1805 Repealed. Laws 1974, LB 354, § 316.

30-1806 Repealed. Laws 1974, LB 354, § 316.

30-1807 Repealed. Laws 1974, LB 354, § 316.

ARTICLE 19

PERSONS ABSENT SEVEN YEARS; ADMINISTRATION OF ESTATES

Section
30-1901. Repealed. Laws 1974, LB 354, § 316.
30-1902. Repealed. Laws 1974, LB 354, § 316.
30-1903. Repealed. Laws 1974, LB 354, § 316.

Section
30-1904. Repealed. Laws 1974, LB 354, § 316.
30-1905. Repealed. Laws 1974, LB 354, § 316.
30-1906. Repealed. Laws 1974, LB 354, § 316.
30-1907. Repealed. Laws 1974, LB 354, § 316.
30-1908. Repealed. Laws 1974, LB 354, § 316.
30-1909. Repealed. Laws 1974, LB 354, § 316.
30-1910. Repealed. Laws 1974, LB 354, § 316.
30-1911. Repealed. Laws 1974, LB 354, § 316.
30-1912. Repealed. Laws 1974, LB 354, § 316.
30-1913. Repealed. Laws 1974, LB 354, § 316.
30-1914. Repealed. Laws 1974, LB 354, § 316.

30-1901 Repealed. Laws 1974, LB 354, § 316.

30-1902 Repealed. Laws 1974, LB 354, § 316.

30-1903 Repealed. Laws 1974, LB 354, § 316.

30-1904 Repealed. Laws 1974, LB 354, § 316.

30-1905 Repealed. Laws 1974, LB 354, § 316.

30-1906 Repealed. Laws 1974, LB 354, § 316.

30-1907 Repealed. Laws 1974, LB 354, § 316.

30-1908 Repealed. Laws 1974, LB 354, § 316.

30-1909 Repealed. Laws 1974, LB 354, § 316.

30-1910 Repealed. Laws 1974, LB 354, § 316.

30-1911 Repealed. Laws 1974, LB 354, § 316.

30-1912 Repealed. Laws 1974, LB 354, § 316.

30-1913 Repealed. Laws 1974, LB 354, § 316.

30-1914 Repealed. Laws 1974, LB 354, § 316.

ARTICLE 20

PERSONS ABSENT FOR NINETY DAYS; ADMINISTRATION OF ESTATES

Section
30-2001. Repealed. Laws 1974, LB 354, § 316.
30-2002. Repealed. Laws 1974, LB 354, § 316.
30-2003. Repealed. Laws 1974, LB 354, § 316.
30-2004. Repealed. Laws 1974, LB 354, § 316.
30-2005. Repealed. Laws 1974, LB 354, § 316.
30-2006. Repealed. Laws 1974, LB 354, § 316.
30-2007. Repealed. Laws 1974, LB 354, § 316.
30-2008. Repealed. Laws 1974, LB 354, § 316.
30-2009. Repealed. Laws 1974, LB 354, § 316.
30-2010. Repealed. Laws 1974, LB 354, § 316.
30-2011. Repealed. Laws 1974, LB 354, § 316.
30-2012. Repealed. Laws 1974, LB 354, § 316.

30-2001 Repealed. Laws 1974, LB 354, § 316.

30-2002 Repealed. Laws 1974, LB 354, § 316.

30-2003 Repealed. Laws 1974, LB 354, § 316.

30-2004 Repealed. Laws 1974, LB 354, § 316.

30-2005 Repealed. Laws 1974, LB 354, § 316.

30-2006 Repealed. Laws 1974, LB 354, § 316.

30-2007 Repealed. Laws 1974, LB 354, § 316.

30-2008 Repealed. Laws 1974, LB 354, § 316.

30-2009 Repealed. Laws 1974, LB 354, § 316.

30-2010 Repealed. Laws 1974, LB 354, § 316.

30-2011 Repealed. Laws 1974, LB 354, § 316.

30-2012 Repealed. Laws 1974, LB 354, § 316.

ARTICLE 21
FIDUCIARIES' EMERGENCY ACT

Section
30-2101. Repealed. Laws 1974, LB 354, § 316.
30-2102. Repealed. Laws 1974, LB 354, § 316.
30-2103. Repealed. Laws 1974, LB 354, § 316.
30-2104. Repealed. Laws 1974, LB 354, § 316.
30-2105. Repealed. Laws 1974, LB 354, § 316.
30-2106. Repealed. Laws 1974, LB 354, § 316.

30-2101 Repealed. Laws 1974, LB 354, § 316.

30-2102 Repealed. Laws 1974, LB 354, § 316.

30-2103 Repealed. Laws 1974, LB 354, § 316.

30-2104 Repealed. Laws 1974, LB 354, § 316.

30-2105 Repealed. Laws 1974, LB 354, § 316.

30-2106 Repealed. Laws 1974, LB 354, § 316.

ARTICLE 22
PROBATE JURISDICTION

PART 1
SHORT TITLE, CONSTRUCTION, GENERAL PROVISIONS

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30-2201. Short title.
30-2202. Purposes; rule of construction.
30-2203. Supplementary general principles of law applicable.
30-2204. Severability.
30-2205. Construction against implied repeal.
30-2206. Effect of fraud and evasion.
30-2207. Evidence as to death or status.
30-2208. Acts by holder of general power.

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30-2209. General definitions.

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30-2210. Territorial application.
30-2211. Subject matter jurisdiction.
30-2212. Venue; multiple proceedings; transfer.
30-2213. Supreme Court; establish rules; uniform administration, proceedings, and practice.
30-2214. Clerk of court shall keep records and certified copies.
30-2215. Mailing published notice; proof.
30-2216. Registrar; powers.
30-2217. Appeals; manner.
30-2218. Clerk magistrates; assignment of matters.
30-2219. Oath, affirmation, or statement on filed documents; perjury; penalty.

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NOTICE, PARTIES, AND REPRESENTATION
IN ESTATE LITIGATION AND OTHER MATTERS

30-2220. Notice of hearing; method and time of giving.
30-2221. Notice; other requirements; waiver.
30-2222. Pleadings; when parties bound by others; notice.

PART 1

SHORT TITLE, CONSTRUCTION, GENERAL PROVISIONS

30-2201 Short title.

Sections 30-2201 to 30-2902 shall be known and may be cited as the Nebraska Probate Code.

Source: Laws 1974, LB 354, § 1, UPC § 1-101; Laws 1985, LB 292, § 1; Laws 1993, LB 250, § 33; Laws 1993, LB 782, § 2; Laws 1997, LB 466, § 2; Laws 1999, LB 100, § 1.

30-2202 Purposes; rule of construction.

(a) This code shall be liberally construed and applied to promote its underlying purposes and policies.

(b) The underlying purposes and policies of this code are:

(1) to simplify and clarify the law concerning the affairs of decedents, missing persons, protected persons, minors, and incapacitated persons;

(2) to discover and make effective the intent of a decedent in distribution of his or her property;

(3) to promote a speedy and efficient system for liquidating the estate of the decedent and making distribution to his or her successors; and

(4) to make uniform the law among the various jurisdictions.

Source: Laws 1974, LB 354, § 2, UPC § 1-102; Laws 2003, LB 130, § 120.

The Nebraska Probate Code should be liberally construed to discover and make effective the intent of a decedent in the distribution of his property. DeVries v. Rix, 203 Neb. 392, 279 N.W.2d 89 (1979).

30-2203 Supplementary general principles of law applicable.

Unless displaced by the particular provisions of this code, the principles of law and equity supplement its provisions.

Source: Laws 1974, LB 354, § 3, UPC § 1-103.

30-2204 Severability.

If any provisions of this code or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the code which can be given effect without the invalid provision or application, and to this end the provisions of this code are declared to be severable.

Source: Laws 1974, LB 354, § 4, UPC § 1-104.

30-2205 Construction against implied repeal.

This code is a general act intended as a unified coverage of its subject matter and no part of it shall be deemed impliedly repealed by subsequent legislation if it can reasonably be avoided.

Source: Laws 1974, LB 354, § 5, UPC § 1-105.

30-2206 Effect of fraud and evasion.

Whenever fraud has been perpetrated in connection with any proceeding or in any statement filed under this code or if fraud is used to avoid or circumvent the provisions or purposes of this code, any person injured thereby may obtain appropriate relief against the perpetrator of the fraud or restitution from any person (other than a bona fide purchaser) benefiting from the fraud, whether innocent or not. Any proceeding must be commenced within two years after the discovery of the fraud, but no proceeding may be brought against one not a perpetrator of the fraud later than five years after the time of commission of the fraud. This section has no bearing on remedies relating to fraud practiced on a decedent during his lifetime which affects the succession of his estate.

Source: Laws 1974, LB 354, § 6, UPC § 1-106.

30-2207 Evidence as to death or status.

In proceedings under this code the rules of evidence in courts of general jurisdiction, including any relating to simultaneous deaths, are applicable unless specifically displaced by the code. In addition, the following rules relating to determination of death and status are applicable:

(1) a certified or authenticated copy of a death certificate purporting to be issued by an official or agency of the place where the death purportedly occurred is prima facie proof of the fact, place, date and time of death and the identity of the decedent;

(2) a certified or authenticated copy of any record or report of a governmental agency, domestic or foreign, that a person is missing, detained, dead, or alive is prima facie evidence of the status and of the dates, circumstances and places disclosed by the record or report;

(3) a person who is absent for a continuous period of five years, during which he has not been heard from, and whose absence is not satisfactorily explained after diligent search or inquiry is presumed to be dead. His death is presumed to have occurred at the end of the period unless there is sufficient evidence for determining that death occurred earlier.

Source: Laws 1974, LB 354, § 7, UPC § 1-107.

30-2208 Acts by holder of general power.

For the purpose of granting consent or approval with regard to the acts or accounts of a personal representative, including relief from liability or penalty for failure to post bond or to perform other duties, the sole holder or all coholders of a presently exercisable general power of appointment, including one in the form of a power of amendment or revocation, are deemed to act for beneficiaries to the extent their interests (as objects, takers in default, or otherwise) are subject to the power.

Source: Laws 1974, LB 354, § 8, UPC § 1-108; Laws 2003, LB 130, § 121.

PART 2

DEFINITIONS

30-2209 General definitions.

Subject to additional definitions contained in the subsequent articles which are applicable to specific articles or parts, and unless the context otherwise requires, in the Nebraska Probate Code:

(1) Application means a written request to the registrar for an order of informal probate or appointment under part 3 of Article 24.

(2) Beneficiary, as it relates to trust beneficiaries, includes a person who has any present or future interest, vested or contingent, and also includes the owner of an interest by assignment or other transfer, and as it relates to a charitable trust includes any person entitled to enforce the trust.

(3) Child includes any individual entitled to take as a child under the code by intestate succession from the parent whose relationship is involved and excludes any person who is only a stepchild, a foster child, or a grandchild or any more remote descendant.

(4) Claim, in respect to estates of decedents and protected persons, includes liabilities of the decedent or protected person whether arising in contract, in tort or otherwise, and liabilities of the estate which arise at or after the death of the decedent or after the appointment of a conservator, including funeral expenses and expenses of administration. The term does not include estate or inheritance taxes, demands or disputes regarding title of a decedent or protected person to specific assets alleged to be included in the estate.

(5) Court means the court or branch having jurisdiction in matters relating to the affairs of decedents. This court in this state is known as county court or, for purposes of guardianship of a juvenile over which a separate juvenile court already has jurisdiction, the county court or separate juvenile court.

(6) Conservator means a person who is appointed by a court to manage the estate of a protected person.

(7) Devise, when used as a noun, means a testamentary disposition of real or personal property and, when used as a verb, means to dispose of real or personal property by will.

(8) Devisee means any person designated in a will to receive a devise. In the case of a devise to an existing trust or trustee, or to a trustee on trust described by will, the trust or trustee is the devisee and the beneficiaries are not devisees.

(9) Disability means cause for a protective order as described by section 30-2630.

(10) Disinterested witness to a will means any individual who acts as a witness to a will and is not an interested witness to such will.

(11) Distributee means any person who has received property of a decedent from his or her personal representative other than as a creditor or purchaser. A testamentary trustee is a distributee only to the extent of distributed assets or increment thereto remaining in his or her hands. A beneficiary of a testamentary trust to whom the trustee has distributed property received from a personal representative is a distributee of the personal representative. For purposes of this provision, testamentary trustee includes a trustee to whom assets are transferred by will, to the extent of the devised assets.

(12) Estate includes the property of the decedent, trust, or other person whose affairs are subject to the Nebraska Probate Code as originally constituted and as it exists from time to time during administration.

(13) Exempt property means that property of a decedent's estate which is described in section 30-2323.

(14) Fiduciary includes personal representative, guardian, conservator, and trustee.

(15) Foreign personal representative means a personal representative of another jurisdiction.

(16) Formal proceedings mean those conducted before a judge with notice to interested persons.

(17) Guardian means a person who has qualified as a guardian of a minor or incapacitated person pursuant to testamentary or court appointment, but excludes one who is merely a guardian ad litem.

(18) Heirs mean those persons, including the surviving spouse, who are entitled under the statutes of intestate succession to the property of a decedent.

(19) Incapacitated person is as defined in section 30-2601.

(20) Informal proceedings mean those conducted without notice to interested persons by an officer of the court acting as a registrar for probate of a will or appointment of a personal representative.

(21) Interested person includes heirs, devisees, children, spouses, creditors, beneficiaries, and any others having a property right in or claim against a trust estate or the estate of a decedent, ward, or protected person which may be affected by the proceeding. It also includes persons having priority for appointment as personal representative, and other fiduciaries representing interested persons. The meaning as it relates to particular persons may vary from time to time and must be determined according to the particular purposes of, and matter involved in, any proceeding.

(22) Interested witness to a will means any individual who acts as a witness to a will at the date of its execution and who is or would be entitled to receive any property thereunder if the testator then died under the circumstances existing at the date of its execution, but does not include any individual, merely because of such nomination, who acts as a witness to a will by which he or she is nominated as personal representative, conservator, guardian, or trustee.

(23) Issue of a person means all his or her lineal descendants of all generations, with the relationship of parent and child at each generation being determined by the definitions of child and parent contained in the Nebraska Probate Code.

(24) Lease includes an oil, gas, or other mineral lease.

(25) Letters include letters testamentary, letters of guardianship, letters of administration, and letters of conservatorship.

(26) Minor means an individual under nineteen years of age, but in case any person marries under the age of nineteen years his or her minority ends.

(27) Mortgage means any conveyance, agreement, or arrangement in which property is used as security.

(28) Nonresident decedent means a decedent who was domiciled in another jurisdiction at the time of his or her death.

(29) Notice means compliance with the requirements of notice pursuant to subdivisions (a)(1) and (a)(2) of section 30-2220.

(30) Organization includes a corporation, government, or governmental subdivision or agency, business trust, estate, trust, partnership, limited liability company, or association, two or more persons having a joint or common interest, or any other legal entity.

(31) Parent includes any person entitled to take, or who would be entitled to take if the child died without a will, as a parent under the Nebraska Probate Code, by intestate succession from the child whose relationship is in question and excludes any person who is only a stepparent, foster parent, or grandparent.

(32) Person means an individual, a corporation, an organization, a limited liability company, or other legal entity.

(33) Personal representative includes executor, administrator, successor personal representative, special administrator, and persons who perform substantially the same function under the law governing their status.

(34) Petition means a written request to the court for an order after notice.

(35) Proceeding includes action at law and suit in equity, but does not include a determination of inheritance tax under Chapter 77, article 20, or estate tax apportionment as provided in sections 77-2108 to 77-2112.

(36) Property includes both real and personal property or any interest therein and means anything that may be the subject of ownership.

(37) Protected person is as defined in section 30-2601.

(38) Protective proceeding is as defined in section 30-2601.

(39) Registrar refers to the official of the court designated to perform the functions of registrar as provided in section 30-2216.

(40) Relative or relation of a person means all persons who are related to him or her by blood or legal adoption.

(41) Security includes any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease, collateral-trust certificate, transferable share, voting-trust certificate or, in general, any interest or instrument commonly known as a security, or any certificate of interest or participation, any temporary or interim certificate, receipt, or certificate of deposit for, or any warrant or right to subscribe to or purchase, any of the foregoing.

(42) Settlement, in reference to a decedent's estate, includes the full process of administration, distribution, and closing.

(43) Special administrator means a personal representative as described by sections 30-2457 to 30-2461.

(44) State includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession subject to the legislative authority of the United States.

(45) Successor personal representative means a personal representative, other than a special administrator, who is appointed to succeed a previously appointed personal representative.

(46) Successors mean those persons, other than creditors, who are entitled to property of a decedent under his or her will or the Nebraska Probate Code.

(47) Supervised administration refers to the proceedings described in Article 24, part 5.

(48) Testacy proceeding means a proceeding to establish a will or determine intestacy.

(49) Testator means the maker of a will.

(50) Trust includes any express trust, private or charitable, with additions thereto, wherever and however created. It also includes a trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust. Trust excludes other constructive trusts, and it excludes resulting trusts, conservatorships, personal representatives, trust accounts as defined in Article 27, custodial arrangements pursuant to the Nebraska Uniform Transfers to Minors Act, business trusts providing for certificates to be issued to beneficiaries, common trust funds, voting trusts, security arrangements, liquidation trusts, and trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind, and any arrangement under which a person is nominee or escrowee for another.

(51) Trustee includes an original, additional, or successor trustee, whether or not appointed or confirmed by court.

(52) Ward is as defined in section 30-2601.

(53) Will means any instrument, including any codicil or other testamentary instrument complying with sections 30-2326 to 30-2338, which disposes of personal or real property, appoints a personal representative, conservator, guardian, or trustee, revokes or revises an earlier executed testamentary instrument, or encompasses any one or more of such objects or purposes.

Source: Laws 1974, LB 354, § 9, UPC § 1-201; Laws 1978, LB 650, § 1; Laws 1992, LB 907, § 26; Laws 1993, LB 121, § 193; Laws 1998, LB 1041, § 3.

Cross References

Nebraska Uniform Transfers to Minors Act, see section 43-2701.

Pursuant to subsection (4) of this section, a judgment lien on the proceeds from a sale is not a claim subject to the provisions of the Nebraska Probate Code. Pursuant to subsection (4) of this section, the Nebraska Probate Code exempts liens because a lien by definition is not a liability as that term is used in the definition of claims. McCook Nat. Bank v. Bennett, 248 Neb. 567, 537 N.W.2d 353 (1995).

Subsection (4) of this section does not distinguish between legal and equitable title when excluding disputes regarding title of a decedent from the definition of ''claims''. Eggers v. Rittscher, 247 Neb. 648, 529 N.W.2d 741 (1995).

As ''distributee'' is defined in subdivision (11) of this section, failure to inform court of attorney fee payments did not violate this particular supervised administration because such fees were not ''distributions.'' In re Estate of Snover, 233 Neb. 198, 443 N.W.2d 894 (1989).

An action to recover specific trust property, or its traceable product, from a decedent's estate is not a claim under subdivision (4) of this section and need not be filed as a claim against the estate. In re Estate of Chaney, 232 Neb. 121, 439 N.W.2d 764 (1989).

PART 3

SCOPE, JURISDICTION, AND COURTS

30-2210 Territorial application.

Except as otherwise provided in this code, this code applies to (1) the affairs and estates of decedents, missing persons, and persons to be protected, domiciled in this state, (2) the property of nonresidents located in this state or property coming into the control of a fiduciary who is subject to the laws of this state, (3) incapacitated persons and minors in this state, and (4) survivorship and related accounts in this state.

Source: Laws 1974, LB 354, § 10, UPC § 1-301; Laws 2003, LB 130, § 122.

30-2211 Subject matter jurisdiction.

(a) To the full extent permitted by the Constitution of Nebraska, the court has jurisdiction over all subject matter relating to (1) estates of decedents, including construction of wills and determination of heirs and successors of decedents, and estates of protected persons; and (2) protection of minors and incapacitated persons.

(b) The court has full power to make orders, judgments, and decrees and take all other action necessary and proper to administer justice in the matters which come before it.

Source: Laws 1974, LB 354, § 11, UPC § 1-302; Laws 2003, LB 130, § 123.

To the extent permitted by the Nebraska Constitution, the county court has jurisdiction over all subject matter relating to estates of decedents, including the determination of heirs, subject to administration. Mischke v. Mischke, 253 Neb. 439, 571 N.W.2d 248 (1997).

County courts, in exercising exclusive original jurisdiction over estates, may apply equitable principles to matters within probate jurisdiction. In re Estate of Steppuhn, 221 Neb. 329, 377 N.W.2d 83 (1985).

In an equity action to determine title to joint bank accounts based on constructive trust or conversion, the county courts cannot acquire jurisdiction under this section since they have no equity jurisdiction over this type of action. Miller v. Janecek, 210 Neb. 316, 314 N.W.2d 250 (1982).

County courts have exclusive original jurisdiction of all matters related to decedents' estates, including the probate of wills and the construction thereof, and all other jurisdiction heretofore provided and not specifically repealed by Laws 1972, LB 1032, and such other jurisdiction as thereafter provided by law. County courts, in exercising exclusive original jurisdiction over estates, may apply equitable principles to matters within probate jurisdiction. In re Estate of Layton, 207 Neb. 646, 300 N.W.2d 802 (1981).

30-2212 Venue; multiple proceedings; transfer.

(a) Where a proceeding under this code could be maintained in more than one place in this state, the court in which the proceeding is first commenced has the exclusive right to proceed.

(b) If proceedings concerning the same estate, protected person, or ward are commenced in more than one court of this state, the court in which the proceeding was first commenced shall continue to hear the matter, and the other courts shall hold the matter in abeyance until the question of venue is decided, and if the ruling court determines that venue is properly in another court, it shall transfer the proceeding to the other court.

(c) If a court finds that in the interest of justice a proceeding or a file should be located in another court of this state, the court making the finding may transfer the proceeding or file to the other court.

Source: Laws 1974, LB 354, § 12, UPC § 1-303; Laws 2003, LB 130, § 124.

30-2213 Supreme Court; establish rules; uniform administration, proceedings, and practice.

The Supreme Court shall have authority to establish rules to carry into effect the provisions of this code so that its administration, proceedings, and practice shall be uniform.

Source: Laws 1974, LB 354, § 13.

30-2214 Clerk of court shall keep records and certified copies.

The clerk of court shall keep a record for each decedent, ward, or protected person involved in any document which may be filed with the court under this code, including petitions and applications, demands for notices or bonds, and of any orders or responses relating thereto by the registrar or court, and establish and maintain a system for indexing, filing, or recording which is sufficient to enable users of the records to obtain adequate information. Upon payment of the fees required by law, the clerk must issue certified copies of any probated wills, letters issued to personal representatives, or any other record or paper filed or recorded. Certificates relating to probated wills must indicate whether the decedent was domiciled in this state and whether the probate was formal or informal. Certificates relating to letters must show the date of appointment.

Source: Laws 1974, LB 354, § 14, UPC § 1-305; Laws 2003, LB 130, § 125.

30-2215 Mailing published notice; proof.

The party instituting or maintaining the proceeding or his attorney is required to mail the published notice and give proof thereof in accordance with section 25-520.01.

Source: Laws 1974, LB 354, § 15.

30-2216 Registrar; powers.

The acts and orders which this code specifies as performable by the registrar may be performed either by a judge of the court or by a person, including the clerk, designated by the court by a written order filed and recorded in the office of the court.

Source: Laws 1974, LB 354, § 16, UPC § 1-307.

30-2217 Appeals; manner.

Appellate review under this code shall be governed by section 30-1601.

Source: Laws 1974, LB 354, § 17, UPC § 1-308.

Appeals of matters arising under the Nebraska Probate Code are reviewed for error on the record. In re Conservatorship of Estate of Martin, 228 Neb. 103, 421 N.W.2d 463 (1988).

30-2218 Clerk magistrates; assignment of matters.

Assignment of matters arising under the Nebraska Probate Code to clerk magistrates shall be subject to sections 24-519 and 24-520.

Source: Laws 1974, LB 354, § 18, UPC § 1-309; Laws 1977, LB 167, § 2; Laws 1986, LB 529, § 46.

30-2219 Oath, affirmation, or statement on filed documents; perjury; penalty.

Except as otherwise specifically provided in this code or by rule, every document filed with the court under this code including applications, petitions, and demands for notice, shall be deemed to include an oath, affirmation, or statement to the effect that its representations are true as far as the person executing or filing it knows or is informed. Any person who willfully falsifies any such representation shall be guilty of perjury and shall, upon conviction thereof, be punished as provided by section 28-915.

Source: Laws 1974, LB 354, § 19, UPC § 1-310; Laws 1978, LB 748, § 25.

PART 4

NOTICE, PARTIES, AND REPRESENTATION IN ESTATE LITIGATION AND OTHER MATTERS

30-2220 Notice of hearing; method and time of giving.

(a) If notice of a hearing on any petition is required and except for specific notice requirements as otherwise provided, the petitioner shall cause notice of the time and place of hearing of any petition to be given to any interested person or his or her attorney if he or she has appeared by attorney or requested that notice be sent to his or her attorney. Notice shall be given:

(1) If the identity and address of any person is known (i) by mailing a copy thereof at least fourteen days before the time set for the hearing by certified, registered, or ordinary first-class mail addressed to the person being notified at the post office address given in his or her demand for notice, if any, or at his or her office or place of residence, if known, or (ii) by delivering a copy thereof to the person being notified personally at least fourteen days before the time set for the hearing; and

(2) By publishing at least once a week for three consecutive weeks a copy thereof in a legal newspaper having general circulation in the county where the hearing is to be held, the last publication of which is to be at least three days before the time set for the hearing.

If the action pending on which notice is required is a guardianship or conservatorship action under sections 30-2601 to 30-2661, publication shall be required only if the identity or address of any person required to be served is not known.

(b) The court for good cause shown may provide for a different method or time of giving notice for any hearing.

(c) Proof of the giving of notice shall be made on or before the hearing and filed in the proceeding.

Source: Laws 1974, LB 354, § 20, UPC § 1-401; Laws 1978, LB 650, § 2; Laws 1993, LB 782, § 3; Laws 1997, LB 466, § 3.

This section clearly states that in a statutory proceeding, the notice required to be given to all interested parties is 14 days. In re Conservatorship of Holle, 254 Neb. 380, 576 N.W.2d 473 (1998).

30-2221 Notice; other requirements; waiver.

A person, including a guardian ad litem, conservator, or other fiduciary, may waive notice or any other requirement for the mailing or receipt of instruments by a writing signed by him or his attorney and filed in the proceeding.

Source: Laws 1974, LB 354, § 21, UPC § 1-402; Laws 1978, LB 650, § 34.

30-2222 Pleadings; when parties bound by others; notice.

In formal proceedings involving estates of decedents, minors, protected persons, or incapacitated persons, and in judicially supervised settlements, the following apply:

(1) Interests to be affected shall be described in pleadings which give reasonable information to owners by name or class, by reference to the instrument creating the interests, or in other appropriate manner.

(2) Persons are bound by orders binding others in the following cases:

(i) Orders binding the sole holder or all coholders of a power of revocation or a presently exercisable general power of appointment, including one in the form of a power of amendment, bind other persons to the extent their interests (as objects, takers in default, or otherwise) are subject to the power.

(ii) To the extent there is no conflict of interest between them or among persons represented, orders binding a conservator bind the person whose estate he or she controls; orders binding a guardian bind the ward if no conservator of his or her estate has been appointed; orders binding a trustee bind beneficiaries of the trust in proceedings to probate a will establishing or adding to a trust, to review the acts or accounts of a prior fiduciary and in proceedings involving creditors or other third parties; and orders binding a personal representative bind persons interested in the undistributed assets of a decedent's estate in actions or proceedings by or against the estate. If there is no conflict of interest and no conservator or guardian has been appointed, a parent may represent his or her minor child.

(iii) An unborn or unascertained person who is not otherwise represented is bound by an order to the extent his or her interest is adequately represented by another party having a substantially identical interest in the proceeding.

(3) Notice is required as follows:

(i) Notice as prescribed by section 30-2220 shall be given to every interested person or to one who can bind an interested person as described in (2)(i) or (2)(ii) above. Notice may be given both to a person and to another who may bind him or her.

(ii) Notice is given to unborn or unascertained persons, who are not represented under (2)(i) or (2)(ii) above, by giving notice to all known persons whose interests in the proceedings are substantially identical to those of the unborn or unascertained persons.

(4) At any point in a proceeding, a court may appoint a guardian ad litem to represent the interest of a minor, an incapacitated, unborn, or unascertained person, or a person whose identity or address is unknown, if the court determines that representation of the interest otherwise would be inadequate. If not precluded by conflict of interests, a guardian ad litem may be appointed to

represent several persons or interests. The court shall set out its reasons for appointing a guardian ad litem as a part of the record of the proceeding.

Source: Laws 1974, LB 354, § 22, UPC § 1-403; Laws 2003, LB 130, § 126.

To the extent there is no conflict of interest between or among persons represented, orders binding a trustee bind the beneficiaries of a trust, and if there is no conflict of interest and no conservator or guardian has been appointed, a parent may represent his or her minor child. Koch v. Koch, 226 Neb. 305, 411 N.W.2d 319 (1987).

This section does not empower a county court to appoint a guardian ad litem for a mentally incapacitated person to serve in that capacity at a hearing held outside of that court concerning the subject's possible removal from the Beatrice State Developmental Center and the court cannot tax costs for services performed by the guardian ad litem at said hearing against the state. In re Guardianship of Jonas, 211 Neb. 397, 318 N.W.2d 867 (1982).

ARTICLE 23
INTESTATE SUCCESSION AND WILLS

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INTESTATE SUCCESSION

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PART 1

INTESTATE SUCCESSION

30-2301 Intestate estate.

Any part of the estate of a decedent not effectively disposed of by his will passes to his heirs as prescribed in the following sections of this code.

Source: Laws 1974, LB 354, § 23, UPC § 2-101.

30-2302 Share of the spouse.

The intestate share of the surviving spouse is:

(1) if there is no surviving issue or parent of the decedent, the entire intestate estate;

(2) if there is no surviving issue but the decedent is survived by a parent or parents, the first fifty thousand dollars, plus one-half of the balance of the intestate estate;

(3) if there are surviving issue all of whom are issue of the surviving spouse also, the first fifty thousand dollars, plus one-half of the balance of the intestate estate;

(4) if there are surviving issue one or more of whom are not issue of the surviving spouse, one-half of the intestate estate.

Source: Laws 1974, LB 354, § 24, UPC § 2-102; Laws 1980, LB 694, § 2.

30-2303 Share of heirs other than surviving spouse.

The part of the intestate estate not passing to the surviving spouse under section 30-2302, or the entire intestate estate if there is no surviving spouse, passes as follows:

(1) to the issue of the decedent; if they are all of the same degree of kinship to the decedent they take equally, but if of unequal degree, then those of more remote degree take by representation;

(2) if there is no surviving issue, to his parent or parents equally;

(3) if there is no surviving issue or parent, to the issue of the parents or either of them by representation;

(4) if there is no surviving issue, parent or issue of a parent, but the decedent is survived by one or more grandparents or issue of grandparents, half of the estate passes to the paternal grandparents if both survive, or to the surviving paternal grandparent, or to the issue of the paternal grandparents if both are deceased, the issue taking equally if they are all of the same degree of kinship to the decedent, but if of unequal degree those of more remote degree take by representation; and the other half passes to the maternal relatives in the same manner; but if there be no surviving grandparent or issue of grandparent on either the paternal or the maternal side, the entire estate passes to the relatives on the other side in the same manner as the half;

(5) if there is no surviving issue, parent, issue of a parent, grandparent or issue of a grandparent, the entire estate passes to the next of kin in equal degree, excepting that when there are two or more collateral kindred in equal degree, but claiming through different ancestors, those who claim through the nearest ancestor shall be preferred to those claiming through a more remote ancestor.

Source: Laws 1974, LB 354, § 25, UPC § 2-103.

30-2304 Requirement that heir survive decedent for one hundred twenty hours.

Any person who fails to survive the decedent by one hundred twenty hours is deemed to have predeceased the decedent for purposes of homestead allowance, exempt property and intestate succession, and the decedent's heirs are determined accordingly. If the time of death of the decedent or of the person who would otherwise be an heir, or the times of death of both, cannot be determined, and it cannot be established that the person who would otherwise be an heir has survived the decedent by one hundred twenty hours, it is deemed that the person failed to survive for the required period. This section is not to be applied where its application would result in a taking of intestate estate by the state under section 30-2305.

Source: Laws 1974, LB 354, § 26, UPC § 2-104.

30-2305 Escheat; no taker.

If there is no taker under the provisions of this article, the intestate estate passes to the state.

Source: Laws 1974, LB 354, § 27, UPC § 2-105.

30-2306 Representation.

If representation is called for by this code, the estate is divided into as many shares as there are surviving heirs in the nearest degree of kinship and deceased persons in the same degree who left issue who survive the decedent, each surviving heir in the nearest degree receiving one share and the share of each deceased person in the same degree being divided among his issue in the same manner.

Source: Laws 1974, LB 354, § 28, UPC § 2-106.

30-2307 Kindred of half blood.

The degrees of kindred shall be computed according to the rule of civil law. Relatives of the half blood inherit the same share they would inherit if they were of the whole blood.

Source: Laws 1974, LB 354, § 29, UPC § 2-107; Laws 1978, LB 650, § 3.

30-2308 Afterborn heirs.

Relatives of the decedent conceived before his death but born thereafter inherit as if they had been born in the lifetime of the decedent.

Source: Laws 1974, LB 354, § 30, UPC § 2-108.

30-2309 Meaning of child and related terms.

If, for purposes of intestate succession, a relationship of parent and child must be established to determine succession by, through, or from a person,

(1) an adopted person is the child of an adopting parent and not of the natural parents except that adoption of a child by the spouse of a natural parent has no effect on the relationship between the child and that natural parent.

(2) in cases not covered by (1), a person born out of wedlock is a child of the mother. That person is also a child of the father, if:

(i) the natural parents participated in a marriage ceremony before or after the birth of the child, even though the attempted marriage is void; or

(ii) the paternity is established by an adjudication before the death of the father or is established thereafter by strict, clear and convincing proof. The open cohabitation of the mother and alleged father during the period of conception shall be admissible as evidence of paternity. The paternity established under this subparagraph (ii) is ineffective to qualify the father or his kindred to inherit from or through the child unless the father has openly treated the child as his, and has not refused to support the child.

Source: Laws 1974, LB 354, § 31, UPC § 2-109.

Although subdivision (2) of this section applies specifically to children born out of wedlock, it applies a fortiori to children born in wedlock. This subdivision does not give illegitimate children rights of inheritance superior to those of legitimate children. Divorce proceeding may constitute a final adjudication of paternity within the meaning of subdivision (2) of this section. In re Estate of Trew, 244 Neb. 490, 507 N.W.2d 478 (1993).

A twice-adopted child may not inherit under the rules of intestacy from his first adoptive parent who has consented to the subsequent adoption and relinquished all rights of a parent in relation to that child. In re Estate of Luckey, Bailey v. Luckey, 206 Neb. 53, 291 N.W.2d 235 (1980).

Conflicting evidence of paternity does not prevent a trial court from determining heirs under subsection (2) of this section by

clear and convincing evidence because the trial court deserves deference in weighing the credibility of the witnesses and deciding what evidence to believe. In re Estate of Brionez, 8 Neb. App. 913, 603 N.W.2d 688 (2000).

This section does not impose a written notice requirement on an objector. In re Estate of Brionez, 8 Neb. App. 913, 603 N.W.2d 688 (2000).

Under this section and the Nebraska Probate Code, an adopted child is an individual entitled to take as a child, and therefore an adopted child is included as a lineal descendant of its adoptive parent under the statutory definition of "issue." In re Estate of Hannan, 2 Neb. App. 636, 513 N.W.2d 339 (1994).

30-2310 Advancements; method of determining.

If a person dies intestate as to all his estate, property which he gave in his lifetime to an heir is treated as an advancement against the latter's share of the estate only if declared in a contemporaneous writing by the decedent or acknowledged in writing by the heir to be an advancement. For this purpose the property advanced is valued as of the time the heir came into possession or enjoyment of the property or as of the time of death of the decedent, whichever first occurs. If the recipient of the property fails to survive the decedent, the property is not taken into account in computing the intestate share to be received by the recipient's issue, unless the declaration or acknowledgment provides otherwise.

Source: Laws 1974, LB 354, § 32, UPC § 2-110.

30-2311 Debts to decedent; retainer.

A debt owed to the decedent is not charged against the intestate share of any person except the debtor. If the debtor fails to survive the decedent, the debt is not taken into account in computing the intestate share of the debtor's issue.

Source: Laws 1974, LB 354, § 33, UPC § 2-111.

30-2312 Alienage; conditions.

No person is disqualified to take as an heir because he or a person through whom he claims is or has been an alien except as provided in section 4-107 and Chapter 76, article 4.

Source: Laws 1974, LB 354, § 34, UPC § 2-112.

PART 2

ELECTIVE SHARE OF SURVIVING SPOUSE

30-2313 Right to elective share; validity of certain conveyances.

(a) Except as provided in subsection (c) of this section, if a married person domiciled in this state dies, the surviving spouse has a right of election to take an elective share in any fraction not in excess of one-half of the augmented estate under the limitations and conditions hereinafter stated.

(b) Except as provided in subsection (c) of this section, if a married person not domiciled in this state dies, the right, if any, of the surviving spouse to take an elective share in property in this state and the amount or extent of such share are governed by the law of the decedent's domicile at death.

(c) If a married person dies and such person (1) had been an owner of real estate in this state and (2) had conveyed the real estate during his or her lifetime without joinder of his or her spouse in the conveyance, while domiciled outside of the state, such conveyance shall be valid regardless of the law of the decedent's domicile at death. The real estate shall not be subject to any claims

or interests derived from the grantor or the grantor's estate because the spouse did not join in the conveyance.

Source: Laws 1974, LB 354, § 35, UPC § 2-201; Laws 1980, LB 694, § 3; Laws 1994, LB 1116, § 1; Laws 1995, LB 872, § 1.

This section provides the right of a surviving spouse to elect to take an elective share of a deceased spouse's estate. In re Estate of Peterson, 221 Neb. 792, 381 N.W.2d 109 (1986).

30-2314 Augmented estate.

(a) The augmented estate is the estate, first, reduced by the aggregate amount of funeral and administration expenses, homestead allowance, family allowances and exemptions, and enforceable claims and, second, increased by the aggregate amount of the following items:

(1) The value of property transferred by the decedent at any time during marriage to the surviving spouse to or for the benefit of any person other than a bona fide purchaser or the surviving spouse, but only to the extent to which the decedent did not receive adequate and full consideration in money or money's worth for such transfer, if such transfer is a transfer of any of the following types:

(i) Any transfer under which the decedent retained at death the possession or enjoyment of, or right to income from, the property;

(ii) Any transfer to the extent to which the decedent retained at death a power alone or with any other person to revoke such transfer or to consume, invade, or dispose of the principal of the property for his or her own benefit;

(iii) Any transfer whereby the property is held at death by the decedent and any other person or persons with right of survivorship; or

(iv) Any transfer to a donee or donees made by the decedent within three years of death to the extent to which the aggregate amount of such transfers to any one donee in any of such years exceeded three thousand dollars; and

(2) The value of property owned by the surviving spouse at death of the decedent and the value of property transferred by the surviving spouse at any time during marriage to the decedent to or for the benefit of any person other than the decedent, but exclusive of all income earned thereby before death of the decedent and only to the extent both to which such property would have been included in the augmented estate of the surviving spouse if the surviving spouse had predeceased the decedent and to which such property is derived from the decedent by any means other than testate or intestate succession without adequate and full consideration in money or money's worth, if such property is property of any of the following types:

(i) Any property derived from the decedent including, without limitation to, any beneficial interest of the surviving spouse in a trust created by the decedent during his or her lifetime, any property appointed to the surviving spouse by the exercise by the decedent of a general or a special power of appointment also exercisable in favor of any person other than the surviving spouse, any proceeds, including accidental death benefits, of insurance upon the life of the decedent together with any lump sum immediately payable and the commuted value of any proceeds of annuity contracts under which the decedent was the primary annuitant attributable to the premiums for such insurance paid by the decedent or by his or her employer, his or her partner, a partnership of which he or she was a member, or any of his or her creditors, the commuted value of

any amounts or proceeds payable after death of the decedent under public or private pension, disability, compensation, death benefit, or retirement plan, exclusive of the federal social security, railroad retirement, or like system, by reason of service performed or disability incurred by the decedent, and the value of any share of the surviving spouse resulting from rights in community property in Nebraska or elsewhere formerly owned with the decedent; or

(ii) Any property owned by the surviving spouse at death of the decedent or previously transferred by the surviving spouse, except to the extent to which the surviving spouse establishes that such property was derived from any source other than the decedent.

A bona fide purchaser under (1) above is a purchaser for value in good faith and without notice of any adverse claim; and the attachment of stamps to an instrument and their cancellation under sections 76-901 to 76-908 are prima facie evidence that the transferee of the transfer thereby effected is a bona fide purchaser.

(b) Property included in the augmented estate under subsection (a) of this section is valued at the following dates:

(1) For property transferred by the decedent by irrevocable gift during lifetime, at the date, if before death of the decedent, the donee first came into possession or enjoyment of such property;

(2) For property transferred by the surviving spouse of the decedent, at the date, if before death of the decedent, such transfer became irrevocable; and

(3) For all property not valued at any other date, at the date of death of the decedent.

(c) The augmented estate does not include the following items otherwise includable under subsection (a) of this section:

(1) Accident or life insurance proceeds, joint annuity, or pension payable to any person other than the surviving spouse of the decedent;

(2) Property transferred by the decedent to any person other than the surviving spouse by any bill of sale, conveyance, deed, or gift or by any other means of transfer either by an instrument of transfer joined in by the surviving spouse of the decedent or with the consent to transfer manifested before or after death of the decedent by a writing signed by the surviving spouse of the decedent before, contemporaneously with, or after the transfer; and

(3) Property transferred by or from the decedent to any person by any means other than intestate succession or testamentary disposition if a petition is not filed or delivered under section 30-2317 within nine months of the death of the decedent.

Source: Laws 1974, LB 354, § 36, UPC § 2-202; Laws 1980, LB 694, § 4; Laws 1985, LB 293, § 1.

A spouse's labor does not become a contribution ''in money's worth'' such as to take one-half the value of jointly produced and acquired assets out of the augmented estate computation provided for in this section. In re Estate of Carman, 213 Neb. 98, 327 N.W.2d 611 (1982).

An augmented estate formula includes property added that decedent gave to others during his lifetime and property held jointly by decedent and others. In re Estate of Florey, 212 Neb. 665, 325 N.W.2d 643 (1982).

Property owned in joint tenancy is not included in the estate of the deceased joint tenant except for inheritance tax purposes. In re Estate of Walters, 212 Neb. 645, 324 N.W.2d 889 (1982).

30-2315 Right of election personal to surviving spouse.

The right of election of the surviving spouse may be exercised only during his or her lifetime by him or her. In the case of a protected person, the right of

election may be exercised only by order of the court in which protective proceedings as to his or her property are pending, after finding that exercise thereof in the fraction designated or proposed is in the best interests of the protected person during his or her probable life expectancy and of the children, family members, or other successors to the decedent or to the protected person, due regard being given by the court to the other assets and resources of the protected person, the extent and nature of any dependent, mutual, or otherwise related estate planning of the decedent and the protected person, the present and likely future financial impact upon the estate of the decedent, the protected person or the estate of the protected person, or such successors of any federal or state estate, excise, gift, income, inheritance, succession, or other tax consequent upon such exercise, and the existence or nonexistence of any other factors deemed by the court to be relevant to the exercise or nonexercise of the right of election.

Source: Laws 1974, LB 354, § 37, UPC § 2-203; Laws 1980, LB 694, § 5.

If a surviving spouse dies after filing a petition for an elective share pursuant to section 30-2315 and this section, the proceeding to enforce the spouse's election as a vested right may be revived by the personal representative of the estate of the spouse who has made the election but who has died before distribution of property pursuant to the elective share. A surviving spouse elects to take a share in the augmented estate when a petition for the elective share is filed in the county court that has probate jurisdiction and is served on the estate's personal representative, if any. In re Estate of Stephenson, 243 Neb. 890, 503 N.W.2d 540 (1993).

30-2316 Waiver of right to elect and of other rights; enforceability.

(a) The right of election of a surviving spouse and the rights of the surviving spouse to homestead allowance, exempt property, and family allowance, or any of them, may be waived, wholly or partially, before or after marriage, by a written contract, agreement, or waiver signed by the surviving spouse.

(b) A surviving spouse's waiver is not enforceable if the surviving spouse proves that:

(1) he or she did not execute the waiver voluntarily;

(2) the waiver was unconscionable when it was executed and, before execution of the waiver, he or she:

(i) was not provided a fair and reasonable disclosure of the property or financial obligations of the decedent;

(ii) did not voluntarily and expressly waive, in writing, any right to disclosure of the property or financial obligations of the decedent beyond the disclosure provided; and

(iii) did not have, or reasonably could not have had, an adequate knowledge of the property or financial obligations of the decedent.

(c) An issue of unconscionability of a waiver is for decision by the court as a matter of law.

(d) Unless it provides to the contrary, a waiver of ''all rights'', or equivalent language, in the property or estate of a present or prospective spouse or a complete property settlement entered into after or in anticipation of separation, divorce, or annulment is a waiver of all rights to elective share, homestead allowance, exempt property, and family allowance by each spouse in the property of the other and a renunciation by each of all benefits that would otherwise pass to him or her from the other by intestate succession or by virtue of any will executed before the waiver or property settlement.

Source: Laws 1974, LB 354, § 38, UPC § 2-204; Laws 1994, LB 202, § 12.

Subsection (d) of this section is applicable only if the parties enter into a property settlement. The term ''settlement'' implies a meeting of the minds of the parties to a transaction or controversy, an adjustment of differences or accounts, or a coming to an agreement. In re Estate of Pfeiffer, 265 Neb. 498, 658 N.W.2d 14 (2003).

Antenuptial agreements that waive the right of election are statutorily authorized by this section. In re Estate of Jakopovic, 261 Neb. 248, 622 N.W.2d 651 (2001).

This section imposes a statutory duty that the parties to an antenuptial agreement make fair disclosure before signing the antenuptial agreement. In re Estate of Stephenson, 243 Neb. 890, 503 N.W.2d 540 (1993).

This section provides that the parties to a valid antenuptial agreement may waive the right to elect a share of both real and personal property of a deceased spouse. In re Estate of Peterson, 221 Neb. 792, 381 N.W.2d 109 (1986).

Fair disclosure was given to the parties. In re Estate of Hill, 214 Neb. 702, 335 N.W.2d 750 (1983).

This section was the law in effect at the time of death, and thus controlled the question of whether a postnuptial agreement precluded the spouse from electing against the will. A postnuptial agreement not to elect against the will was valid and enforceable under this section. In re Estate of Kopecky, 6 Neb. App. 500, 574 N.W.2d 549 (1998).

30-2317 Proceeding for elective share; time limit.

(a) The surviving spouse may elect to take his or her elective share in the augmented estate by filing in the court and mailing or delivering to the personal representative, if any, a petition for the elective share in any designated fraction not in excess of one-half or, in the absence of any such designation, of one-half of the augmented estate within nine months after the date of death or within six months after the probate of the decedent's will, whichever time limitation last expires. Nonprobate transfers described in section 30-2314(a)(1) shall not be included within the augmented estate for the purpose of computing the elective share if the petition is filed later than one year after death. The court may extend the time for election as it sees fit for cause shown by the surviving spouse before the time for election has expired.

(b) The surviving spouse shall give notice of the time and place set for hearing to persons interested in the estate and to the distributees and recipients of portions of the augmented estate whose interests will be adversely affected by the taking of the elective share.

(c) The surviving spouse may withdraw his or her demand for an elective share at any time before entry of a final determination by the court.

(d) After notice and hearing, the court shall determine the amount of the elective share and shall order its payment from the assets of the augmented estate or by contribution as appears appropriate under section 30-2319. If it appears that a fund or property included in the augmented estate has not come into the possession of the personal representative, or has been distributed by the personal representative, the court nevertheless shall fix the liability of any person who has any interest in the fund or property or who has possession thereof, whether as trustee or otherwise. The proceeding may be maintained against fewer than all persons against whom relief could be sought, but no person is subject to contribution in any greater amount than he or she would have been if relief had been secured against all persons subject to contribution.

(e) The order or judgment of the court may be enforced as necessary in suit for contribution or payment in other courts of this state or other jurisdictions.

Source: Laws 1974, LB 354, § 39, UPC § 2-205; Laws 1980, LB 694, § 6; Laws 1985, LB 293, § 2.

A surviving spouse elects to take a share in the augmented estate when a petition for the elective share is filed in the county court that has probate jurisdiction and is served on the estate's personal representative, if any. In re Estate of Stephenson, 243 Neb. 890, 503 N.W.2d 540 (1993).

If a surviving spouse dies after filing a petition for an elective share pursuant to section 30-2315 and this section, the proceeding to enforce the spouse's election as a vested right may be revived by the personal representative of the estate of the spouse who has made the election but who has died before distribution of property pursuant to the elective share. In re Estate of Stephenson, 243 Neb. 890, 503 N.W.2d 540 (1993).

30-2318 Effect of election benefits by will or statute.

(a) The surviving spouse's election of his elective share does not affect the share of the surviving spouse under the provisions of the decedent's will or intestate succession unless the surviving spouse also expressly renounces in the petition for an elective share the benefit of all or any of the provisions. If any provision is so renounced, the property or other benefit which would otherwise have passed to the surviving spouse thereunder is treated, subject to contribution under subsection 30-2319(b), as if the surviving spouse had predeceased the testator.

(b) A surviving spouse is entitled to homestead allowance, exempt property and family allowance whether or not he elects to take an elective share.

Source: Laws 1974, LB 354, § 40, UPC § 2-206.

30-2319 Charging spouse with gifts received; liability of others for balance of elective share.

(a) In the proceeding for an elective share, property which is part of the augmented estate which passes or has passed to the surviving spouse by testate or intestate succession or other means and which has not been renounced, including that described in section 30-2314, is applied first to satisfy the elective share and to reduce the amount due from other recipients of portions of the augmented estate.

(b) Remaining property of the augmented estate is so applied that liability for the balance of the elective share of the surviving spouse is equitably apportioned among the recipients of the augmented estate in proportion to the value of their interests therein.

(c) Only original transferees from, or appointees of, the decedent and their donees, to the extent the donees have the property or its proceeds, are subject to the contribution to make up the elective share of the surviving spouse. A person liable to contribution may choose to give up the property transferred to him or to pay its value as of the time it is considered in computing the augmented estate.

Source: Laws 1974, LB 354, § 41, UPC § 2-207.

A surviving spouse's beneficial interest in an inter vivos trust created by the decedent is property which passes or has passed to the surviving spouse within the meaning of this section such that it should be charged against the amount of the surviving spouse's elective share of the augmented estate. In re Estate of Myers, 256 Neb. 817, 594 N.W.2d 563 (1999).

This section does not make a distinction between specific and residuary beneficiaries; each beneficiary, regardless of whether it is a specific or residual beneficiary, must contribute proportionately, according to its interests, to the elective share. In re Estate of Ziegenbein, 2 Neb. App. 923, 519 N.W.2d 5 (1994).

PART 3

SPOUSE AND CHILDREN UNPROVIDED FOR IN WILLS

30-2320 Omitted spouse.

(a) If a testator fails to provide by will for his surviving spouse who married the testator after the execution of the will, the omitted spouse shall receive the same share of the estate he would have received if the decedent left no will unless waived pursuant to section 30-2316.

(b) In satisfying a share provided by this section, the devises made by the will abate as provided in section 30-24,100.

Source: Laws 1974, LB 354, § 42, UPC § 2-301.

30-2321 Pretermitted children.

(a) If a testator fails to provide in his will for any of his children born or adopted after the execution of his will, the omitted child receives a share in the estate equal in value to that which he would have received if the testator had died intestate unless:

(1) it appears from the will that the omission was intentional;

(2) when the will was executed the testator had one or more children and devised substantially all his estate to the other parent of the omitted child; or

(3) the testator provided for the child by transfer outside the will in an amount equal to or greater than such child's share had the testator died intestate.

(b) If at the time of execution of the will the testator fails to provide in his will for a living child solely because he believes the child to be dead, the child receives a share in the estate equal in value to that which he would have received if the testator had died intestate.

(c) In satisfying a share provided by this section, the devises made by the will abate as provided in section 30-24,100.

Source: Laws 1974, LB 354, § 43, UPC § 2-302.

PART 4

EXEMPT PROPERTY AND ALLOWANCES

30-2322 Homestead allowance.

A surviving spouse of a decedent who was domiciled in this state is entitled to a homestead allowance of seven thousand five hundred dollars. If there is no surviving spouse, each minor child and each dependent child of the decedent is entitled to a homestead allowance amounting to seven thousand five hundred dollars divided by the number of minor and dependent children of the decedent. The homestead allowance is exempt from and has priority over all claims against the estate except for costs and expenses of administration. Homestead allowance is in addition to any share passing to the surviving spouse or minor or dependent child by the will of the decedent unless otherwise provided therein, by intestate succession or by way of elective share.

Source: Laws 1974, LB 354, § 44, UPC § 2-401; Laws 1978, LB 650, § 4; Laws 1980, LB 981, § 1.

30-2323 Exempt property.

In addition to the homestead allowance, the surviving spouse of a decedent who was domiciled in this state is entitled from the estate to value not exceeding five thousand dollars in excess of any security interests therein in household furniture, automobiles, furnishings, appliances, and personal effects. If there is no surviving spouse, children of the decedent are entitled jointly to the same value unless the decedent has provided in his or her will that one or more of such children shall be disinherited, in which case only those children not so disinherited shall be so entitled. For purposes of this section, disinherited means providing in one's will that a child shall take nothing or a nominal amount of ten dollars or less from the estate.

If encumbered chattels are selected and if the value in excess of security interests, plus that of other exempt property, is less than five thousand dollars,

or if there is not five thousand dollars worth of exempt property in the estate, the spouse or children are entitled to other assets of the estate, if any, to the extent necessary to make up the five thousand dollars value. Rights to exempt property and assets needed to make up a deficiency of exempt property have priority over all claims against the estate except for costs and expenses of administration, and except that the right to any assets to make up a deficiency of exempt property shall abate as necessary to permit prior payment of homestead allowance and family allowance.

These rights are in addition to any benefit or share passing to the surviving spouse by the will of the decedent unless otherwise provided therein, by intestate succession, or by way of elective share. These rights are in addition to any benefit or share passing to the surviving children by intestate succession and are in addition to any benefit or share passing by the will of the decedent to those surviving children not disinherited unless otherwise provided in the will.

Source: Laws 1974, LB 354, § 45, UPC § 2-402; Laws 1978, LB 650, § 5; Laws 1980, LB 981, § 2; Laws 1999, LB 318, § 1.

This section creates a vested and indefeasible statutory right which may not be abrogated by will that accrues to the surviving spouse or the surviving children jointly if there is no surviving spouse upon the death of the testator. In re Estate of Peterson, 254 Neb. 334, 576 N.W.2d 767 (1998).

30-2324 Family allowance.

In addition to the right to homestead allowance and exempt property, if the decedent was domiciled in this state, the surviving spouse and minor children whom the decedent was obligated to support and children who were in fact being supported by him are entitled to a reasonable allowance in money out of the estate for their maintenance during the period of administration, which allowance may not continue for longer than one year if the estate is inadequate to discharge allowed claims. The allowance may be paid as a lump sum or in periodic installments. It is payable to the surviving spouse, if living, for the use of the surviving spouse and minor and dependent children; otherwise to the children, or persons having their care and custody; but in case any minor child or dependent child is not living with the surviving spouse, the allowance may be made partially to the child or his guardian or other person having his care and custody, and partially to the spouse, as their needs may appear. The family allowance is exempt from and has priority over all claims except for costs and expenses of administration and the homestead allowance.

The family allowance is not chargeable against any benefit or share passing to the surviving spouse or children by the will of the decedent unless otherwise provided therein, by intestate succession, or by way of elective share. The death of any person entitled to family allowance, other than the surviving spouse, terminates his right to allowances not yet paid.

Source: Laws 1974, LB 354, § 46, UPC § 2-403; Laws 1978, LB 650, § 6.

Under this section and section 30-2325, a right to allowances for homestead, exempt property, and unpaid spousal support survives the claimant's death to the extent of unpaid support. In re Estate of Stephenson, 243 Neb. 890, 503 N.W.2d 540 (1993).

The rights granted herein are specific, vested, and indefeasible and accrue to the recipient statutorily upon the decedent's death. In re Estate of Carman, 213 Neb. 98, 327 N.W.2d 611 (1982).

30-2325 Source, determination, and documentation.

If the estate is otherwise sufficient, property specifically devised is not used to satisfy rights to homestead and exempt property. Subject to this restriction, the surviving spouse, the guardians of the minor children, or children who are

adults may select property of the estate as homestead allowance and exempt property. After giving such notice as the court may require in a proceeding initiated under the provisions of section 30-2405, the personal representative may make these selections if the surviving spouse, the children or the guardians of the minor children are unable or fail to do so within a reasonable time or if there are no guardians of the minor children. The personal representative may execute an instrument or deed of distribution to establish the ownership of property taken as homestead allowance or exempt property. He or she may determine the family allowance in a lump sum not exceeding nine thousand dollars or periodic installments not exceeding seven hundred fifty dollars per month for one year, and may disburse funds of the estate in payment of the family allowance and any part of the homestead allowance payable in cash. The personal representative or any interested person aggrieved by any selection, determination, payment, proposed payment, or failure to act under this section may petition the court for appropriate relief, which relief may provide a family allowance larger or smaller than that which the personal representative determined or could have determined.

The homestead allowance, the exempt property, and the family allowance as finally determined by the personal representative or by the court, shall vest in the surviving spouse as of the date of decedent's death, as a vested indefeasible right of property, shall survive as an asset of the surviving spouse's estate if unpaid on the date of death of such surviving spouse, and shall not terminate upon the death or remarriage of the surviving spouse.

Source: Laws 1974, LB 354, § 47, UPC § 2-404; Laws 1980, LB 981, § 3.

Under section 30-2324 and this section, a right to allowances for homestead, exempt property, and unpaid spousal support survives the claimant's death to the extent of unpaid support. In re Estate of Stephenson, 243 Neb. 890, 503 N.W.2d 540 (1993).

The rights granted herein are specific, vested, and indefeasible and accrue to the recipient statutorily upon the decedent's death. In re Estate of Carman, 213 Neb. 98, 327 N.W.2d 611 (1982).

PART 5

WILLS

30-2326 Who may make a will.

Any individual who is eighteen or more years of age or is not a minor and who is of sound mind may make a will and thereby dispose of personal and real property at and after death and prescribe, to the extent not otherwise controlled or limited by this code, the manner of administration of his estate and conduct of his affairs after death and until final settlement of his estate.

Source: Laws 1974, LB 354, § 48, UPC § 2-501.

30-2327 Execution.

Except as provided for holographic wills, writings within section 30-2338, and wills within section 30-2331, every will is required to be in writing signed by the testator or in the testator's name by some other individual in the testator's presence and by his direction, and is required to be signed by at least two individuals each of whom witnessed either the signing or the testator's acknowledgment of the signature or of the will.

Source: Laws 1974, LB 354, § 49, UPC § 2-502.

In order to be valid, a will must be signed by witnesses prior to the testator's death. In re Estate of Flicker, 215 Neb. 495, 339 N.W.2d 914 (1983).

Testamentary capacity is not an element of due execution. In re Estate of Flider, 213 Neb. 153, 328 N.W.2d 197 (1982).

An attesting witness need not probe into a testator's mental capacity prior to signing a will as a witness. In re Estate of Camin, 212 Neb. 490, 323 N.W.2d 827 (1982).

30-2328 Holographic will.

An instrument which purports to be testamentary in nature but does not comply with section 30-2327 is valid as a holographic will, whether or not witnessed, if the signature, the material provisions, and an indication of the date of signing are in the handwriting of the testator and, in the absence of such indication of date, if such instrument is the only such instrument or contains no inconsistency with any like instrument or if such date is determinable from the contents of such instrument, from extrinsic circumstances, or from any other evidence.

Source: Laws 1974, LB 354, § 50, UPC § 2-503; Laws 1980, LB 694, § 7.

A decedent's handwritten initials, as opposed to his or her whole name, constitute a signature within the meaning of this section. In determining the validity of a holographic instrument, only the portion of the instrument actually in the handwriting of the testator is to be considered; all other language is to be disregarded. In re Estate of Foxley, 254 Neb. 204, 575 N.W.2d 150 (1998).

When the purposes for requiring a date on a holographic will can be satisfied, a holographic will dated by only a month and year substantially complies with this section. In re Estate of Wells, 243 Neb. 152, 497 N.W.2d 683 (1993).

30-2329 Self-proved will.

(1) Any will may be simultaneously executed, attested, and made self-proved by the acknowledgment thereof by the testator and the affidavits of the witnesses, each made before an officer authorized to administer oaths under the laws of this state or under the laws of the state where execution occurs and evidenced by the officer's certificate, under official seal, in form and content substantially as follows:

I, ... the testator, sign my name to this instrument this ..... day of ..... 20...., and being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my last will and that I sign it willingly or willingly direct another to sign for me, that I execute it as my free and voluntary act for the purposes therein expressed and that I am eighteen years of age or older or am not at this time a minor, and am of sound mind and under no constraint or undue influence.

....
Testator

We, ... and ...., the witnesses, sign our names to this instrument, being first duly sworn, and do hereby declare to the undersigned authority that the testator signs and executes this instrument as his or her last will and that he or she signs it willingly or willingly directs another to sign for him or her, and that he or she executes it as his or her free and voluntary act for the purposes therein expressed, and that each of us, in the presence and hearing of the testator, hereby signs this will as witness to the testator's signing, and that to the best of his or her knowledge the testator is eighteen years of age or older or is not at this time a minor, and is of sound mind and under no constraint or undue influence.

....
Witness

....
Witness

THE STATE OF ....

COUNTY OF ....

Subscribed, sworn to, and acknowledged before me by ...., the testator, and subscribed and sworn to before me by .... and ...., witnesses, this ..... day of .... 20.... .

(SEAL) (Signed) ....

....
(Official capacity of officer)

The execution of the acknowledgment by the testator and the affidavits of the witnesses as provided for in this section shall be sufficient to satisfy the requirements of the signing of the will by the testator and the witnesses under section 30-2327.

(2) An attested will may at any time subsequent to its execution be made self-proved, by the acknowledgment thereof by the testator and the affidavits of the witnesses, each made before an officer authorized to administer oaths under the laws of this state or under the laws of the state where execution occurs, and evidenced by the officer's certificate, under official seal, attached or annexed to the will in form and content substantially as follows:

THE STATE OF ....

COUNTY OF ....

We, ..., ..., and ...., the testator and the witnesses, respectively, whose names are signed to the attached or foregoing instrument, being first duly sworn, do hereby declare to the undersigned authority that the testator signed and executed the instrument as his or her last will and that he or she had signed willingly or directed another to sign for him or her, and that he or she executed it as his or her free and voluntary act for the purposes therein expressed; and that each of the witnesses, in the presence and hearing of the testator, signed the will as witness and that to the best of his or her knowledge the testator was at that time eighteen or more years of age or was not at that time a minor, and was of sound mind and under no constraint or undue influence.

....
Testator

....
Witness

....
Witness

Subscribed, sworn to, and acknowledged before me by ...., the testator, and subscribed and sworn to before me by .... and ...., witnesses, this ..... day of .... 20.... .

(SEAL) (Signed) ....

....
(Official capacity of officer)

Source: Laws 1974, LB 354, § 51, UPC § 2-504; Laws 1978, LB 650, § 7; Laws 2004, LB 813, § 10.

Where a will complies with the provisions of this section, the signature requirements for execution are considered conclusively presumed. In re Estate of Stephens, 9 Neb. App. 68, 608 N.W.2d 201 (2000).

30-2330 Who may witness; interested witness; intestate share.

(a) Any individual generally competent to be a witness may act as a witness to a will.

(b) A will or any provision thereof is not invalid because the will is signed by an interested witness. Unless there is at least one disinterested witness to a will,

an interested witness to a will is entitled to receive any property thereunder only to an amount or extent not exceeding that which is or would be the intestate share of such interested witness if the testator died intestate at the date of death.

Source: Laws 1974, LB 354, § 52, UPC § 2-505.

30-2331 Choice of law as to execution.

A written will is valid if executed in compliance with section 30-2327 or 30-2328 or if its execution complies with the law at the time of execution of the place where the will is executed or of the place where at the time of execution or at the time of death the testator is domiciled, has a place of abode or is a national.

Source: Laws 1974, LB 354, § 53, UPC § 2-506.

30-2332 Revocation by writing or by act.

A will or any part thereof is revoked

(1) by a subsequent will which, as is evident either from its terms or from competent evidence of its terms, revokes the prior will or part expressly or by inconsistency; or

(2) by being burned, torn, canceled, obliterated, or destroyed, with the intent and for the purpose of revoking it by the testator or by another person in the presence of and by the direction of the testator.

Source: Laws 1974, LB 354, § 54, UPC § 2-507.

In order to prove by parol evidence the subsequent execution of a will that revoked a prior will, that evidence must establish by clear and convincing evidence the requirements of proper execution as set out in section 30-2327. In re Estate of Thompson, 214 Neb. 899, 336 N.W.2d 590 (1983).

30-2333 Revocation by divorce; no revocation by other changes of circumstances.

If after executing a will the testator is divorced or his marriage dissolved or annulled, the divorce, dissolution, or annulment revokes any disposition or appointment of property made by the will to the former spouse, any provision conferring a general or special power of appointment on the former spouse, and any nomination of the former spouse as executor, trustee, conservator, or guardian, unless the will expressly provides otherwise. Property prevented from passing to a former spouse because of revocation by divorce, dissolution, or annulment passes as if the former spouse failed to survive the decedent, and other provisions conferring some power or office on the former spouse are interpreted as if the spouse failed to survive the decedent. If provisions are revoked solely by this section, they are revived by testator's remarriage to the former spouse. For purposes of this section, divorce, dissolution, or annulment means any divorce, dissolution, or annulment which would exclude the spouse as a surviving spouse within the meaning of section 30-2353. A decree of separation which does not terminate the status of husband and wife is not a divorce for purposes of this section. No change of circumstances other than as described in this section revokes a will.

Source: Laws 1974, LB 354, § 55, UPC § 2-508.

30-2334 Revival of revoked will.

(a) If a second will which, had it remained effective at death, would have revoked the first will in whole or in part, is thereafter revoked by acts under section 30-2332, the first will is revoked in whole or in part unless it is evident from the circumstances of the revocation of the second will or from testator's contemporary or subsequent declarations that he intended the first will to take effect as executed.

(b) If a second will which, had it remained effective at death, would have revoked the first will in whole or in part, is thereafter revoked by a third will, the first will is revoked in whole or in part, except to the extent it appears from the terms of the third will that the testator intended the first will to take effect.

Source: Laws 1974, LB 354, § 56, UPC § 2-509.

30-2335 Incorporation by reference.

Any writing in existence when a will is executed may be incorporated by reference if the language of the will manifests this intent and describes the writing sufficiently to permit its identification.

Source: Laws 1974, LB 354, § 57, UPC § 2-510.

30-2336 Transferred to section 30-3602.

30-2337 Events of independent significance.

A will may dispose of property by reference to acts and events which have significance apart from their effect upon the dispositions made by the will, whether they occur before or after the execution of the will or before or after the testator's death. The execution or revocation of a will of another individual is such an event.

Source: Laws 1974, LB 354, § 59, UPC § 2-512.

30-2338 Separate writing identifying bequest of tangible property.

Whether or not the provisions relating to holographic wills apply, a will may refer to a written statement or list to dispose of items of tangible personal property not otherwise specifically disposed of by the will, other than money, evidences of indebtedness, documents of title, and securities, and property used in trade or business. To be admissible under this section as evidence of the intended disposition, the writing must have an indication of the date of the writing or signing and, in the absence of such indication of date, be the only such writing or contain no inconsistency with any other like writing or permit determination of such date of writing or signing from the contents of such writing, from extrinsic circumstances, or from any other evidence, must either be in the handwriting of the testator or be signed by him or her, and must describe the items and the devisees with reasonable certainty. The writing may be referred to as one to be in existence at the time of the testator's death; it may be prepared before or after the execution of the will; it may be altered by the testator after its preparation; and it may be a writing which has no significance apart from its effect upon the disposition made by the will.

Source: Laws 1974, LB 354, § 60, UPC § 2-513; Laws 1980, LB 694, § 8.

PART 6

RULES OF CONSTRUCTION

30-2339 Requirement that devisee survive testator by one hundred twenty hours.

A devisee who does not survive the testator by one hundred twenty hours is treated as if he predeceased the testator, unless the will of the testator contains some language dealing explicitly with simultaneous deaths or deaths in a common disaster, or requiring that the devisee survive the testator or survive the testator for a stated period in order to take under the will.

Source: Laws 1974, LB 354, § 61, UPC § 2-601.

30-2340 Choice of law as to meaning and effect of wills.

The meaning and legal effect of a disposition in a will shall be determined by the local law of a particular state selected by the testator in his instrument unless the application of that law is contrary to the provisions relating to the elective share described in part 2 of this article, the provisions relating to exempt property and allowances described in part 4 of this article, or any other public policy of this state otherwise applicable to the disposition.

Source: Laws 1974, LB 354, § 62, UPC § 2-602.

30-2341 Rules of construction and intention.

The intention of a testator as expressed in his will controls the legal effect of his dispositions. The rules of construction expressed in the succeeding sections of this part apply unless a contrary intention is indicated by the will.

Source: Laws 1974, LB 354, § 63, UPC § 2-603.

30-2342 General residuary clause; construction that will possess all property; after-acquired property.

Except as provided in section 30-2348, a general residuary clause in a will or a will making general disposition of all of the property of the testator is construed to pass all property which the testator owns at his death including property acquired after the execution of the will.

Source: Laws 1974, LB 354, § 64, UPC § 2-604.

30-2343 Anti-lapse; deceased devisee; class gifts.

If a devisee related to the testator in any degree of kinship is dead at the time of execution of the will, fails to survive the testator, or is treated as if he predeceased the testator, the issue of the deceased devisee who survive the testator by one hundred twenty hours take in place of the deceased devisee and if they are all of the same degree of kinship to the devisee they take equally, but if of unequal degree then those of more remote degree take by representation. One who would have been a devisee under a class gift if he had survived the testator is treated as a devisee for purposes of this section whether his death occurred before or after the execution of the will.

Source: Laws 1974, LB 354, § 65, UPC § 2-605.

Nothing in this section or subsection (b) of section 30-2344 places any limitation upon the estate which passes to the issue of a deceased devisee by operation of this section. In re Estate of Eickmeyer, 262 Neb. 17, 628 N.W.2d 246 (2001).

30-2344 Failure of testamentary provision.

(a) Except as provided in section 30-2343, if a devise other than a residuary devise fails for any reason, it becomes a part of the residue.

(b) Except as provided in section 30-2343, if the residue is devised to two or more persons and the share of one of the residuary devisees fails for any reason, his share passes to the other residuary devisee, or to other residuary devisees in proportion to their interests in the residue.

Source: Laws 1974, LB 354, § 66, UPC § 2-606.

The term ''other residuary devisee'' in subsection (b) of this section includes residuary devisees specifically named in the will and those who take in their place by operation of section 30-2343. Nothing in section 30-2343 or subsection (b) of this section places any limitation upon the estate which passes to the issue of a deceased devisee by operation of section 30-2343. In re Estate of Eickmeyer, 262 Neb. 17, 628 N.W.2d 246 (2001).

30-2345 Change in securities; accessions; nonademption.

(a) If the testator intended a specific devise of certain securities rather than the equivalent value thereof, the specific devisee is entitled only to:

(1) as much of the devised securities as is a part of the estate at the time of the testator's death;

(2) any additional or other securities of the same entity owned by the testator by reason of action entered into or initiated by the entity excluding any acquired by exercise of purchase options;

(3) securities of another entity owned by the testator as a result of a merger, consolidation, reorganization or other similar action entered into or initiated by the entity; and

(4) any additional securities of the entity owned by the testator as a result of a plan of reinvestment if it is a regulated investment company.

(b) Distributions prior to death with respect to a specifically devised security not provided for in subsection (a) are not part of the specific devise.

Source: Laws 1974, LB 354, § 67, UPC § 2-607.

30-2346 Nonademption of specific devises in certain cases; sale by conservator; unpaid proceeds of sale, condemnation, or insurance.

(a) If specifically devised property is sold by a conservator or guardian, or if a condemnation award or insurance proceeds are paid to a conservator or guardian as a result of condemnation, fire, or casualty, the specific devisee has the right to a general pecuniary devise equal to the net sale price, the condemnation award, or the insurance proceeds. This subsection does not apply if, subsequent to the sale, condemnation, or casualty, it is adjudicated that the disability of the testator has ceased and the testator survives the adjudication by one year. The right of the specific devisee under this subsection is reduced by any right he has under subsection (b).

(b) A specific devisee has the right to the remaining specifically devised property and:

(1) any balance of the purchase price (together with any security interest) owing from a purchaser to the testator at death by reason of sale of the property;

(2) any amount of a condemnation award for the taking of the property unpaid at death;

(3) any proceeds unpaid at death on fire or casualty insurance on the property; and

(4) property owned by testator at his death as a result of foreclosure, or obtained in lieu of foreclosure, of the security for a specifically devised obligation.

Source: Laws 1974, LB 354, § 68, UPC § 2-608.

This section does not create an exception to the common-law rule of implied revocation when property is sold by an attorney in fact under a durable power of attorney. In re Estate of Bauer, 270 Neb. 91, 700 N.W.2d 572 (2005).

Where a testator has, during his lifetime, sold specifically devised property and, at his death, an unpaid balance remains owing to him from the sale, the beneficiary of the specific bequest is entitled to receive the unpaid balance. In re Estate of McClow, Reed v. McClow, 205 Neb. 739, 290 N.W.2d 186 (1980).

30-2347 Nonexoneration.

A specific devise passes subject to any security interest existing at the date of death, without right of exoneration, regardless of a general directive in the will to pay debts.

Source: Laws 1974, LB 354, § 69, UPC § 2-609.

30-2348 Exercise of power of appointment.

A general residuary clause in a will, or a will making general disposition of all of the testator's property, does not exercise a power of appointment held by the testator unless specific reference is made to the power or there is some other indication of intention to include the property subject to the power.

Source: Laws 1974, LB 354, § 70, UPC § 2-610.

30-2349 Construction of generic terms to accord with relationships as defined for intestate succession.

Halfbloods, adopted individuals and individuals born out of wedlock are included in class gift terminology and terms of relationship in accordance with rules for determining relationships for purposes of intestate succession.

Source: Laws 1974, LB 354, § 71, UPC § 2-611.

30-2350 Ademption by satisfaction.

Property which a testator gave in his lifetime to a person is treated as a satisfaction of a devise to that person in whole or in part only if the will provides for deduction of the lifetime gift, or the testator declares in a writing contemporaneous with the gift that it is to be deducted from the devise or is in satisfaction of the devise, or the devisee acknowledges in a writing contemporaneous with the gift that it is in satisfaction. For purpose of partial satisfaction, property given during lifetime is valued as of the time the devisee came into possession or enjoyment of the property or as of the time of death of the testator, whichever occurs first.

Source: Laws 1974, LB 354, § 72, UPC § 2-612.

A donor may express in the gift that the gift is an advancement. In re Estate of McFayden, 235 Neb. 214, 454 N.W.2d 676 (1990).

This section does not permit the use of parol evidence to prove that a testator or testatrix intended an inter vivos gift to be an advancement toward, or ademptive of, a devise in the

testator's or testatrix's will. In re Estate of McFayden, 235 Neb. 214, 454 N.W.2d 676 (1990).

This section eliminates as proof a written blanket declaration that future inter vivos gifts to a devisee are to be considered advancements. In re Estate of McFayden, 235 Neb. 214, 454 N.W.2d 676 (1990).

PART 7

CONTRACTUAL ARRANGEMENTS RELATING TO DEATH

30-2351 Contracts concerning succession.

A contract to make a will or devise, or not to revoke a will or devise, or to die intestate, if executed after January 1, 1977, can be established only by (1) provisions of a will stating material provisions of the contract; (2) an express reference in a will to a contract and extrinsic evidence proving the terms of the contract; or (3) a writing signed by the decedent evidencing the contract. The execution of a joint will or mutual wills does not create a presumption of a contract not to revoke the will or wills.

Source: Laws 1974, LB 354, § 73, UPC § 2-701.

For the purposes of this section, an oral contract is ''executed'' at such time as the parties become bound to each other for the performance of the terms of the agreement. In re Estate of Nicholson, 211 Neb. 805, 320 N.W.2d 739 (1982).

PART 8

GENERAL PROVISIONS

30-2352 Renunciation of succession.

(a)(1) A person (or the representative of a deceased, incapacitated, or protected person) who is an heir, devisee, person succeeding to a renounced interest, donee, beneficiary under a testamentary or nontestamentary instrument, donee of a power of appointment, grantee, surviving joint owner or surviving joint tenant, beneficiary, or owner of an insurance contract or any incident of ownership therein, beneficiary or person designated to take pursuant to a power of appointment exercised by a testamentary or nontestamentary instrument, person who has a statutory entitlement to or election with respect to property pursuant to the Nebraska Probate Code, or recipient of any beneficial interest under any testamentary or nontestamentary instrument, may renounce in whole or in part, or with reference to specific parts, fractional shares, undivided portions or assets thereof, by filing a written instrument of renunciation within the time and at the place hereinafter provided.

(2) The instrument shall (i) describe the property or part thereof or the interest therein renounced, (ii) be signed and acknowledged by the person renouncing in the manner provided for in the execution of deeds of real estate, (iii) declare the renunciation and the extent thereof, and (iv) declare that the renunciation is an irrevocable and unqualified refusal to accept the renounced interest.

(3) The appropriate court in a proceeding under section 30-3812, may direct or permit a trustee under a testamentary or nontestamentary instrument to renounce any restriction on or power of administration, management, or allocation of benefit upon finding that such restrictions on the exercise of such power may defeat or impair the accomplishment of the purposes of the trust whether by the imposition of tax or the allocation of beneficial interest inconsistent with such purposes or by other reason. Such authority shall be exercised

after hearing and upon notice to qualified beneficiaries as defined in section 30-3803, in the manner directed by the court.

(b) The instrument specified in (a)(1) and (a)(2) must be received by the transferor of the interest, his or her legal representative, the personal representative of a deceased transferor, the trustee of any trust in which the interest being renounced exists, or the holder of the legal title to the property to which the interest relates. To be effective for purposes of determining inheritance and estate taxes under articles 20 and 21 of Chapter 77, the instrument must be received not later than the date which is nine months after the later of (i) the date on which the transfer creating the interest in such person is made, or (ii) the date on which such person attains age twenty-one. If the circumstances which establish the right of a person to renounce an interest arise as a result of the death of an individual, the instrument shall also be filed in the court of the county where proceedings concerning the decedent's estate are pending, or where they would be pending if commenced. If an interest in real estate is renounced, a copy of the instrument shall also be recorded in the office of the register of deeds in the county in which the real estate lies. No person entitled to a copy of the instrument shall be liable for any proper distribution or disposition made without actual notice of the renunciation and no such person making a proper distribution or disposition in reliance upon the renunciation shall be liable for any such distribution or disposition in the absence of actual notice that an action has been instituted contesting the validity of the renunciation.

(c) Unless the transferor of the interest has otherwise indicated in the instrument creating the interest, the interest renounced, and any future interest which is to take effect in possession or enjoyment at or after the termination of the interest renounced, passes as if the person renouncing had predeceased the decedent or had died prior to the date on which the transfer creating the interest in such person is made, as the case may be, if the renunciation is within the time periods set forth in subsection (b) and if not within such time periods the interest renounced, and any future interest which is to take effect in possession or enjoyment at or after the termination of the interest renounced, passes as if the person renouncing had died on the date the interest was renounced. The person renouncing shall have no power to direct how the interest being renounced shall pass, except that the renunciation of an interest for which the right to renounce was established by the death of an individual shall, in the case of the spouse of the decedent, relate only to that statutory provision or that provision of the instrument creating the interest being renounced and shall not preclude the spouse from receiving the benefits of the renounced interest which may be derived as a result of the renounced interest passing pursuant to other statutory provisions or pursuant to other provisions of the instrument creating the interest unless such further benefits are also renounced. In every case when the renunciation is within the time periods set forth in subsection (b) the renunciation relates back for all purposes to the date of death of the decedent or the date on which the transfer creating the interest in such person is made, as the case may be.

(d) Any (1) assignment, conveyance, encumbrance, pledge, or transfer of property therein or any contract therefor, (2) written waiver of the right to renounce or any acceptance of property or benefits therefrom or an interest therein by an heir, devisee, person succeeding to a renounced interest, donee, beneficiary under a testamentary or nontestamentary instrument, donee of a

power of appointment, grantee, surviving joint owner or surviving joint tenant, beneficiary or owner of an insurance contract or any incident of ownership therein, beneficiary or person designated to take pursuant to a power of appointment exercised by a testamentary or nontestamentary instrument, person who has a statutory entitlement to or election with respect to property pursuant to the Nebraska Probate Code, or recipient of any beneficial interest under any testamentary or nontestamentary instrument, or (3) sale or other disposition of property pursuant to judicial process, made within the time periods set forth in subsection (b) shall not bar the right to renounce, but shall make a subsequent renunciation within the time period set forth in subsection (b) of this section ineffective for purposes of determination of inheritance and estate taxes under articles 20 and 21 of Chapter 77.

(e) Within thirty days of receipt of a written instrument of renunciation by the transferor of the interest, his or her legal representative, the personal representative of the decedent, the trustee of any trust in which the interest being renounced exists, or the holder of the legal title to the property to which the interest relates, as the case may be, such person shall attempt to notify in writing those persons who are known or ascertainable with reasonable diligence who shall be recipients or potential recipients of the renounced interest of the renunciation and the interest or potential interest such recipient shall receive as a result of the renunciation.

(f) The right to renounce granted by this section exists irrespective of any limitation on the interest of the person renouncing in the nature of a spendthrift provision or similar restriction. A trust beneficiary whose interest is subject to any limitation in the nature of a spendthrift provision or similar restriction may assign, sell, or otherwise convey such interest or any part thereof upon a finding by a court in a proceeding under section 30-3812 that the rights of other beneficiaries would not be impaired and that such assignment, sale, or other conveyance would not result in any substantial benefit to nonbeneficiaries of the trust at the expense of the trust or trust beneficiaries. Such finding may be made after hearing and upon notice to all known persons beneficially interested in such trust, in the manner directed by the court.

(g) This section does not abridge the right of any person to assign, convey, release, or renounce any property arising under any other section of this code or other statute.

(h) Any interest in property which exists on July 19, 1980, may be renounced after July 19, 1980, as provided herein. An interest which has arisen prior to July 19, 1980, in any person other than the person renouncing is not destroyed or diminished by any action of the person renouncing taken under this section.

Source: Laws 1974, LB 354, § 74, UPC § 2-801; Laws 1978, LB 650, § 35; Laws 1980, LB 694, § 9; Laws 2003, LB 130, § 127.

A renunciation properly effected pursuant to this section and prior to distribution is not a transfer and therefore not a fraudulent transfer under the Uniform Fraudulent Transfer Act, sections 36-701 to 36-712. Essen v. Gilmore, 259 Neb. 55, 607 N.W.2d 829 (2000).

An exception to the general rule that a renunciation relates back "for all purposes" exists for individuals depriving themselves of any property whatsoever for purposes of qualifying for public assistance. Hoesly v. State, 243 Neb. 304, 498 N.W.2d 571 (1993).

There is nothing inconsistent in making claim to the whole of an estate and at the same time accepting something less than the whole under the will since property comprising a bequest of only a part of an estate would be included within a claim to the entire estate. Consequently, the claimant had no reason to renounce the will under the terms of this section. In re Estate of Nicholson, 211 Neb. 805, 320 N.W.2d 739 (1982).

30-2353 Effect of divorce, annulment, and decree of separation.

(a) An individual who is divorced from the decedent or whose marriage to the decedent has been dissolved or annulled by a decree that has become final is

not a surviving spouse unless, by virtue of a subsequent marriage, he is married to the decedent at the time of death. A decree of separation which does not terminate the status of husband and wife is not a divorce for purposes of this section.

(b) For purposes of parts 1, 2, 3, and 4 of this article and of section 30-2412, a surviving spouse does not include:

(1) an individual who obtains or consents to a final decree or judgment of divorce from the decedent or an annulment or dissolution of their marriage, which decree or judgment is not recognized as valid in this state, unless they subsequently participate in a marriage ceremony purporting to marry each to the other, or subsequently live together as man and wife;

(2) an individual who, following a decree or judgment of divorce or annulment or dissolution of marriage obtained by the decedent, participates in a marriage ceremony with a third individual; or

(3) an individual who was a party to a valid proceeding concluded by an order purporting to terminate all marital property rights against the decedent.

Source: Laws 1974, LB 354, § 75, UPC § 2-802.

Pursuant to subsection (b)(3) of this section, a person is not a surviving spouse only if the order includes language purporting to terminate all marital property rights against the decedent. In re Estate of Pfeiffer, 265 Neb. 498, 658 N.W.2d 14 (2003).

Prior to the amendment of section 42-372 to provide that the decree is final upon the death of one of the parties to the dissolution, if one of the parties to a decree of dissolution of marriage died during the 6-month period before which the decree is final under section 42-372, then the dissolution decree was nonoperative and the other party was a surviving spouse under the Nebraska Probate Code. In re Estate of Watson, 217 Neb. 305, 348 N.W.2d 856 (1984).

Nebraska Probate Code did not govern definition of ''lawful spouse'' for purposes of federal statute governing servicemen's group life insurance policy. Under federal statute legal status of alleged spouse must be determined at a particular point in time, while section of probate code defining ''surviving spouse'' does not define status at time of a spouse's death, but instead limits rights of one lawfully married to decedent to share in decedent's estate after his death. Prudential Ins. Co. of America v. Dulek, 504 F.Supp. 1015 (D. Neb. 1980).

30-2354 Effect of homicide on intestate succession, wills, joint assets, life insurance, and beneficiary designations.

(a) A surviving spouse, heir or devisee who feloniously and intentionally kills or aids and abets the killing of the decedent is not entitled to any benefits under the will or under this article, and the estate of the decedent passes as if such spouse, heir, or devisee had predeceased the decedent. Property appointed by the will of the decedent to or for the benefit of such devisee passes as if the devisee had predeceased the decedent.

(b) Any joint tenant who feloniously and intentionally kills or aids and abets the killing of another joint tenant thereby effects a severance of the interest of the decedent so that the share of the decedent passes as his property and such joint tenant has no rights by survivorship. This provision applies to joint tenancies and tenancies by the entirety in real and personal property, joint accounts in banks, savings and loan associations, credit unions and other institutions, and any other form of co-ownership with survivorship incidents.

(c) A named beneficiary of a bond, life insurance policy, or other contractual arrangement who feloniously and intentionally kills or aids and abets the killing of the principal obligee or the individual upon whose life the policy is issued is not entitled to any benefit under the bond, policy or other contractual arrangement, and it becomes payable as though such beneficiary has predeceased the decedent.

(d) Any other acquisition of property or interest by the killer or by one who aids and abets the killer is treated in accordance with the principles of this section.

(e) A final judgment of conviction of felonious and intentional killing or aiding and abetting therein is conclusive for purposes of this section. In the absence of a conviction of felonious and intentional killing or aiding and abetting therein, the court may determine by a preponderance of evidence whether the killing or aiding and abetting therein was felonious and intentional for purposes of this section.

(f) This section does not affect the rights of any person who, before rights under this section have been adjudicated, purchases, from the killer or aider and abettor for value and without notice, property which the killer or aider and abettor would have acquired except for this section, but the killer or aider and abettor is liable for the amount of the proceeds or the value of the property. Any insurance company, bank, or other obligor making payment according to the terms of its policy or obligation is not liable by reason of this section unless prior to payment it has received at its home office or principal address written notice of a claim under this section.

Source: Laws 1974, LB 354, § 76, UPC § 2-803.

An acquittal on a charge of murder is the absence of a conviction for purposes of this section. In re Estate of Krumwiede, 264 Neb. 378, 647 N.W.2d 625 (2002).

In probate proceedings which do not raise equitable matters, an appellate court reviews the decision of the county court for errors appearing on the record and does not conduct a de novo review of the facts. In re Estate of Krumwiede, 264 Neb. 378, 647 N.W.2d 625 (2002).

An action to vacate a decree of dissolution for fraud survives the death of a party whose death is the result of a homicide committed by the other party to the proceeding. Howsden v. Rolenc, 219 Neb. 16, 360 N.W.2d 680 (1985).

PART 9

CUSTODY AND DEPOSIT OF WILLS

30-2355 Deposit of will with court in testator's lifetime.

A will may be deposited by the testator or his agent with the court having jurisdiction of the county of his residence for safekeeping, under rules of the court. The will shall be kept confidential. During the testator's lifetime a deposited will shall be delivered only to him or to a person authorized in writing signed by him to receive the will. A conservator or guardian may be allowed to examine a deposited will of a protected testator under procedures designed to maintain the confidential character of the will to the extent possible, and to assure that it will be resealed and left on deposit after the examination. Upon being informed of the testator's death, the court shall notify any person designated to receive the will and deliver it to him on request; or the court may deliver the will to some other appropriate court.

Source: Laws 1974, LB 354, § 77, UPC § 2-901.

30-2356 Duty of custodian of will; liability.

After the death of a testator and on request of an interested person, any person having custody of a will of the testator is required to deliver it with reasonable promptness to a person able to secure its probate and, if none is known, to an appropriate court. Any person who willfully fails to deliver a will is liable to any person aggrieved for the damages which may be sustained by the failure. Any person who willfully refuses or fails to deliver a will after being ordered by the court in a proceeding brought for the purpose of compelling delivery is subject to penalty for contempt of court.

Source: Laws 1974, LB 354, § 78, UPC § 2-902.

ARTICLE 24

PROBATE OF WILLS AND ADMINISTRATION

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PART 1

GENERAL PROVISIONS

30-2401 Devolution of estate at death; restrictions.

The power of a person to leave property by will, and the rights of creditors, devisees, and heirs to his property are subject to the restrictions and limitations contained in this code to facilitate the prompt settlement of estates. Upon the death of a person, his real and personal property devolves to the persons to whom it is devised by his last will or to those indicated as substitutes for them in cases involving lapse, renunciation, or other circumstances affecting the devolution of testate estate or, in the absence of testamentary disposition, to his heirs, or to those indicated as substitutes for them in cases involving renunciation or other circumstances affecting devolution of intestate estates, subject to homestead allowance, exempt property and family allowance, to rights of creditors, elective share of the surviving spouse, and to administration.

Source: Laws 1974, LB 354, § 79, UPC § 3-101.

This section does not create an absolute right in the heir of a deceased person whose estate is being administered to sue to recover property alleged to be a part of the estate, in derogation of those interests to which the potential rights of the heir are subordinate, including the rights of creditors and the orderly administration of the decedent's estate. Beachy v. Becerra, 259 Neb. 299, 609 N.W.2d 648 (2000).

30-2402 Necessity of order of probate for will; certified; evidence.

Except as provided in sections 30-24,125 and 30-24,129, to be effective to prove the transfer of any property or to nominate an executor, a will must be declared to be valid by an order of informal probate by the registrar or an adjudication of probate by the court, except that a duly executed and unrevoked will which has not been probated may be admitted as evidence of a devise if (1) no court proceeding concerning the succession or administration of the estate has occurred and (2) either the devisee or his or her successors and assigns possessed the property devised in accordance with the provisions of the will, or the property devised was not possessed or claimed by anyone by virtue of the decedent's title during the time period for testacy proceedings. Every will, when proved as provided in the Nebraska Probate Code, shall have a certificate of such proof endorsed thereon or annexed thereto, signed by the registrar, judge, or clerk magistrate of the county court and attested by the seal of the court. Every will so certified, and the record thereof, or a transcript of such record, certified by the judge or clerk magistrate of the county court and attested by the seal of the court, may be read in evidence in all courts of this state without further proof. An affidavit executed pursuant to section 30-24,129 prior to September 1, 2001, is valid and effective to prove such transfer.

Source: Laws 1974, LB 354, § 80, UPC § 3-102; Laws 1986, LB 529, § 47; Laws 2001, LB 489, § 10.

30-2403 Necessity of appointment for administration.

Except as otherwise provided in article 25, to acquire the powers and undertake the duties and liabilities of a personal representative of a decedent, a person must be appointed by order of the court or registrar, qualify and be issued letters. Administration of an estate is commenced by the issuance of letters.

Source: Laws 1974, LB 354, § 81, UPC § 3-103.

30-2404 Claims against decedent; necessity of administration.

No proceeding to enforce a claim against the estate of a decedent or his successors may be revived or commenced before the appointment of a personal representative. After the appointment and until distribution, all proceedings and actions to enforce a claim against the estate are governed by the procedure prescribed by this article. After distribution a creditor whose claim has not been barred may recover from the distributees as provided in section 30-24,118 or from a former personal representative individually liable as provided in section 30-24,119. This section has no application to a proceeding by a secured creditor of the decedent to enforce his right to his security except as to any deficiency judgment which might be sought therein.

Source: Laws 1974, LB 354, § 82, UPC § 3-104.

30-2405 Proceedings affecting devolution and administration; jurisdiction of subject matter.

Persons interested in decedents' estates may apply to the registrar for determination in the informal proceedings provided in this article, and may petition the court for orders in formal proceedings within the court's jurisdiction including but not limited to those described in this article. The court has jurisdiction of all proceedings to determine how decedents' estates subject to the laws of this state are to be administered, expended and distributed.

Source: Laws 1974, LB 354, § 83, UPC § 3-105.

During an estate proceeding, where the probate court is petitioned pursuant to this section to settle ''demands or disputes regarding title of a decedent . . . to specific assets alleged to be included in the estate,'' as provided in section 30-2209(4), the probate court shall determine the relief sought only after providing notice and appropriate due process to other persons claiming, or having an interest in, such assets. In re Estate of Chaney, 232 Neb. 121, 439 N.W.2d 764 (1989).

30-2406 Proceedings within the exclusive jurisdiction of court; service; jurisdiction over persons.

In proceedings within the jurisdiction of the court where notice is required by this code or by rule, interested persons may be bound by the orders of the court in respect to property in or subject to the laws of this state by notice in conformity with section 30-2220. An order is binding as to all who are given notice of the proceeding though less than all interested persons are notified.

Source: Laws 1974, LB 354, § 84, UPC § 3-106.

30-2407 Scope of proceedings; proceedings independent; exception.

Unless supervised administration as described in part 5 is involved, (1) each proceeding before the court or registrar is independent of any other proceeding involving the same estate; (2) petitions for formal orders of the court may combine various requests for relief in a single proceeding if the orders sought may be finally granted without delay. Except as required for proceedings which are particularly described by other sections of this article, no petition is defective because it fails to embrace all matters which might then be the subject of a final order; (3) proceedings for probate of wills or adjudications of no will may be combined with proceedings for appointment of personal representatives; and (4) a proceeding for appointment of a personal representative is concluded by an order making or declining the appointment.

Source: Laws 1974, LB 354, § 85, UPC § 3-107.

30-2408 Probate, testacy, and appointment proceedings; ultimate time limit.

No informal probate or appointment proceeding or formal testacy or appointment proceeding, other than a proceeding to probate a will previously probated at the testator's domicile and appointment proceedings relating to an estate in which there has been a prior appointment, may be commenced more than three years after the decedent's death, except (1) if a previous proceeding was dismissed because of doubt about the fact of the decedent's death, appropriate probate, appointment, or testacy proceedings may be maintained at any time thereafter upon a finding that the decedent's death occurred prior to the initiation of the previous proceeding and the applicant or petitioner has not delayed unduly in initiating the subsequent proceeding; (2) appropriate probate, appointment, or testacy proceedings may be maintained in relation to the estate of an absent, disappeared, or missing person for whose estate a conservator has been appointed, at any time within three years after the conservator becomes able to establish the death of the protected person; (3) a proceeding to contest an informally probated will and to secure appointment of the person with legal priority for appointment in the event the contest is successful may be commenced within the later of twelve months from the informal probate or three years from the decedent's death; and (4) an informal probate or appointment or a formal testacy or appointment proceeding may be commenced thereafter if no formal or informal proceeding for probate or proceeding concerning the succession or administration has occurred within the three-year period, but claims other than expenses of administration may not be presented against the estate. These limitations do not apply to proceedings to construe probated wills or determine heirs of an intestate. In cases under (1) or (2) above, the date on which a testacy or appointment proceeding is properly commenced shall be deemed to be the date of the decedent's death for purposes of other limitations provisions of this code which relate to the date of death.

Source: Laws 1974, LB 354, § 86, UPC § 3-108; Laws 1984, LB 373, § 1.

30-2409 Statutes of limitation on decedent's cause of action.

No statute of limitations running on a cause of action belonging to a decedent which had not been barred as of the date of his death shall apply to bar a cause of action surviving the decedent's death sooner than four months after death. A cause of action which, but for this section, would have been barred less than four months after death is barred after four months unless tolled.

Source: Laws 1974, LB 354, § 87, UPC § 3-109.

PART 2

VENUE FOR PROBATE AND ADMINISTRATION; PRIORITY TO ADMINISTER; DEMAND FOR NOTICE

30-2410 Venue for first and subsequent estate proceedings; location of property.

(a) Venue for the first informal or formal testacy or appointment proceedings after a decedent's death is:

(1) in the county where the decedent had his domicile at the time of his death; or

(2) if the decedent was not domiciled in this state, in any county where property of the decedent was located at the time of his death.

(b) Venue for all subsequent proceedings within the jurisdiction of the court is in the place where the initial proceeding occurred, unless the initial proceeding has been transferred as provided in section 30-2212 or subsection (c) of this section.

(c) If the first proceeding was informal, on application of an interested person and after notice to the proponent in the first proceeding, the court, upon finding that venue is elsewhere, may transfer the proceeding and the file to the other court.

(d) For the purpose of aiding determinations concerning location of assets which may be relevant in cases involving nondomiciliaries, a debt, other than one evidenced by investment or commercial paper or other instrument in favor of a nondomiciliary, is located where the debtor resides or, if the debtor is a person other than an individual, at the place where it has its principal office. Commercial paper, investment paper and other instruments are located where the instrument is. An interest in property held in trust is located where the trustee may be sued. If the asset arises by reason of a tort claim against a nondomiciliary decedent, the asset is located in any county in this state where the nondomiciliary decedent could have been sued if not deceased.

Source: Laws 1974, LB 354, § 88, UPC § 3-201.

30-2411 Appointment or testacy proceedings; conflicting claim of domicile in another state.

If conflicting claims as to the domicile of a decedent are made in a formal testacy or appointment proceeding commenced in Nebraska and also in a testacy or appointment proceeding after notice pending at the same time in another state, with an applicable provision of law similar in reciprocal effect to this provision, the court in Nebraska is required to stay, dismiss, or permit suitable amendment in the proceeding here unless it is here determined that the local proceeding was commenced before the proceeding elsewhere, and the determination of domicile in the proceeding first commenced is determinative in the proceeding in Nebraska.

Source: Laws 1974, LB 354, § 89, UPC § 3-202.

30-2412 Priority among persons seeking appointment as personal representative.

(a) Whether the proceedings are formal or informal, persons who are not disqualified have priority for appointment in the following order:

(1) the person with priority as determined by a probated will including a person nominated by a power conferred in a will;

(2) the surviving spouse of the decedent who is a devisee of the decedent;

(3) other devisees of the decedent;

(4) the surviving spouse of the decedent;

(5) other heirs of the decedent;

(6) forty-five days after the death of the decedent, any creditor.

(b) An objection to an appointment can be made only in formal proceedings. In case of objection the priorities stated in (a) apply except that

(1) if the estate appears to be more than adequate to meet exemptions and costs of administration but inadequate to discharge anticipated unsecured claims, the court, on petition of a creditor, may appoint any qualified person;

(2) in case of objection to appointment of a person other than one whose priority is determined by will by an heir or devisee appearing to have a substantial interest in the estate, the court may appoint a person who is acceptable to heirs and devisees whose interests in the estate appear to be worth in total more than half of the probable distributable value or, in default of this accord, any suitable person.

(c) A person entitled to letters under (2) through (5) of (a) above, and a person aged eighteen and over who would be entitled to letters but for his age, may nominate a qualified person to act as personal representative. Any person aged eighteen and over may renounce his right to nominate or to an appointment by appropriate writing filed with the court. When two or more persons share a priority, those of them who do not renounce must concur in nominating another to act for them, or in applying for appointment.

(d) Conservators of the estates of protected persons, or if there is no conservator, any guardian except a guardian ad litem of a minor or incapacitated person, may exercise the same right to nominate, to object to another's appointment, or to participate in determining the preference of a majority in interest of the heirs and devisees that the protected person or ward would have if qualified for appointment.

(e) Appointment of one who does not have priority may be made only in formal proceedings except that appointment of one having priority resulting from renunciation or nomination may be made in informal proceedings. Before appointing one without priority, the court must determine that those having priority, although given notice of the proceedings, have failed to request appointment or to nominate another for appointment, and that administration is necessary.

(f) No person is qualified to serve as a personal representative who is:

(1) under the age of nineteen;

(2) a person whom the court finds unsuitable in formal proceedings.

(g) A personal representative appointed by a court of the decedent's domicile has priority over all other persons except where the decedent's will nominates different persons to be personal representative in this state and in the state of domicile. The domiciliary personal representative may nominate another, who shall have the same priority as the domiciliary personal representative.

(h) This section governs priority for appointment of a successor personal representative but does not apply to the selection of a special administrator.

Source: Laws 1974, LB 354, § 90, UPC § 3-203; Laws 1978, LB 650, § 8.

Matters involving appointments of personal representatives, on appeal to the district court and the Supreme Court, are reviewed for error appearing on the record. In re Estate of Casselman, 219 Neb. 653, 365 N.W.2d 805 (1985).

Although it is not mandatory that the court appoint as personal representative of the estate the person or persons nominated in a will, it is required that the court adhere to all the applicable provisions of this section in making an appointment. Schissler v. Foote, 203 Neb. 598, 279 N.W.2d 614 (1979).

30-2413 Demand for notice of order or filing concerning decedent's estate.

Any person desiring notice of any order or filing pertaining to a decedent's estate in which he has a financial or property interest may file a demand for

notice with the court at any time after the death of the decedent stating the name of the decedent, the nature of his interest in the estate, and the demandant's address or that of his attorney. The clerk shall mail a copy of the demand to the personal representative if one has been appointed. After filing of a demand, no order shall be made or filing acted upon to which the demand relates without notice as prescribed in section 30-2220 to the demandant or his attorney. The validity of an order which is issued without compliance with this requirement shall not be affected by the error, but the petitioner receiving the order or the person making the filing may be liable for any damage caused by the absence of notice. The requirement of notice arising from a demand under this provision may be waived in writing by the demandant and shall cease upon the termination of his interest in the estate.

Source: Laws 1974, LB 354, § 91, UPC § 3-204.

PART 3

INFORMAL PROBATE AND APPOINTMENT PROCEEDINGS

30-2414 Informal probate or appointment proceedings; application; contents.

Applications for informal probate or informal appointment shall be directed to the registrar and verified by the applicant to be accurate and complete to the best of his knowledge and belief as to the following information:

(1) Every application for informal probate of a will or for informal appointment of a personal representative, other than a special or successor representative, shall contain the following:

(i) a statement of the interest of the applicant;

(ii) the name and date of death of the decedent, his age, and the county and state of his domicile at the time of death, and the names and addresses of the spouse, children, heirs and devisees and the ages of any who are minors so far as known or ascertainable with reasonable diligence by the applicant;

(iii) if the decedent was not domiciled in the state at the time of his death, a statement showing venue;

(iv) a statement identifying and indicating the address of any personal representative of the decedent appointed in this state or elsewhere whose appointment has not been terminated;

(v) a statement indicating whether the applicant has received a demand for notice or is aware of any demand for notice of any probate or appointment proceeding concerning the decedent that may have been filed in this state or elsewhere.

(2) An application for informal probate of a will shall state the following in addition to the statements required by (1):

(i) that the original of the decedent's last will is in the possession of the court, or accompanies the application, or that an authenticated copy of a will probated in another jurisdiction accompanies the application;

(ii) that the applicant, to the best of his knowledge, believes the will to have been validly executed; and

(iii) that after the exercise of reasonable diligence the applicant is unaware of any instrument revoking the will, and that the applicant believes that the instrument which is the subject of the application is the decedent's last will.

(3) An application for informal appointment of a personal representative to administer an estate under a will shall describe the will by date of execution and state the time and place of probate or the pending application or petition for probate. The application for appointment shall adopt the statements in the application or petition for probate and state the name, address and priority for appointment of the person whose appointment is sought.

(4) An application for informal appointment of an administrator in intestacy shall state in addition to the statements required by (1):

(i) that after the exercise of reasonable diligence the applicant is unaware of any unrevoked testamentary instrument relating to property having a situs in this state under section 30-2210, or a statement why any such instrument of which he may be aware is not being probated;

(ii) the priority of the person whose appointment is sought and the names of any other persons having a prior or equal right to the appointment under section 30-2412.

(5) An application for appointment of a personal representative to succeed a personal representative appointed under a different testacy status shall refer to the order in the most recent testacy proceeding, state the name and address of the person whose appointment is sought and of the person whose appointment will be terminated if the application is granted, and describe the priority of the applicant.

(6) An application for appointment of a personal representative to succeed a personal representative who has tendered a resignation as provided in section 30-2453(c), or whose appointment has been terminated by death or removal, shall adopt the statements in the application or petition which led to the appointment of the person being succeeded except as specifically changed or corrected, state the name and address of the person who seeks appointment as successor, and describe the priority of the applicant.

Source: Laws 1974, LB 354, § 92, UPC § 3-301; Laws 1978, LB 650, § 9.

30-2415 Informal probate; duty of registrar; effect of informal probate.

(a) Upon receipt of an application requesting informal probate of a will, the registrar, upon making the findings required by section 30-2416, shall issue a written statement of informal probate if at least one hundred twenty hours have elapsed since the decedent's death. Informal probate is conclusive as to all persons until superseded by an order in a formal testacy proceeding. No defect in the application or procedure relating thereto which leads to informal probate of a will, or in connection with the notice required by subsection (b) of this section, renders the probate void.

(b) If a personal representative has not been appointed under section 30-2420 contemporaneously with the issuance of a written statement of informal probate, the clerk shall, within thirty days thereafter, publish notice once a week for three consecutive weeks in a newspaper having general circulation in the county where the written statement of informal probate has been issued. The first publication shall be made within thirty days after the statement is issued, shall be in a form prescribed by the Supreme Court, and shall give notice that a

written statement of informal probate of a will of the decedent has been issued. The party instituting or maintaining the proceeding or his attorney is required to mail the published notice and give proof thereof in accordance with section 25-520.01.

Source: Laws 1974, LB 354, § 93, UPC § 3-302.

30-2416 Informal probate; proof and findings required.

(a) In an informal proceeding for original probate of a will, the registrar shall determine whether:

(1) the application is complete;

(2) the applicant has made oath or affirmation that the statements contained in the application are true to the best of his knowledge and belief;

(3) the applicant appears from the application to be an interested person as defined in section 30-2209(21);

(4) on the basis of the statements in the application, venue is proper;

(5) an original, duly executed and apparently unrevoked will is in the registrar's possession; and

(6) any notice required by section 30-2413 has been given and that the application is not within section 30-2417.

(b) The application shall be denied if it indicates that a personal representative has been appointed in another county of this state or, except as provided in subsection (d) below, if it appears that this or another will of the decedent has been the subject of a previous probate order.

(c) A will which appears to have the required signatures and which contains an attestation clause showing that requirements of execution under section 30-2327, 30-2328, or 30-2331 have been met shall be probated without further proof. In other cases, the registrar may assume execution if the will appears to have been properly executed, or he may accept a sworn statement or affidavit of any person having knowledge of the circumstances of execution, whether or not the person was a witness to the will.

(d) Informal probate of a will which has been previously probated elsewhere may be granted at any time upon written application by any interested person, together with deposit of an authenticated copy of the will and of the statement probating it from the office or court where it was first probated.

(e) A will from a place which does not provide for probate of a will after death and which is not eligible for probate under subsection (a) above may be probated in this state upon receipt by the registrar of a duly authenticated copy of the will and a duly authenticated certificate of its legal custodian that the copy filed is a true copy and that the will has become operative under the law of the other place.

Source: Laws 1974, LB 354, § 94, UPC § 3-303; Laws 1978, LB 650, § 10.

30-2417 Informal probate; unavailable in certain cases.

An application for informal probate shall be declined if it relates to one or more of a known series of testamentary instruments the latest of which does not

expressly revoke the earlier, except that a series consisting of a will with its codicils may be informally probated.

Source: Laws 1974, LB 354, § 95, UPC § 3-304.

30-2418 Informal probate; registrar not satisfied.

If the registrar is not satisfied that a will is entitled to be probated in informal proceedings because of failure to meet the requirements of sections 30-2416 and 30-2417 or any other reason, he may decline the application. A declination of informal probate is not an adjudication and does not preclude formal probate proceedings.

Source: Laws 1974, LB 354, § 96, UPC § 3-305.

30-2419 Informal probate; notice; requirements.

The moving party must give notice as described by section 30-2220 of his application for informal probate (1) to any person demanding it pursuant to section 30-2413; and (2) to any personal representative of the decedent whose appointment has not been terminated. No other notice of informal probate is required, except as provided in sections 30-2415(b) and 30-2420(c).

Source: Laws 1974, LB 354, § 97, UPC § 3-306.

30-2420 Informal appointment proceedings; delay in order; duty of registrar; effect of appointment.

(a) Upon receipt of an application for informal appointment of a personal representative other than a special administrator as provided in section 30-2457, if at least one hundred twenty hours have elapsed since the decedent's death, the registrar, after making the findings required by section 30-2421, shall appoint the applicant subject to qualification and acceptance; *Provided*, that if the decedent was a nonresident, the registrar shall delay the order of appointment until thirty days have elapsed since death unless the personal representative appointed at the decedent's domicile is the applicant, or unless the decedent's will directs that his estate be subject to the laws of this state.

(b) The status of personal representative and the powers and duties pertaining to the office are fully established by informal appointment. An appointment, and the office of personal representative created thereby, is subject to termination as provided in sections 30-2451 to 30-2455, but is not subject to retroactive vacation.

(c) In addition to the notices required by section 30-2413, after a personal representative is appointed pursuant to the provisions of this section, the clerk shall, within thirty days after the appointment, cause notice of the appointment to be published once a week for three consecutive weeks in a newspaper having general circulation in the county where the appointment has been made. The first publication shall be made within thirty days after appointment.

The published notice shall be in a form prescribed by the Supreme Court and shall contain the following: (1) notice of the appointment, and (2) notice that a written statement of informal probate of a will of decedent has been issued if such is the case. The party instituting or maintaining the proceeding or his attorney is required to mail the published notice and give proof thereof in accordance with section 25-520.01.

Source: Laws 1974, LB 354, § 98, UPC § 3-307.

30-2421 Informal appointment proceedings; proof and findings required.

(a) In informal appointment proceedings, the registrar must determine whether:

(1) the application for informal appointment of a personal representative is complete;

(2) the applicant has made oath or affirmation that the statements contained in the application are true to the best of his knowledge and belief;

(3) the applicant appears from the application to be an interested person as defined in section 30-2209(21);

(4) on the basis of the statements in the application, venue is proper;

(5) any will to which the requested appointment relates has been formally or informally probated; but this requirement does not apply to the appointment of a special administrator;

(6) any notice required by section 30-2413 has been given;

(7) from the statements in the application, the person whose appointment is sought has priority entitling him to the appointment.

(b) Unless section 30-2455 controls, the application must be denied if it indicates that a personal representative who has not filed a written statement of resignation as provided in section 30-2453(c) has been appointed in this or another county of this state, that (unless the applicant is the domiciliary personal representative or his nominee) the decedent was not domiciled in this state and that a personal representative whose appointment has not been terminated has been appointed by a court in the state of domicile, or that other requirements of this section have not been met.

Source: Laws 1974, LB 354, § 99, UPC § 3-308.

30-2422 Informal appointment proceedings; registrar not satisfied.

If the registrar is not satisfied that a requested informal appointment of a personal representative should be made because of failure to meet the requirements of sections 30-2420 and 30-2421, or for any other reason, he may decline the application. A declination of informal appointment is not an adjudication and does not preclude appointment in formal proceedings.

Source: Laws 1974, LB 354, § 100, UPC § 3-309.

30-2423 Informal appointment proceedings; notice requirements.

The moving party must give notice as described by section 30-2220 of his intention to seek an appointment informally: (1) to any person demanding it pursuant to section 30-2413; and (2) to any person having a prior or equal right to appointment not waived in writing and filed with the court. No other notice of an informal appointment proceeding is required, except as provided in section 30-2420(c) or in section 30-2483.

Source: Laws 1974, LB 354, § 101, UPC § 3-310.

30-2424 Informal appointment unavailable in certain cases.

If an application for informal appointment indicates the existence of a possible unrevoked testamentary instrument which may relate to property

subject to the laws of this state, and which is not filed for probate in this court, the registrar shall decline the application.

Source: Laws 1974, LB 354, § 102, UPC § 3-311.

PART 4

FORMAL TESTACY AND APPOINTMENT PROCEEDINGS

30-2425 Formal testacy proceedings; nature; when commenced.

A formal testacy proceeding is litigation to determine whether a decedent left a valid will. A formal testacy proceeding may be commenced by an interested person filing a petition as described in section 30-2426(a) in which he requests that the court, after notice and hearing, enter an order probating a will, or a petition to set aside an informal probate of a will or to prevent informal probate of a will which is the subject of a pending application, or a petition in accordance with section 30-2426(b) for an order that the decedent died intestate.

A petition may seek formal probate of a will without regard to whether the same or a conflicting will has been informally probated. A formal testacy proceeding may, but need not, involve a request for appointment of a personal representative.

During the pendency of a formal testacy proceeding, the registrar shall not act upon any application for informal probate of any will of the decedent or any application for informal appointment of a personal representative of the decedent.

Unless a petition in a formal testacy proceeding also requests confirmation of the previous informal appointment, a previously appointed personal representative, after receipt of notice of the commencement of a formal probate proceeding, must refrain from exercising his power to make any further distribution of the estate during the pendency of the formal proceeding. A petitioner who seeks the appointment of a different personal representative in a formal proceeding also may request an order restraining the acting personal representative from exercising any of the powers of his office and requesting the appointment of a special administrator. In the absence of a request, or if the request is denied, the commencement of a formal proceeding has no effect on the powers and duties of a previously appointed personal representative other than those relating to distribution.

Source: Laws 1974, LB 354, § 103, UPC § 3-401.

30-2426 Formal testacy or appointment proceedings; petition; contents.

(a) Petitions for formal probate of a will, or for adjudication of intestacy with or without request for appointment of a personal representative, must be directed to the court, request a judicial order after notice and hearing and contain further statements as indicated in this section. A petition for formal probate of a will

(1) requests an order as to the testacy of the decedent in relation to a particular instrument which may or may not have been informally probated and determining the heirs,

(2) contains the statements required for informal applications as stated in the five subparagraphs under section 30-2414(1), the statements required by subparagraphs (ii) and (iii) of section 30-2414(2), and

(3) states whether the original of the last will of the decedent is in the possession of the court or accompanies the petition.

If the original will is neither in the possession of the court nor accompanies the petition and no authenticated copy of a will probated in another jurisdiction accompanies the petition, the petition also must state the contents of the will and indicate that it is lost, destroyed, or otherwise unavailable.

(b) A petition for adjudication of intestacy and appointment of an administrator in intestacy must request a judicial finding and order that the decedent left no will and determining the heirs, contain the statements required by (1) and (4) of section 30-2414 and indicate whether supervised administration is sought. A petition may request an order determining intestacy and heirs without requesting the appointment of an administrator, in which case the statements required by subparagraph (ii) of section 30-2414(4) above may be omitted.

Source: Laws 1974, LB 354, § 104, UPC § 3-402.

30-2427 Formal testacy proceeding; notice of hearing on petition.

(a) Upon commencement of a formal testacy proceeding, the court shall fix a time and place of hearing. Notice shall be given in the manner prescribed by section 30-2220 by the petitioner under subdivision 30-2220(a)(1) to the persons herein enumerated and to any additional person who has filed a demand for notice under section 30-2413.

Notice shall be given to the following persons: The surviving spouse, children, and other heirs of the decedent, the devisees and executors named in any will that is being, or has been, probated, or offered for informal or formal probate in the county, or that is known by the petitioner to have been probated, or offered for informal or formal probate elsewhere, and any personal representative of the decedent whose appointment has not been terminated. Notice may be given to other persons. In addition, the clerk shall publish notice to all unknown persons and to all known persons whose addresses are unknown who have any interest in the matters being litigated in accordance with section 30-2220(a)(2). The party instituting or maintaining the proceeding or his or her attorney is required to mail the published notice and give proof thereof in accordance with section 25-520.01.

(b) If it appears by the petition or otherwise that the fact of the death of the alleged decedent may be in doubt, or on the written demand of any interested person, a copy of the notice of the hearing on the petition shall be sent by certified or registered mail to the alleged decedent at his or her last-known address. The court shall direct the petitioner to report the results of, or make and report back concerning, a reasonably diligent search for the alleged decedent in any manner that may seem advisable, including any or all of the following methods:

(1) By inserting in one or more suitable periodicals a notice requesting information from any person having knowledge of the whereabouts of the alleged decedent;

(2) By notifying law enforcement officials and public welfare agencies in appropriate locations of the disappearance of the alleged decedent;

(3) By engaging the services of an investigator. The costs of any search so directed shall be paid by the petitioner if there is no administration or by the estate of the decedent in case there is administration.

Source: Laws 1974, LB 354, § 105, UPC § 3-403; Laws 1987, LB 93, § 10.

There is no statutory requirement that the interested parties be notified as to the content or date of execution of the document or documents offered for probate. The statutory requirement is for notice that there is a petition to probate the estate. In re Estate of Seidler, 241 Neb. 402, 490 N.W.2d 453 (1992).

30-2428 Formal testacy proceedings; written objections to probate.

Any party to a formal proceeding who opposes the probate of a will for any reason shall state in his pleadings his objections to probate of the will.

Source: Laws 1974, LB 354, § 106, UPC § 3-404.

30-2429 Formal testacy proceedings; uncontested cases; hearings and proof.

If a petition in a testacy proceeding is unopposed, the court may order probate or intestacy on the strength of the pleadings if satisfied that the conditions of section 30-2433 have been met, or conduct a hearing in open court and require proof of the matters necessary to support the order sought. If evidence concerning execution of the will is necessary, the affidavit or testimony of one of any attesting witnesses to the instrument is sufficient. If the affidavit or testimony of an attesting witness is not available, execution of the will may be proved by other evidence or affidavit.

Source: Laws 1974, LB 354, § 107, UPC § 3-405.

30-2429.01 Formal testacy proceedings; objection; informal probate; petition to set aside; transfer to district court; procedure; fees.

(1) If there is an objection to probate of a will or if a petition is filed to set aside an informal probate of a will or to prevent informal probate of a will which is the subject of a pending application, the county court shall continue the originally scheduled hearing for at least fourteen days from the date of the hearing. At any time prior to the continued hearing date any party may transfer the proceeding to determine whether the decedent left a valid will to the district court by filing with the county court a notice of transfer, depositing with the clerk of the county court a docket fee in the amount of the filing fee in district court for cases originally commenced in district court, and paying to the clerk of the county court a fee of twenty dollars.

(2) Within ten days of the completion of the requirements of subsection (1) of this section, the clerk of the county court shall transmit to the clerk of the district court a certified transcript of the complete record of the matter transferred and the docket fee.

(3) Upon the filing of the transcript in the district court, such court shall have jurisdiction over the proceeding on the contest. Within thirty days of the filing of the transcript, any party may file additional objections.

(4) The district court may order such additional pleadings as necessary and shall thereafter determine whether the decedent left a valid will. Trial shall be

to a jury unless a jury is waived by all parties who have filed pleadings in the matter.

(5) The final decision and judgment in the matter transferred shall be certified to the county court, and proceedings shall be had thereon necessary to carry the final decision and judgment into execution.

Source: Laws 1981, LB 42, § 18; Laws 1985, LB 293, § 3; Laws 1992, LB 999, § 1.

A request for transfer may be made at any time prior to the final scheduled continuance. In re Estate of Nuesch, 252 Neb. 610, 567 N.W.2d 113 (1997).

When a will contest is transferred pursuant to this section, the district court obtains jurisdiction over all proceedings related to the contest action. Jurisdiction remains with the district court until a final decision is reached and the case remanded to the county court. Once the contest is transferred to the district court, the county court has no authority over the matter other than to carry out the district court's final decision after remand. In re Estate of Miller, 231 Neb. 723, 437 N.W.2d 793 (1989).

30-2430 Formal testacy proceedings; contested cases; testimony of attesting witnesses.

(a) If evidence concerning execution of an attested will which is not self-proved is necessary in contested cases, the testimony of at least one of the attesting witnesses, if within the state competent and able to testify, is required. Due execution of an attested or unattested will may be proved by other evidence.

(b) If the will is self-proved, compliance with signature requirements for execution is conclusively presumed and other requirements of execution are presumed subject to rebuttal without the testimony of any witness upon filing the will and the acknowledgment and affidavits annexed or attached thereto, unless there is proof of fraud or forgery affecting the acknowledgment or affidavit.

Source: Laws 1974, LB 354, § 108, UPC § 3-406.

This is a procedural section defining evidence that may be used to prove an otherwise valid will; it does not create another category of valid wills. In re Estate of Flicker, 215 Neb. 495, 339 N.W.2d 914 (1983).

In a self-proved will, compliance with signature requirements is conclusively presumed and other requirements of execution are presumed, subject to rebuttal. The presumption of due execution arising from the acknowledgment of a self-proved will may be attacked by proof of fraud or forgery. In the absence of proof that the formalities required by the statute were not complied with, the presumption of due execution is conclusive. In re Estate of Flider, 213 Neb. 153, 328 N.W.2d 197 (1982).

The proponent of a self-proved will, as provided for under this statute, need not call any attesting witness to make a prima facie case of testamentary capacity. In re Estate of Camin, 212 Neb. 490, 323 N.W.2d 827 (1982).

30-2431 Formal testacy proceedings; burdens in contested cases.

In contested cases, petitioners who seek to establish intestacy have the burden of establishing prima facie proof of death, venue, and heirship. Proponents of a will have the burden of establishing prima facie proof of due execution, death, testamentary capacity, and venue. Contestants of a will have the burden of establishing undue influence, fraud, duress, mistake or revocation. Parties have the ultimate burden of persuasion as to matters with respect to which they have the initial burden of proof. If a will is opposed by the petition for probate of a later will revoking the former, it shall be determined first whether the later will is entitled to probate, and if a will is opposed by a petition for a declaration of intestacy, it shall be determined first whether the will is entitled to probate.

Source: Laws 1974, LB 354, § 109, UPC § 3-407.

This section did not change the rules concerning the effect of a presumption of undue influence established by case law existing prior to the adoption of the Uniform Probate Code. In re Estate of Novak, 235 Neb. 939, 458 N.W.2d 221 (1990).

While a nonexpert witness who is shown to have had intimate acquaintance with a deceased may be permitted to state an opinion concerning the mental condition of the deceased, the person testifying must give the facts and circumstances upon which the opinion is based. In re Estate of Thompson, 225 Neb. 643, 407 N.W.2d 738 (1987).

30-2432 Formal testacy proceedings; will construction; effect of final order in another jurisdiction.

A final order of a court of another state, which state has an applicable provision of law similar in reciprocal effect to this section, determining testacy, the validity or construction of a will, made in a proceeding involving notice to and an opportunity for contest by all interested persons must be accepted as determinative by the courts of this state if it includes, or is based upon, a finding that the decedent was domiciled at his death in the state where the order was made.

Source: Laws 1974, LB 354, § 110, UPC § 3-408.

The clear directive of this section is that an order of another state shall be adopted by a Nebraska court only if the other state has a similar law for providing reciprocity of decisions made in Nebraska courts in probate proceedings. In re Estate of Hannan, 2 Neb. App. 636, 513 N.W.2d 339 (1994).

30-2433 Formal testacy proceedings; order; foreign will.

After the time required for any notice has expired, upon proof of notice, and after any hearing that may be necessary, if the court finds that the testator is dead and venue is proper, it shall determine the decedent's domicile at death, his heirs and his state of testacy. Any will found to be valid and unrevoked shall be formally probated. Termination of any previous informal appointment of a personal representative, which may be appropriate in view of the relief requested and findings, is governed by section 30-2455. The petition shall be dismissed or appropriate amendment allowed if the court is not satisfied that the alleged decedent is dead. A will from a place which does not provide for probate of a will after death may be proved for probate in this state by a duly authenticated certificate of its legal custodian that the copy introduced is a true copy and that the will has become effective under the law of the other place.

Source: Laws 1974, LB 354, § 111, UPC § 3-409; Laws 1978, LB 650, § 11.

30-2434 Formal testacy proceedings; probate of more than one instrument.

If two or more instruments are offered for probate before a final order is entered in a formal testacy proceeding, more than one instrument may be probated if neither expressly revokes the other or contains provisions which work a total revocation by implication. If more than one instrument is probated, the order shall indicate what provisions control in respect to the nomination of an executor, if any. The order may, but need not, indicate how any provisions of a particular instrument are affected by the other instrument. After a final order in a testacy proceeding has been entered, no petition for probate of any other instrument of the decedent may be entertained, except incident to a petition to vacate or modify a previous probate order and subject to the time limits of section 30-2436.

Source: Laws 1974, LB 354, § 112, UPC § 3-410.

30-2435 Formal testacy proceedings; partial intestacy.

If it becomes evident in the course of a formal testacy proceeding that, though one or more instruments are entitled to be probated, the decedent's

estate is or may be partially intestate, the court shall enter an order to that effect.

Source: Laws 1974, LB 354, § 113, UPC § 3-411.

30-2436 Formal testacy proceedings; effect of order; vacation.

Subject to appeal and subject to vacation as provided herein and in section 30-2437, a formal testacy order under sections 30-2433 to 30-2435, including an order that the decedent left no valid will and determining heirs, is final as to all persons with respect to all issues concerning the decedent's estate that the court considered or might have considered incident to its rendition relevant to the question of whether the decedent left a valid will, and to the determination of heirs, except that:

(1) The court shall entertain a petition for modification or vacation of its order and probate of another will of the decedent if it is shown that the proponents of the later-offered will were unaware of its existence at the time of the earlier proceeding or were unaware of the earlier proceeding and were given no notice thereof, except by publication.

(2) If intestacy of all or part of the estate has been ordered, the determination of heirs of the decedent may be reconsidered if it is shown that one or more persons were omitted from the determination and it is also shown that the persons were unaware of their relationship to the decedent, were unaware of his or her death or were given no notice of any proceeding concerning his or her estate, except by publication.

(3) A petition for vacation under either (1) or (2) above must be filed prior to the earlier of the following time limits:

(i) If a personal representative has been appointed for the estate, the time of entry of any order approving final distribution of the estate, or, if the estate is closed by statement, six months after the filing of the closing statement.

(ii) Whether or not a personal representative has been appointed for the estate of the decedent, the time prescribed by subdivision (1), (2), or (3) of section 30-2408 when it is no longer possible to initiate an original proceeding to probate a will of the decedent.

(iii) Twelve months after the entry of the order sought to be vacated.

(4) The order originally rendered in the testacy proceeding may be modified or vacated, if appropriate under the circumstances, by the order of probate of the later-offered will or the order redetermining heirs.

(5) The finding of the fact of death is conclusive as to the alleged decedent only if notice of the hearing on the petition in the formal testacy proceeding was sent by registered or certified mail addressed to the alleged decedent at his or her last-known address and the court finds that a search under section 30-2427(b) was made.

If the alleged decedent is not dead, even if notice was sent and search was made, he or she may recover estate assets in the hands of the personal representative. In addition to any remedies available to the alleged decedent by reason of any fraud or intentional wrongdoing, the alleged decedent may recover any estate or its proceeds from distributees that is in their hands, or the value of distributions received by them, to the extent that any recovery from distributees is equitable in view of all of the circumstances.

(6) In a contested will case in which the district court heard a transferred proceeding and certified the results to the county court under section 30-2429.01, any petition for modification under subsection (1) of this section shall be filed in the county court from which the proceedings were transferred; any party may thereafter remove the proceedings for modification or vacation in accordance with section 30-2429.01.

Source: Laws 1974, LB 354, § 114, UPC § 3-412; Laws 1978, LB 650, § 12; Laws 1981, LB 42, § 19.

30-2437 Formal testacy proceedings; vacation of order for other cause.

For good cause shown, an order in a formal testacy proceeding may be modified or vacated within the time allowed for appeal.

Source: Laws 1974, LB 354, § 115, UPC § 3-413.

A motion to vacate or modify which is filed within the time limitation contemplated by this section is similar in nature to a motion for a new trial in district court and the overruling of such motion is itself a final order which extends the thirty-day appeal time from the entry of the original order complained of to the date upon which the motion to vacate or modify is overruled. DeVries v. Rix, 203 Neb. 392, 279 N.W.2d 89 (1979).

To show ''good cause'', as used in this section, means to demonstrate a logical reason or legal ground, based on fact or law, why an otherwise final order of the county court should be vacated or modified. DeVries v. Rix, 203 Neb. 392, 279 N.W.2d 89 (1979).

Under this section, a movant must support a claim of meritorious objection or defense by good faith averment of facts, not simply legal conclusions. In re Estate of Rolenc, 7 Neb. App. 833, 585 N.W.2d 526 (1998).

30-2438 Formal proceedings concerning appointment of personal representative.

(a) A formal proceeding for adjudication regarding the priority or qualification of one who is an applicant for appointment as personal representative, or of one who previously has been appointed personal representative in informal proceedings, if an issue concerning the testacy of the decedent is or may be involved, is governed by section 30-2426, as well as by this section. In other cases, the petition shall contain or adopt the statements required by section 30-2414(1) and describe the question relating to priority or qualification of the personal representative which is to be resolved. If the proceeding precedes any appointment of a personal representative, it shall stay any pending informal appointment proceedings as well as any commenced thereafter. If the proceeding is commenced after appointment, the previously appointed personal representative, after receipt of notice thereof, shall refrain from exercising any power of administration except as necessary to preserve the estate or unless the court orders otherwise.

(b) After notice to interested persons, including all persons interested in the administration of the estate as successors under the applicable assumption concerning testacy, any previously appointed personal representative and any person having or claiming priority for appointment as personal representative, the court shall determine who is entitled to appointment under section 30-2412, make a proper appointment and, if appropriate, terminate any prior appointment found to have been improper as provided in cases of removal under section 30-2454.

Source: Laws 1974, LB 354, § 116, UPC § 3-414.

Summary judgment is an incorrect procedure for making a priority determination that removes or replaces a personal representative when the hearing does not comply with the procedural requirements of a formal proceeding under this section. In re Estate of Sutherlin, 261 Neb. 297, 622 N.W.2d 657 (2001).

PART 5

SUPERVISED ADMINISTRATION

30-2439 Supervised administration; nature of proceeding.

Supervised administration is a single in rem proceeding to secure complete administration and settlement of a decedent's estate under the continuing authority of the court which extends until entry of an order approving distribution of the estate and discharging the personal representative or other order terminating the proceeding. A supervised personal representative is responsible to the court, as well as to the interested parties, and is subject to directions concerning the estate made by the court on its own motion or on the motion of any interested party. Except as otherwise provided in this part, or as otherwise ordered by the court, a supervised personal representative has the same duties and powers as a personal representative who is not supervised.

Source: Laws 1974, LB 354, § 117, UPC § 3-501.

30-2440 Supervised administration; petition; order.

A petition for supervised administration may be filed by any interested person or by a personal representative at any time or the prayer for supervised administration may be joined with a petition in a testacy or appointment proceeding. If the testacy of the decedent and the priority and qualification of any personal representative have not been adjudicated previously, the petition for supervised administration shall include the matters required of a petition in a formal testacy proceeding and the notice requirements and procedures applicable to a formal testacy proceeding apply. If not previously adjudicated, the court shall adjudicate the testacy of the decedent and questions relating to the priority and qualifications of the personal representative in any case involving a request for supervised administration, even though the request for supervised administration may be denied. After notice to interested persons, the court shall order supervised administration of a decedent's estate: (1) if the decedent's will directs supervised administration, it shall be ordered unless the court finds that circumstances bearing on the need for supervised administration have changed since the execution of the will and that there is no necessity for supervised administration; (2) if the decedent's will directs unsupervised administration, supervised administration shall be ordered only upon a finding that it is necessary for protection of persons interested in the estate; or (3) in other cases if the court finds that supervised administration is necessary under the circumstances.

Source: Laws 1974, LB 354, § 118, UPC § 3-502.

30-2441 Supervised administration; effect on other proceedings.

(a) The pendency of a proceeding for supervised administration of a decedent's estate stays action on any informal application then pending or thereafter filed.

(b) If a will has been previously probated in informal proceedings, the effect of the filing of a petition for supervised administration is as provided for formal testacy proceedings by section 30-2425.

(c) After he has received notice of the filing of a petition for supervised administration, a personal representative who has been appointed previously shall not exercise his power to distribute any estate. The filing of the petition does not affect his other powers and duties unless the court restricts the exercise of any of them pending full hearing on the petition.

Source: Laws 1974, LB 354, § 119, UPC § 3-503.

30-2442 Supervised administration; powers of personal representative.

Unless restricted by the court, a supervised personal representative has, without interim orders approving exercise of a power, all powers of personal representatives under this code, but he shall not exercise his power to make any distribution of the estate without prior order of the court. Any other restriction on the power of a personal representative which may be ordered by the court must be endorsed on his letters of appointment and, unless so endorsed, is ineffective as to persons dealing in good faith with the personal representative.

Source: Laws 1974, LB 354, § 120, UPC § 3-504.

Pursuant to this section, failure to inform court of attorney fee payments did not violate this particular supervised administration because such fees were not "distributions." In re Estate of Snover, 233 Neb. 198, 443 N.W.2d 894 (1989).

30-2443 Supervised administration; interim orders; distribution and closing orders.

Unless otherwise ordered by the court, supervised administration is terminated by order in accordance with time restrictions, notices and contents of orders prescribed for proceedings under section 30-24,115. Interim orders approving or directing partial distributions or granting other relief may be issued by the court at any time during the pendency of a supervised administration on the application of the personal representative or any interested person.

Source: Laws 1974, LB 354, § 121, UPC § 3-505.

PART 6

PERSONAL REPRESENTATIVE; APPOINTMENT, CONTROL, AND TERMINATION OF AUTHORITY

30-2444 Qualification.

Prior to receiving letters, a personal representative shall qualify by filing with the appointing court any required bond and a statement of acceptance of the duties of the office.

Source: Laws 1974, LB 354, § 122, UPC § 3-601.

30-2445 Acceptance of appointment; consent to jurisdiction.

By accepting appointment, a personal representative submits personally to the jurisdiction of the court in any proceeding relating to the estate that may be instituted by any interested person. Notice of any proceeding shall be delivered to the personal representative or mailed to him by ordinary first-class mail at his address as listed in the application or petition for appointment or as thereafter reported to the court and to his address as then known to the petitioner.

Source: Laws 1974, LB 354, § 123, UPC § 3-602.

30-2446 Bond required; exceptions; when court may require; required when value of estate will not permit summary procedures.

(1) A bond shall be required of a personal representative unless: (a) The will expressly waives the bond, expressly requests that there be no bond, or waives the requirement of a surety thereon other than the personal representative; (b) all of the heirs, if no will has been probated, or all of the devisees under a will which does not provide for relieving the personal representative of bond in accordance with subdivision (1)(a) of this section, file with the court a written waiver of the bond requirement; a duly appointed guardian or conservator may waive on behalf of his ward or protected person unless the guardian or conservator is the personal representative; (c) the personal representative is a national banking association, a holder of a banking permit under the laws of this state, or a trust company holding a certificate to engage in trust business from the Department of Banking and Finance; or (d) the petition for formal or informal appointment alleges that the probable value of the entire estate will permit summary procedures under section 30-24,127.

(2) In any case when bond is not required under subsection (1) of this section, the court may, upon petition of any interested person and upon reasonable proof that the interest of the petitioning person is in danger of being lost because of the administration of the estate, require a bond in such amount as the court may direct in order to protect the interest of the petitioner or of the petitioner and others. An heir or devisee who initially waived bond may be a petitioner under this subsection.

(3) If a bond is not initially required because the petition for appointment alleges that the probable value of the entire estate will permit summary procedures under section 30-24,127, and it later appears from the inventory and appraisal that the value of the estate will not permit use of such procedures, then the personal representative shall promptly file a bond unless one is not required for some other reason under subsection (1) of this section.

Source: Laws 1974, LB 354, § 124, UPC § 3-603; Laws 1975, LB 500, § 1.

30-2447 Bond amount; security; procedure; reduction.

(a) In informal proceedings, if bond is required under section 30-2446 and the provisions of the will or court order do not specify the amount, unless stated in his application or petition, the person qualifying shall file a statement under oath with the registrar indicating his best estimate of the value of the personal estate of the decedent and of the income expected from the personal and real estate during the next year, and he shall execute and file a bond with the registrar in an amount not less than the estimate. The registrar shall determine that the bond is duly executed by a corporate surety or with such individual sureties as the court shall direct or approve.

(b) In formal and informal proceedings, on application or petition of the personal representative or another interested person, the court may excuse a requirement of bond, increase or reduce the amount of the bond, release sureties, or permit the substitution of another bond with the same or different sureties.

Source: Laws 1974, LB 354, § 125, UPC § 3-604.

30-2448 Demand for bond by interested person.

Any person apparently having an interest in the estate worth in excess of one thousand dollars, or any creditor having a claim in excess of one thousand dollars, may make a written demand that a personal representative give bond. The demand must be filed with the registrar and a copy mailed to the personal representative, if appointment and qualification have occurred. Thereupon, bond is required, but the requirement ceases if the person demanding bond ceases to be interested in the estate or if bond is excused as provided in section 30-2446 or 30-2447. After he has received notice and until the filing of the bond or cessation of the requirement of bond, the personal representative shall refrain from exercising any powers of his office except as necessary to preserve the estate. Failure of the personal representative to meet a requirement of bond by giving suitable bond within thirty days after receipt of notice is cause for his removal and appointment of a successor personal representative.

Source: Laws 1974, LB 354, § 126, UPC § 3-605.

30-2449 Terms and conditions of bonds.

(a) The following requirements and provisions apply to any bond required by this part:

(1) Bonds shall name the court as obligee for the benefit of the persons interested in the estate and shall be conditioned upon the faithful discharge by the fiduciary of all duties according to law and shall be approved by the registrar in informal proceedings and by the court in formal proceedings.

(2) Unless otherwise provided by the terms of the approved bond, sureties are jointly and severally liable with the personal representative and with each other. The address of sureties shall be stated in the bond.

(3) By executing an approved bond of a personal representative, the surety consents to the jurisdiction of the probate court which issued letters to the primary obligor in any proceedings pertaining to the fiduciary duties of the personal representative and naming the surety as a party. Notice of any proceeding shall be delivered to the surety or mailed to him by registered or certified mail at his address as listed with the court where the bond is filed and to his address as then known to the petitioner.

(4) On petition of a successor personal representative, any other personal representative of the same decedent, or any interested person, a proceeding in the court may be initiated against a surety for breach of the obligation of the bond of the personal representative.

(5) The bond of the personal representative is not void after the first recovery but may be proceeded against from time to time until the whole penalty is exhausted.

(b) No action or proceeding may be commenced against the surety on any matter as to which an action or proceeding against the primary obligor is barred by adjudication or limitation.

Source: Laws 1974, LB 354, § 127, UPC § 3-606.

30-2450 Order restraining personal representative; hearing.

(a) On petition of any person who appears to have an interest in the estate, the court by temporary order may restrain a personal representative from performing specified acts of administration, disbursement, or distribution, or exercise of any powers or discharge of any duties of his office, or make any

other order to secure proper performance of his duty, if it appears to the court that the personal representative otherwise may take some action which would jeopardize unreasonably the interest of the applicant or of some other interested person. Persons with whom the personal representative may transact business may be made parties.

(b) The matter shall be set for hearing within ten days unless the parties otherwise agree. Notice as the court directs shall be given to the personal representative and his attorney of record, if any, and to any other parties named defendant in the petition.

Source: Laws 1974, LB 354, § 128, UPC § 3-607.

30-2451 Termination of appointment; general.

Termination of appointment of a personal representative occurs as indicated in sections 30-2452 to 30-2455. Termination ends the right and power pertaining to the office of personal representative as conferred by this code or any will, except that a personal representative, at any time prior to distribution or until restrained or enjoined by court order, may perform acts necessary to protect the estate and may deliver the assets to a successor representative. Termination does not discharge a personal representative from liability for transactions or omissions occurring before termination, or relieve him of the duty to preserve assets subject to his control, to account therefor and to deliver the assets. Termination does not affect the jurisdiction of the court over the personal representative, but terminates his authority to represent the estate in any pending or future proceeding.

Source: Laws 1974, LB 354, § 129, UPC § 3-608.

30-2452 Termination of appointment; death or disability.

The death of a personal representative or the appointment of a guardian or conservator for the estate of a personal representative terminates his appointment. Until appointment and qualification of a successor or special representative to replace the deceased or protected representative, the representative of the estate of the deceased or protected personal representative, if any, has the duty to protect the estate possessed and being administered by his decedent or ward at the time his appointment terminates, has the power to perform acts necessary for protection and shall account for and deliver the estate assets to a successor or special personal representative upon his appointment and qualification.

Source: Laws 1974, LB 354, § 130, UPC § 3-609.

30-2453 Termination of appointment; voluntary.

(a) An appointment of a personal representative terminates as provided in section 30-24,117 one year after the filing of a closing statement.

(b) An order closing an estate as provided in section 30-24,115 or 30-24,116 terminates an appointment of a personal representative at the time and on the conditions provided for in the order.

(c) A personal representative may resign his position by filing a written statement of resignation with the registrar after he has given at least fifteen days' written notice to the persons known to be interested in the estate. If no one applies or petitions for appointment of a successor representative within

the time indicated in the notice, the filed statement of resignation is ineffective as a termination of appointment and in any event is effective only upon the appointment and qualification of a successor representative and delivery of the assets to him.

Source: Laws 1974, LB 354, § 131, UPC § 3-610; Laws 1978, LB 650, § 13.

30-2454 Termination of appointment by removal; cause; procedure.

(a) A person interested in the estate may petition for removal of a personal representative for cause at any time. Upon filing of the petition, the court shall fix a time and place for hearing. Notice shall be given by the petitioner to the personal representative, and to other persons as the court may order. Except as otherwise ordered as provided in section 30-2450, after receipt of notice of removal proceedings, the personal representative shall not act except to account, to correct maladministration or preserve the estate. If removal is ordered, the court also shall direct by order the disposition of the assets remaining in the name of, or under the control of, the personal representative being removed.

(b) Cause for removal exists when removal would be in the best interests of the estate, or if it is shown that a personal representative or the person seeking his appointment intentionally misrepresented material facts in the proceedings leading to his appointment, or that the personal representative has disregarded an order of the court, has become incapable of discharging the duties of his office, or has mismanaged the estate or failed to perform any duty pertaining to the office. Unless the decedent's will directs otherwise, a personal representative appointed at the decedent's domicile, incident to securing appointment of himself or his nominee as ancillary personal representative, may obtain removal of another who was appointed personal representative in this state to administer local assets.

Source: Laws 1974, LB 354, § 132, UPC § 3-611.

A proceeding under this section to remove a personal representative for cause is a special proceeding within the meaning of section 25-1902 and therefore is a final order and is appealable, even though it may not terminate the action or constitute a final disposition of the case. Failure to pay claims within the time limited by the court is not cause for removal of a personal representative when there are no funds with which to pay the claims, unless it appears that absent neglect on the part of the personal representative funds would have been available. In re Estate of Seidler, 241 Neb. 402, 490 N.W.2d 453 (1992).

Order of county court dismissing motion to remove personal representative was appealable. In re Estate of Snover, 233 Neb. 198, 443 N.W.2d 894 (1989).

Under subsection (b) of this section, the county court erred in failing to remove a personal representative who failed to comply with a progression order with respect to the filing of a federal estate tax return. In re Estate of Snover, 233 Neb. 198, 443 N.W.2d 894 (1989).

30-2455 Termination of appointment; change of testacy status.

Except as otherwise ordered in formal proceedings, the probate of a will subsequent to the appointment of a personal representative in intestacy or under a will which is superseded by formal probate of another will, or the vacation of an informal probate of a will subsequent to the appointment of the personal representative thereunder, does not terminate the appointment of the personal representative although his powers may be reduced as provided in section 30-2425. Termination occurs upon appointment in informal or formal appointment proceedings of a person entitled to appointment under the later assumption concerning testacy. If no request for new appointment is made within thirty days after expiration of time for appeal from the order in formal testacy proceedings, or from the informal probate, changing the assumption

concerning testacy, the previously appointed personal representative upon request may be appointed personal representative under the subsequently probated will, or as in intestacy as the case may be.

Source: Laws 1974, LB 354, § 133, UPC § 3-612.

30-2456 Successor personal representative.

Parts 3 and 4 of this article govern proceedings for appointment of a personal representative to succeed one whose appointment has been terminated. After appointment and qualification, a successor personal representative may be substituted in all actions and proceedings to which the former personal representative was a party, and no notice, process or claim which was given or served upon the former personal representative need be given to or served upon the successor in order to preserve any position or right the person giving the notice or filing the claim may thereby have obtained or preserved with reference to the former personal representative. Except as otherwise ordered by the court, the successor personal representative has the powers and duties in respect to the continued administration which the former personal representative would have had if his appointment had not been terminated.

Source: Laws 1974, LB 354, § 134, UPC § 3-613.

Under this section and section 3-309 of the Uniform Commercial Code, 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. Fales v. Norine, 263 Neb. 932, 644 N.W.2d 513 (2002).

30-2457 Special administrator; appointment.

A special administrator may be appointed:

(1) informally by the registrar on the application of any interested person when necessary to protect the estate of a decedent prior to the appointment of a general personal representative or if a prior appointment has been terminated as provided in section 30-2452.

(2) in a formal proceeding by order of the court on the petition of any interested person and finding, after notice and hearing, that appointment is necessary to preserve the estate or to secure its proper administration including its administration in circumstances where a general personal representative cannot or should not act. If it appears to the court that an emergency exists, appointment may be ordered without notice.

Source: Laws 1974, LB 354, § 135, UPC § 3-614.

A special administrator may be appointed for the limited purpose of accepting a claim against an estate. The imminent running of the statute of limitations by creditors against a decedent's estate constitutes an emergency for purposes of this section. This section does not require subsequent notice after the emergency appointment of a special administrator without notice. In re Estate of Wilson, 8 Neb. App. 467, 594 N.W.2d 695 (1999).

30-2458 Special administrator; who may be appointed.

(a) If a special administrator is to be appointed pending the probate of a will which is the subject of a pending application or petition for probate, the person named personal representative in the will shall be appointed if available and qualified.

(b) In other cases, any proper person may be appointed special administrator.

Source: Laws 1974, LB 354, § 136, UPC § 3-615; Laws 1978, LB 650, § 36.

30-2459 Special administrator; appointed informally; powers and duties.

A special administrator appointed by the registrar in informal proceedings pursuant to section 30-2457(1) has the duty to collect and manage the assets of the estate, to preserve them, to account therefor and to deliver them to the personal representative upon his qualification, or to such other person as shall be legally entitled to receive the same. The special administrator has the power of a personal representative under this code necessary to perform his duties.

Source: Laws 1974, LB 354, § 137, UPC § 3-616; Laws 1978, LB 650, § 14.

A special administrator has the power of a personal representative under the probate code, including the right to partition assets in estates being administered. Znamenacek v. Menke, 210 Neb. 671, 316 N.W.2d 605 (1982).

30-2460 Special administrator; formal proceedings; powers and duties.

A special administrator appointed by order of the court in any formal proceeding has the power of a personal representative except as limited in the appointment and duties as prescribed in the order. The appointment may be for a specified time, to perform particular acts or on other terms as the court may direct.

Source: Laws 1974, LB 354, § 138, UPC § 3-617; Laws 1978, LB 650, § 15.

30-2461 Termination of appointment; special administrator.

The appointment of a special administrator terminates in accordance with the provisions of the order of appointment, other order of the court, or on the appointment of a personal representative. In other cases, the appointment of a special administrator is subject to termination as provided in sections 30-2451 to 30-2454.

Source: Laws 1974, LB 354, § 139, UPC § 3-618; Laws 1978, LB 650, § 16.

PART 7

DUTIES AND POWERS OF PERSONAL REPRESENTATIVES

30-2462 Time of accrual of duties and powers.

The duties and powers of a personal representative commence upon his appointment. The powers of a personal representative relate back in time to give acts by the person appointed which are beneficial to the estate occurring prior to appointment the same effect as those occurring thereafter. Prior to appointment, a person named executor in a will may carry out written instructions of the decedent relating to his body, funeral and burial arrangements. A personal representative may ratify and accept acts on behalf of the estate done by others where the acts would have been proper for a personal representative.

Source: Laws 1974, LB 354, § 140, UPC § 3-701.

30-2463 Priority among different letters.

A person to whom general letters are issued first has exclusive authority under the letters until his appointment is terminated or modified. If, through error, general letters are afterwards issued to another, the first appointed representative may recover any property of the estate in the hands of the

representative subsequently appointed, but the acts of the latter done in good faith before notice of the first letters are not void for want of validity of appointment.

Source: Laws 1974, LB 354, § 141, UPC § 3-702.

30-2464 General duties; relation and liability to persons interested in estate; standing to sue.

(a) A personal representative is a fiduciary who shall comply with the prudent investor rule set forth in sections 30-3883 to 30-3889. A personal representative is under a duty to settle and distribute the estate of the decedent in accordance with the terms of any probated and effective will and this code, and as expeditiously and efficiently as is consistent with the best interests of the estate. He or she shall use the authority conferred upon him or her by this code, the terms of the will, if any, and any order in proceedings to which he or she is party for the best interests of successors to the estate.

(b) A personal representative shall not be surcharged for acts of administration or distribution if the conduct in question was authorized at the time. Subject to other obligations of administration, an informally probated will is authority to administer and distribute the estate according to its terms. An order of appointment of a personal representative, whether issued in informal or formal proceedings, is authority to distribute apparently intestate assets to the heirs of the decedent if, at the time of distribution, the personal representative is not aware of a pending testacy proceeding, a proceeding to vacate an order entered in an earlier testacy proceeding, a formal proceeding questioning his or her appointment or fitness to continue, or a supervised administration proceeding. Nothing in this section affects the duty of the personal representative to administer and distribute the estate in accordance with the rights of claimants, the surviving spouse, any minor and dependent children and any pretermitted child of the decedent as described elsewhere in this code.

(c) Except as to proceedings which do not survive the death of the decedent, a personal representative of a decedent domiciled in this state at his or her death has the same standing to sue and be sued in the courts of this state and the courts of any other jurisdiction as his or her decedent had immediately prior to death.

Source: Laws 1974, LB 354, § 142, UPC § 3-703; Laws 1997, LB 54, § 14; Laws 2003, LB 130, § 128.

When a claim presented in the manner described in section 30-2486 and within the time limit described in section 30-2485 is disallowed by the personal representative, the dissatisfied claimant may, within sixty days of the mailing of notice of the disallowance, commence a proceeding against the personal representative in the district court insofar as the claim relates to matters within the district court's chancery or common-law jurisdiction. Holdrege Co-op Assn. v. Wilson, 236 Neb. 541, 463 N.W.2d 312 (1990).

Under subsection (a) of this section, the county court erred in failing to remove a personal representative who failed to comply with a progression order with respect to the filing of a federal estate tax return. In re Estate of Snover, 233 Neb. 198, 443 N.W.2d 894 (1989).

If a licensed attorney serves in the capacity of a personal representative, the attorney is considered a fiduciary with the special skills of an attorney and is held to the standard of care of personal representatives possessing special skills; the attorney's actions are to be reviewed as actions of a personal representative with special skills, not as a licensed attorney. In re Estate of Snover, 4 Neb. App. 533, 546 N.W.2d 341 (1996).

30-2465 Personal representative to proceed without court order; exception.

A personal representative shall proceed expeditiously with the settlement and distribution of a decedent's estate and, except as otherwise specified or ordered in regard to a supervised personal representative, do so without adjudication, order, or direction of the court, but he may invoke the jurisdiction of the court,

in proceedings authorized by this code, to resolve questions concerning the estate or its administration.

Source: Laws 1974, LB 354, § 143, UPC § 3-704.

30-2466 Repealed. Laws 1980, LB 694, § 13.

30-2467 Duty of personal representative; inventory and appraisal.

Within three months after appointment, a personal representative, who is not a special administrator or a successor to another representative who has previously discharged this duty, shall prepare and file an inventory of property owned by the decedent at the time of death, listing it with reasonable detail and indicating as to each listed item its fair market value as of the date of the decedent's death and the type and amount of any encumbrance that may exist with reference to any item.

The personal representative shall send a copy of the inventory to interested persons who request it and shall file the original of the inventory with the court.

Source: Laws 1974, LB 354, § 145, UPC § 3-706; Laws 1992, LB 999, § 2; Laws 1997, LB 770, § 1; Laws 2000, LB 968, § 15.

30-2468 Employment of appraisers.

The personal representative may employ a qualified and disinterested appraiser to assist him in ascertaining the fair market value as of the date of the decedent's death of any asset the value of which may be subject to reasonable doubt. Different persons may be employed to appraise different kinds of assets included in the estate. The names and addresses of any appraiser shall be indicated on the inventory with the item or items he appraised.

Source: Laws 1974, LB 354, § 146, UPC § 3-707.

30-2469 Duty of personal representative; supplementary inventory.

If any property not included in the original inventory comes to the knowledge of a personal representative or if the personal representative learns that the value or description indicated in the original inventory for any item is erroneous or misleading, the personal representative shall make a supplementary inventory or appraisement showing the market value as of the date of the decedent's death of the new item or the revised market value or descriptions and the appraisers or other data relied upon, if any, and file it with the court and furnish copies thereof or information thereof to persons interested in the new information.

Source: Laws 1974, LB 354, § 147, UPC § 3-708; Laws 1997, LB 770, § 2; Laws 2000, LB 968, § 16.

30-2470 Duty of personal representative; possession of estate.

Except as otherwise provided by a decedent's will, every personal representative has a right to, and shall take possession or control of, the decedent's property, except that any real property or tangible personal property may be left with or surrendered to the person presumptively entitled thereto unless or until, in the judgment of the personal representative, possession of the property by him will be necessary for purposes of administration. The request by a

personal representative for delivery of any property possessed by an heir or devisee is conclusive evidence, in any action against the heir or devisee for possession thereof, that the possession of the property by the personal representative is necessary for purposes of administration. The personal representative shall pay taxes on, and take all steps reasonably necessary for the management, protection and preservation of, the estate in his possession. He may maintain an action to recover possession of property or to determine the title thereto.

Source: Laws 1974, LB 354, § 148, UPC § 3-709.

A personal representative may maintain an action with respect to real estate only to the extent the personal representative has possession of the real estate for purposes of estate administration. Ruzicka v. Ruzicka, 262 Neb. 824, 635 N.W.2d 528 (2001).

This section gives the personal representative specific authority to ''maintain an action to recover possession of property or to determine the title thereto''. Beachy v. Becerra, 259 Neb. 299, 609 N.W.2d 648 (2000).

The personal representative has the right to take possession and control of the decedent's real property. However, real or personal property may be left with or surrendered to the person presumptively entitled to it unless or until, in the judgment of the personal representative, possession of the property will be necessary for purposes of estate administration. Mischke v. Mischke, 253 Neb. 439, 571 N.W.2d 248 (1997).

In the absence of an allegation that a decedent's property is necessary for purposes of administration, a personal representative has no authority to take possession or control of a decedent's property. In re Estate of Kesting, 220 Neb. 524, 371 N.W.2d 107 (1985).

The personal representative of a decedent's estate, not its beneficiary, has standing to seek to set aside a decedent's inter vivos transfer of bonds. Hampshire v. Powell, 10 Neb. App. 148, 626 N.W.2d 620 (2001).

30-2471 Power to avoid transfers.

The property liable for the payment of unsecured debts of a decedent includes all property transferred by him by any means which is in law void or voidable as against his creditors, and, subject to prior liens, the right to recover this property, so far as necessary for the payment of unsecured debts of the decedent, is exclusively in the personal representative.

Source: Laws 1974, LB 354, § 149, UPC § 3-710.

30-2472 Powers of personal representatives; in general.

Until termination of his appointment a personal representative has the same power over the title to property of the estate that an absolute owner would have, in trust however, for the benefit of the creditors and others interested in the estate. Unless otherwise specifically ordered by the court, this power may be exercised without notice, hearing, or order of court.

Source: Laws 1974, LB 354, § 150, UPC § 3-711.

30-2473 Improper exercise of power; breach of fiduciary duty.

If the exercise of power concerning the estate is improper, the personal representative is liable to interested persons for damage or loss resulting from breach of his fiduciary duty to the same extent as a trustee of an express trust. The rights of purchasers and others dealing with a personal representative shall be determined as provided in sections 30-2474 and 30-2475.

Source: Laws 1974, LB 354, § 151, UPC § 3-712.

30-2474 Sale, encumbrance, or transaction involving conflict of interest; voidable; exceptions.

Any sale or encumbrance to the personal representative, his spouse, agent or attorney, or any corporation or trust in which he has a substantial beneficial interest, or any transaction which is affected by a substantial conflict of interest on the part of the personal representative, is voidable by any person interested in the estate except one who has consented after fair disclosure, unless

(1) the will or a contract entered into by the decedent expressly authorized the transaction; or

(2) the transaction is approved by the court after notice to interested persons.

Source: Laws 1974, LB 354, § 152, UPC § 3-713.

Evidence presented before a county court as to the amount which should be allowed by the court to reimburse an administratrix for expenses incurred in maintaining the decedent's cattle operation as an asset of decedent's estate where the administratrix was dealing with herself as landowner on which land the cattle grazed was not a contract as prohibited under this section as no money changed hands until after the reimbursement was presented to the court for approval with notice given to all interested parties. In re Estate of Kennedy, 220 Neb. 212, 369 N.W.2d 63 (1985).

30-2475 Persons dealing with personal representative; protection.

A person who in good faith either assists a personal representative or deals with him for value is protected as if the personal representative properly exercised his power. The fact that a person knowingly deals with a personal representative does not alone require the person to inquire into the existence of a power or the propriety of its exercise. Except for restrictions on powers of supervised personal representatives which are endorsed on letters as provided in section 30-2442, no provision in any will or order of court purporting to limit the power of a personal representative is effective except as to persons with actual knowledge thereof. A person is not bound to see to the proper application of estate assets paid or delivered to a personal representative. The protection here expressed extends to instances in which some procedural irregularity or jurisdictional defect occurred in proceedings leading to the issuance of letters, including a case in which the alleged decedent is found to be alive. The protection here expressed is not by substitution for that provided by comparable provisions of the laws relating to commercial transactions and laws simplifying transfers of securities by fiduciaries.

Source: Laws 1974, LB 354, § 153, UPC § 3-714.

30-2476 Transactions authorized for personal representatives; exceptions.

Except as restricted or otherwise provided by the will or by an order in a formal proceeding and subject to the priorities stated in section 30-24,100, a personal representative, acting reasonably for the benefit of the interested persons, may properly:

(1) retain assets owned by the decedent pending distribution or liquidation including those in which the representative is personally interested or which are otherwise improper for trust investment;

(2) receive assets from fiduciaries or other sources;

(3) perform, compromise, or refuse performance of the decedent's contracts that continue as obligations of the estate, as he or she may determine under the circumstances. In performing enforceable contracts by the decedent to convey or lease land, the personal representative, among other possible courses of action, may:

(i) execute and deliver a deed of conveyance for cash payment of all sums remaining due or the purchaser's note for the sum remaining due secured by a mortgage or deed of trust on the land; or

(ii) deliver a deed in escrow with directions that the proceeds, when paid in accordance with the escrow agreement, be paid to the successors of the decedent, as designated in the escrow agreement;

(4) satisfy written charitable pledges of the decedent irrespective of whether the pledges constituted binding obligations of the decedent or were properly presented as claims, if in the judgment of the personal representative the decedent would have wanted the pledges completed under the circumstances;

(5) if funds are not needed to meet debts and expenses currently payable and are not immediately distributable, deposit or invest liquid assets of the estate, including money received from the sale of other assets, in federally insured interest-bearing accounts, readily marketable secured loan arrangements, or other prudent investments which would be reasonable for use by trustees generally;

(6) acquire or dispose of an asset, including land in this or another state, for cash or on credit, at public or private sale; and manage, develop, improve, exchange, partition, change the character of, or abandon an estate asset;

(7) make ordinary or extraordinary repairs or alterations in buildings or other structures, demolish any improvements, and raze existing or erect new party walls or buildings;

(8) subdivide, develop, or dedicate land to public use; make or obtain the vacation of plats and adjust boundaries; or adjust differences in valuation on exchange or partition by giving or receiving considerations; or dedicate easements to public use without consideration;

(9) enter for any purpose into a lease as lessor or lessee, with or without option to purchase or renew, for a term within or extending beyond the period of administration;

(10) enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement;

(11) abandon property when, in the opinion of the personal representative, it is valueless, or is so encumbered, or is in condition that it is of no benefit to the estate;

(12) vote stocks or other securities in person or by general or limited proxy;

(13) pay calls, assessments, and other sums chargeable or accruing against or on account of securities, unless barred by the provisions relating to claims;

(14) hold a security in the name of a nominee or in other form without disclosure of the interest of the estate but the personal representative is liable for any act of the nominee in connection with the security so held;

(15) insure the assets of the estate against damage, loss, and liability and himself or herself against liability as to third persons;

(16) borrow money with or without security to be repaid from the estate assets or otherwise; and advance money for the protection of the estate;

(17) effect a fair and reasonable compromise with any debtor or obligor, or extend, renew, or in any manner modify the terms of any obligation owing to the estate. If the personal representative holds a mortgage, pledge, or other lien upon property of another person, he or she may, in lieu of foreclosure, accept a conveyance or transfer of encumbered assets from the owner thereof in satisfaction of the indebtedness secured by lien;

(18) pay taxes, assessments, compensation of the personal representative, and other expenses incident to the administration of the estate;

(19) sell or exercise stock subscription or conversion rights; consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise;

(20) allocate items of income or expense to either estate income or principal, as permitted or provided by law;

(21) employ persons, including attorneys, auditors, investment advisors, or agents, even if they are associated with the personal representative, to advise or assist the personal representative in the performance of his or her administrative duties; act without independent investigation upon their recommendations; and instead of acting personally, employ one or more agents to perform any act of administration, whether or not discretionary;

(22) prosecute or defend claims or proceedings in any jurisdiction for the protection of the estate and of the personal representative in the performance of his or her duties;

(23) sell, mortgage, or lease any real or personal property of the estate or any interest therein for cash, for credit, or for part cash and part credit, and with or without security for unpaid balances;

(24) continue any unincorporated business or venture in which the decedent was engaged at the time of death (i) in the same business form for a period of not more than four months from the date of appointment of a general personal representative if continuation is a reasonable means of preserving the value of the business including goodwill, (ii) in the same business form for any additional period of time that may be approved by order of the court in a formal proceeding to which the persons interested in the estate are parties, or (iii) throughout the period of administration if the business is incorporated by the personal representative and if none of the probable distributees of the business who are competent adults object to its incorporation and retention in the estate;

(25) incorporate any business or venture in which the decedent was engaged at the time of death;

(26) provide for exoneration of the personal representative from personal liability in any contract entered into on behalf of the estate;

(27) satisfy and settle claims and distribute the estate as provided in the Nebraska Probate Code.

Source: Laws 1974, LB 354, § 154, UPC § 3-715; Laws 1978, LB 650, § 17; Laws 1993, LB 315, § 1.

Pursuant to subsections (18) and (21) of this section, failure to inform court of attorney fee payments did not violate this particular supervised administration because such fees were not "distributions." In re Estate of Snover, 233 Neb. 198, 443 N.W.2d 894 (1989).

The covenant of a personal representative's deed of lawful power and authority to convey real property is not a warranty of title and contains no implication of a covenant warranting titles. Ihde v. Kempkes, 228 Neb. 433, 422 N.W.2d 788 (1988).

A personal representative, under both the old and new probate code, has the authority to settle claims in favor of the estate against third parties. Brown v. Sherwood, 203 Neb. 209, 278 N.W.2d 565 (1979).

Under prior law the personal representative of a deceased person acting reasonably for the benefit of the interested persons may sell any real property of the estate following a court order with notice given in the manner prescribed by section 30-2220. Booth v. Reisdorff, 202 Neb. 7, 272 N.W.2d 915 (1978).

Generally, a beneficiary has no standing to prosecute a claim for the protection of the estate under subsection (22) of this section. Hampshire v. Powell, 10 Neb. App. 148, 626 N.W.2d 620 (2001).

Unless restricted by the provisions of a will or by an order of court in a formal proceeding, a personal representative is authorized to employ persons, including attorneys, to advise or assist in the performance of administrative duties. When a personal representative employs an attorney to advise or assist in the performance of administrative duties, the attorney serves as an attorney for the personal representative, and the attorney owes no duty of care to the estate or to the beneficiaries; the personal representative, not the estate, is the attorney's client. In re Estate of Snover, 4 Neb. App. 533, 546 N.W.2d 341 (1996).

30-2477 Powers and duties of successor personal representative.

A successor personal representative has the same power and duty as the original personal representative to complete the administration and distribution of the estate, as expeditiously as possible, but he shall not exercise any power expressly made personal to the executor named in the will.

Source: Laws 1974, LB 354, § 155, UPC § 3-716.

30-2478 Corepresentatives; when joint action required.

If two or more persons are appointed corepresentatives and unless the will provides otherwise, the concurrence of all is required on all acts connected with the administration and distribution of the estate. This restriction does not apply when any corepresentative receives and receipts for property due the estate, when the concurrence of all cannot readily be obtained in the time reasonably available for emergency action necessary to preserve the estate, or when a corepresentative has been delegated to act for the others. Persons dealing with a corepresentative, if actually unaware that another has been appointed to serve with him or if advised by the personal representative with whom they deal that he has authority to act alone for any of the reasons mentioned herein, are as fully protected as if the person with whom they dealt had been the sole personal representative.

Source: Laws 1974, LB 354, § 156, UPC § 3-717.

30-2479 Powers of surviving personal representative.

Unless the terms of the will otherwise provide, every power exercisable by personal corepresentatives may be exercised by the one or more remaining after the appointment of one or more is terminated, and if one of two or more nominated as coexecutors is not appointed, those appointed may exercise all the powers incident to the office.

Source: Laws 1974, LB 354, § 157, UPC § 3-718.

30-2480 Compensation of personal representative.

A personal representative is entitled to reasonable compensation for his services. If a will provides for compensation of the personal representative and there is no contract with the decedent regarding compensation, he may renounce the provision before qualifying and be entitled to reasonable compensation. A personal representative also may renounce his right to all or any part of the compensation. A written renunciation of fee may be filed with the court.

Source: Laws 1974, LB 354, § 158, UPC § 3-719.

30-2481 Expenses in estate litigation.

If any personal representative or person nominated as personal representative defends or prosecutes any proceeding in good faith, whether successful or not he is entitled to receive from the estate his necessary expenses and disbursements including reasonable attorneys' fees incurred.

Source: Laws 1974, LB 354, § 159, UPC § 3-720.

Good faith for the purpose of this section is honesty in fact concerning conduct or a transaction, and is distinguished from mere negligence or honest mistake. Whether successful or not, a personal representative or person nominated as personal representative is entitled to receive his necessary expenses, including attorney fees, when he prosecutes or defends any proceeding in good faith. In re Estate of Watkins, 243 Neb. 583, 501 N.W.2d 292 (1993).

Fees allowed in probate proceedings under this section to persons nominated as personal representatives under a will are administration expenses and need not be paid pursuant to the probate claim statutes. In re Estate of Reimer, 229 Neb. 406, 427 N.W.2d 293 (1988).

The good faith required in this section is an ultimate fact for the court's determination upon all of the evidence. There are no rules defining it, rather, it depends upon the peculiar facts and circumstances existing in each case. In re Estate of Odineal, 220 Neb. 168, 368 N.W.2d 800 (1985).

30-2482 Proceedings for review of employment of agents and compensation of personal representatives and employees of estate.

(1) After notice to all interested persons or on petition of an interested person or on appropriate motion if administration is supervised, the propriety of employment of any person by a personal representative including any attorney, auditor, investment advisor, or other specialized agent or assistant, the reasonableness of the compensation of any person so employed, or the reasonableness of the compensation determined by the personal representative for his or her own services, may be reviewed by the court. Any person who has received excessive compensation from an estate for services rendered may be ordered to make appropriate refunds.

(2) Factors to be considered as guides in determining the reasonableness of a fee include the following:

(a) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the service properly;

(b) The likelihood, if apparent to the personal representative, that the acceptance of the particular employment will preclude the person employed from other employment;

(c) The fee customarily charged in the locality for similar services;

(d) The amount involved and the results obtained;

(e) The time limitations imposed by the personal representative or by the circumstances;

(f) The nature and length of the relationship between the personal representative and the person performing the services; and

(g) The experience, reputation, and ability of the person performing the services.

Source: Laws 1974, LB 354, § 160, UPC § 3-721; Laws 1980, LB 694, § 10.

If a claim for attorney fees in a probate matter is brought under this section, the burden is on the party challenging the reasonableness of the fee to show excessive compensation. From the date of this opinion forward, all claims for attorney fees in probate matters shall be filed pursuant to this section and not pursuant to section 30-2486. In re Estate of Wagner, 253 Neb. 498, 571 N.W.2d 76 (1997).

When challenging attorney fees awarded from an estate for services rendered, the burden is on the challenger to show excessive compensation. In reviewing the award of attorney fees in cases arising under this section, the standard of review in the district court and appellate courts is for error appearing on the record. In re Estate of Nicholson, 241 Neb. 447, 488 N.W.2d 554 (1992).

The standard of review in both the district court and in the Supreme Court in cases arising under this statute is for error appearing on the record. In re Estate of Snyder, 217 Neb. 356, 348 N.W.2d 136 (1984).

PART 8

CREDITORS' CLAIMS

30-2483 Notice to creditors.

Unless notice has already been given under this article and except when an appointment of a personal representative is made pursuant to subdivision (4) of section 30-2408, the clerk of the court upon the appointment of a personal

representative shall publish a notice once a week for three successive weeks in a newspaper of general circulation in the county announcing the appointment and the address of the personal representative, and notifying creditors of the estate to present their claims within two months after the date of the first publication of the notice or be forever barred. The first publication shall be made within thirty days after the appointment. The party instituting or maintaining the proceeding or his or her attorney is required to mail the published notice and give proof thereof in accordance with section 25-520.01. If the decedent was fifty-five years of age or older or resided in a medical institution as defined in subsection (1) of section 68-919, the notice shall also be mailed to the Department of Health and Human Services with the decedent's social security number and, if available upon reasonable investigation, the name and social security number of the decedent's spouse if such spouse is deceased.

Source: Laws 1974, LB 354, § 161, UPC § 3-801; Laws 1978, LB 650, § 18; Laws 2008, LB928, § 1.
Operative date July 18, 2008.

30-2484 Statutes of limitations.

Unless an estate is insolvent the personal representative, with the consent of all successors, may waive any defense of limitations available to the estate. If the defense is not waived, no claim which was barred by any statute of limitations at the time of the decedent's death shall be allowed or paid. The running of any statute of limitations measured from some other event than death and advertisement for claims against a decedent is suspended during the two months following the decedent's death but resumes thereafter as to claims not barred pursuant to the sections which follow. For purposes of any statute of limitations, the proper presentation of a claim under section 30-2486 is equivalent to commencement of a proceeding on the claim.

Source: Laws 1974, LB 354, § 162, UPC § 3-802.

Filing a claim against an estate with the clerk of the court is equivalent to the commencement of a proceeding on the claim. Mulinix v. Roberts, 261 Neb. 800, 626 N.W.2d 220 (2001).

30-2485 Limitations on presentation of claims.

(a) All claims against a decedent's estate which arose before the death of the decedent, including claims of the state and any subdivision thereof, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, if not barred earlier by other statute of limitations, are barred against the estate, the personal representative, and the heirs and devisees of the decedent, unless presented as follows:

(1) Within two months after the date of the first publication of notice to creditors if notice is given in compliance with sections 25-520.01 and 30-2483, except that claims barred by the nonclaim statute at the decedent's domicile before the first publication for claims in this state are also barred in this state. If any creditor has a claim against a decedent's estate which arose before the death of the decedent and which was not presented within the time allowed by this subdivision, including any creditor who did not receive notice, such creditor may apply to the court within sixty days after the expiration date provided in this subdivision for additional time and the court, upon good cause shown, may allow further time not to exceed thirty days;

(2) Within three years after the decedent's death if notice to creditors has not been given in compliance with sections 25-520.01 and 30-2483.

(b) All claims, other than for administration expenses, against a decedent's estate which arise at or after the death of the decedent, including claims of the state and any subdivision thereof, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, are barred against the estate, the personal representative, and the heirs and devisees of the decedent, unless presented as follows:

(1) A claim based on a contract with the personal representative, within four months after performance by the personal representative is due;

(2) Any other claim, within four months after it arises.

(c) Nothing in this section affects or prevents:

(1) Any proceeding to enforce any mortgage, pledge, or other lien upon property of the estate; or

(2) To the limits of the insurance protection only, any proceeding to establish liability of the decedent or the personal representative for which he or she is protected by liability insurance.

Source: Laws 1974, LB 354, § 163, UPC § 3-803; Laws 1991, LB 95, § 1.

1. Scope
2. Miscellaneous

1. Scope

A claim against a decedent's estate which is excepted from the time limitations of this section remains subject to the statute of limitations governing the underlying claim. Babbitt v. Hronik, 261 Neb. 513, 623 N.W.2d 700 (2001).

Claims for reimbursement of medical expenses made pursuant to section 68-1036.02 arise at or after death and, therefore, are subject to the limitations period imposed by subsection (b)(2) of this section. In re Estate of Tvrz, 260 Neb. 991, 620 N.W.2d 757 (2001).

Pursuant to subsection (c)(1) of this section, a judgment lien on the proceeds from a sale is not a claim subject to the provisions of the Nebraska Probate Code. A judgment lien is not a claim and is not subject to the provisions of the Nebraska Probate Code. McCook Nat. Bank v. Bennett, 248 Neb. 567, 537 N.W.2d 353 (1995).

The purpose of the nonclaim statute is facilitation and expedition of proceedings for distribution of a decedent's estate, including an early appraisal of the respective rights of interested persons and prompt settlement of demands against the estate. In re Estate of Masopust, 232 Neb. 936, 443 N.W.2d 274 (1989).

The requirements of this section are mandatory, and where a claim is not filed within the time provided in the statute, it is barred. In re Estate of Masopust, 232 Neb. 936, 443 N.W.2d 274 (1989).

The defense of recoupment is not barred by this section. In re Estate of Massie, 218 Neb. 103, 353 N.W.2d 735 (1984).

2. Miscellaneous

Subsection (a)(1) of this section applies to all creditors who may ask the county court for an extension of time to file a claim, but subsection (a)(2) of this section applies only to creditors who do not receive notice. Therefore, both subsections (a)(1) and (2) of this section apply to creditors who do not receive notice. In re Estate of Emery, 258 Neb. 789, 606 N.W.2d 750 (2000).

The creditor bears the burden of proving that it filed a claim within the required period. Katskee v. Nevada Bob's Golf of Neb., 238 Neb. 654, 472 N.W.2d 372 (1991).

Good cause within the meaning of subsection (a)(1) of this section envisions a claimant proceeding diligently toward presenting a claim against the decedent's estate, but the presentation of the claim is prevented by fraud, accident, mistake, unavoidable misfortune, or excusable neglect. In re Estate of Feuerhelm, 215 Neb. 872, 341 N.W.2d 342 (1983).

A claim by the Department of Health and Human Services Finance and Support for reimbursement of medical assistance benefits pursuant to section 68-1036.02 is one that necessarily falls within the provisions of subsection (b) of this section as arising ''at or after'' the death of the decedent who is a recipient of those benefits. In re Estate of Tvrz, 9 Neb. App. 98, 608 N.W.2d 226 (2000).

Subsection (c) of this section does not provide for a direct action against an insurer, but, rather, an action against the estate of an alleged tort-feasor with the award being limited to the amount of available liability insurance. Robertson v. Motor Club Ins. Assn., 8 Neb. App. 758, 602 N.W.2d 27 (1999).

Administration expenses, including attorney fees, are only excepted from the time-bar provisions for bringing claims. Administration expenses may be brought under the probate claims procedure. Kerrigan & Line v. Foote, 5 Neb. App. 397, 558 N.W.2d 837 (1997).

Subsection (c)(2) of this section provides an exception to the general time-bar provisions of the probate code, and establishes a potential creditor's right to have an estate reopened for the limited purpose of service of process in a civil action to establish liability and liability insurance coverage, but this section does not authorize a suit against a former personal representative who has already been discharged for the purpose of establishing liability and insurance coverage. Mach v. Schmer, 4 Neb. App. 819, 550 N.W.2d 385 (1996).

30-2486 Manner of presentation of claims.

Claims against a decedent's estate may be presented as follows:

(1) The claimant may file a written statement of the claim, in the form prescribed by rule, with the clerk of the court. The claim is deemed presented

on the filing of the claim with the court. If a claim is not yet due, the date when it will become due shall be stated. If the claim is contingent or unliquidated, the nature of the uncertainty shall be stated. If the claim is secured, the security shall be described. Failure to describe correctly the security, the nature of any uncertainty, and the due date of a claim not yet due does not invalidate the presentation made.

(2) The claimant may commence a proceeding against the personal representative in any court which has subject matter jurisdiction and the personal representative may be subjected to jurisdiction, to obtain payment of his or her claim against the estate, but the commencement of the proceeding must occur within the time limited for presenting the claim. No presentation of claim is required in regard to matters claimed in proceedings against the decedent which were pending at the time of his or her death.

(3) If a claim is presented under subsection (1), no proceeding thereon may be commenced more than sixty days after the personal representative has mailed a notice of disallowance; but, in the case of a claim which is not presently due or which is contingent or unliquidated, the personal representative may consent to an extension of the sixty-day period, or to avoid injustice the court, on petition, may order an extension of the sixty-day period, but in no event shall the extension run beyond the applicable statute of limitations.

Source: Laws 1974, LB 354, § 164, UPC § 3-804; Laws 1981, LB 42, § 20.

If a claim is brought pursuant to the probate claims procedure, the burden is on the claimant seeking compensation to prove that he or she rendered services and the reasonable value thereof. In re Estate of Wagner, 253 Neb. 498, 571 N.W.2d 76 (1997).

When a claim presented in the manner described in this section and within the time limit described in section 30-2485 is disallowed by the personal representative, the dissatisfied claimant may, within 60 days of the mailing of notice of the disallowance, commence a proceeding against the personal representative in the district court insofar as the claim relates to matters within the district court's chancery or common-law jurisdiction. Holdrege Co-op Assn. v. Wilson, 236 Neb. 541, 463 N.W.2d 312 (1990).

Implicit in the language ''the claimant may file a written statement of the claim . . . .'' is the requirement that the creditor to whom the decedent is obligated is the claimant who can present a demand against the estate. J.J. Schaefer Livestock Hauling v. Gretna St. Bank, 229 Neb. 580, 428 N.W.2d 185 (1988); In re Estate of Feuerhelm, 215 Neb. 872, 341 N.W.2d 342 (1983).

Mere notice to a representative of an estate regarding a possible demand or claim against an estate does not constitute presenting or filing a claim under this section. In re Estate of Feuerhelm, 215 Neb. 872, 341 N.W.2d 342 (1983).

While the plaintiffs did voluntarily dismiss a county court action after the nonclaim statute had run and were thus barred from pursuing a claim against the estate, they remained free to proceed against the decedent's insurer to the extent of insurance coverage available. Tank v. Peterson, 214 Neb. 34, 332 N.W.2d 669 (1983).

Although this section provides authority for a claimant to present a claim against the estate by commencing an action against the personal representative, this section does not provide authority for a claimant to commence an action against a former personal representative who has already been discharged and whose appointment has already been terminated. Mach v. Schmer, 4 Neb. App. 819, 550 N.W.2d 385 (1996).

30-2487 Payment of claims; order.

(a) If the applicable assets of the estate are insufficient to pay all claims in full, the personal representative shall make payment in the following order:

(1) Costs and expenses of administration;

(2) Reasonable funeral expenses;

(3) Debts and taxes with preference under federal law;

(4) Reasonable and necessary medical and hospital expenses of the last illness of the decedent, including compensation of persons attending the decedent and claims filed by the Department of Health and Human Services pursuant to section 68-919;

(5) Debts and taxes with preference under other laws of this state;

(6) All other claims.

(b) No preference shall be given in the payment of any claim over any other claim of the same class, and a claim due and payable shall not be entitled to a preference over claims not due.

Source: Laws 1974, LB 354, § 165, UPC § 3-805; Laws 1975, LB 481, § 17; Laws 1994, LB 1224, § 40; Laws 1996, LB 1044, § 90; Laws 2006, LB 1248, § 53; Laws 2007, LB296, § 49.

30-2488 Allowance of claims; transfer of certain claims; procedures.

(a) As to claims presented in the manner described in section 30-2486 within the time limit prescribed in section 30-2485, the personal representative may mail a notice to any claimant stating that the claim has been disallowed. If, after allowing or disallowing a claim, the personal representative changes his or her decision concerning the claim, he or she shall notify the claimant. The personal representative may not change a disallowance of a claim after the time for the claimant to file a petition for allowance or to commence a proceeding on the claim has run and the claim has been barred. Every claim which is disallowed in whole or in part by the personal representative is barred so far as not allowed unless the claimant files a petition for allowance in the court or commences a proceeding against the personal representative not later than sixty days after the mailing of the notice of disallowance or partial allowance if the notice warns the claimant of the impending bar. Failure of the personal representative to mail notice to a claimant of action on his or her claim for sixty days after the time for original presentation of the claim has expired has the effect of a notice of allowance.

(b) At any time within fourteen days of the filing of a petition for allowance of a claim, the personal representative may transfer the claim to the regular docket of the county court by filing with the court a notice of transfer. The county court shall hear and determine the claim in the same manner as actions originally filed in the county court on the regular docket. The county court may order such additional pleadings as are necessary. If the claim is greater than the jurisdictional amount in subdivision (5) of section 24-517 and the personal representative requests transfer of the claim to the district court, upon payment by the personal representative to the clerk of the district court of a docket fee in the amount of the filing fee in district court, the county court shall transfer the claim to the district court as provided in section 25-2706. If the claim is transferred to the district court, a jury trial is allowed unless waived by the parties as provided under section 25-1104.

(c) Upon the petition of the personal representative or of a claimant in a proceeding for the purpose, the court may allow in whole or in part any claim or claims filed with the clerk of the court in due time and not barred by subsection (a) of this section. Notice in this proceeding shall be given to the claimant, the personal representative, and those other persons interested in the estate as the court may direct by order entered at the time the proceeding is commenced.

(d) A final judgment in a proceeding in any court against a personal representative to enforce a claim against a decedent's estate is an allowance of the claim.

(e) Unless otherwise provided in any final judgment in any court entered against the personal representative, allowed claims bear interest at the legal rate for the period commencing sixty days after the time for original presenta-

tion of the claim has expired unless based on a contract making a provision for interest, in which case they bear interest in accordance with that provision.

Source: Laws 1974, LB 354, § 166, UPC § 3-806; Laws 1981, LB 42, § 21; Laws 1983, LB 137, § 4; Laws 1991, LB 422, § 4; Laws 2001, LB 269, § 3.

A personal representative may disallow a claim that has been allowed by the failure to object. In re Estate of Dickie, 261 Neb. 533, 623 N.W.2d 666 (2001).

When a claim presented in the manner described in section 30-2486 and within the time limit described in section 30-2485 is disallowed by the personal representative, the dissatisfied claimant may, within sixty days of the mailing of notice of the disallowance, commence a proceeding against the personal representative in the district court insofar as the claim relates to matters within the district court's chancery or common-law jurisdiction. Holdrege Co-op Assn. v. Wilson, 236 Neb. 541, 463 N.W.2d 312 (1990).

There is no constitutional right to trial by jury in appeals to the district court from the county court in probate matters. In re Estate of Massie, 218 Neb. 103, 353 N.W.2d 735 (1984).

A personal representative may disallow a claim that has been allowed by the failure to object. In re Estate of Krichau, 1 Neb. App. 398, 501 N.W.2d 722 (1992).

30-2489 Payment of claims.

(a) Upon the expiration of two months from the date of the first publication of the notice to creditors, the personal representative shall proceed to pay the claims allowed against the estate in the order of priority prescribed, after making allowance for costs and expenses of administration and after making provision for homestead, family and support allowances, for claims already presented which have not yet been allowed or whose allowance has been appealed, and for unbarred claims which may yet be presented. By petition to the court in a proceeding for the purpose, or by appropriate motion if the administration is supervised, a claimant whose claim has been allowed but not paid as provided herein may secure an order directing the personal representative to pay the claim to the extent that funds of the estate are available for the payment.

(b) The personal representative at any time may pay any enforceable claim which has not been barred, with or without formal presentation, but he is personally liable to any other claimant whose claim is allowed and who is injured by such payment if

(1) the payment was made before the expiration of the time limit stated in subsection (a) and the personal representative failed to require the payee to give adequate security for the refund of any of the payment necessary to pay other claimants; or

(2) the payment was made, due to the negligence or willful fault of the personal representative, in such manner as to deprive the injured claimant of his priority.

Source: Laws 1974, LB 354, § 167, UPC § 3-807; Laws 1978, LB 650, § 19.

A petition requesting an order to direct the personal representative to pay a claim that has been allowed but not paid may only be brought in the county court. Kerrigan & Line v. Foote, 5 Neb. App. 397, 558 N.W.2d 837 (1997).

30-2490 Individual liability of personal representative.

(a) Unless otherwise provided in the contract, a personal representative is not individually liable on a contract properly entered into in his fiduciary capacity in the course of administration of the estate unless he fails to reveal his representative capacity and identify the estate in the contract.

(b) A personal representative is individually liable for obligations arising from ownership or control of the estate or for torts committed in the course of administration of the estate only if he is personally at fault.

(c) Claims based on contracts entered into by a personal representative in his fiduciary capacity, on obligations arising from ownership or control of the estate or on torts committed in the course of estate administration, may be asserted against the estate by proceeding against the personal representative in his fiduciary capacity, whether or not the personal representative is individually liable therefor.

(d) Issues of liability as between the estate and the personal representative individually may be determined in a proceeding for accounting, surcharge or indemnification or other appropriate proceeding.

Source: Laws 1974, LB 354, § 168, UPC § 3-808.

Under subsection (a) of this section, it is the personal representative's duty to disclose his or her representative capacity in order to avoid personal liability in contract, and the personal representative bears the burden of proof on this issue. Purbaugh v. Jurgensmeier, 240 Neb. 679, 483 N.W.2d 757 (1992).

30-2491 Secured claims.

Payment of a secured claim is upon the basis of the amount allowed if the creditor surrenders his security; otherwise payment is upon the basis of one of the following:

(1) if the creditor exhausts his security before receiving payment, upon the amount of the claim allowed less the fair value of the security; or

(2) if the creditor does not have the right to exhaust his security or has not done so, upon the amount of the claim allowed less the value of the security determined by converting it into money according to the terms of the agreement pursuant to which the security was delivered to the creditor, or by the creditor and personal representative by agreement, arbitration, compromise or litigation.

Source: Laws 1974, LB 354, § 169, UPC § 3-809.

30-2492 Claims not due and contingent or unliquidated claims.

(a) If a claim which will become due at a future time or a contingent or unliquidated claim becomes due or certain before the distribution of the estate, and if the claim has been allowed or established by a proceeding, it is paid in the same manner as presently due and absolute claims of the same class.

(b) In other cases the personal representative or, on petition of the personal representative or the claimant in a special proceeding for the purpose, the court may provide for payment as follows:

(1) if the claimant consents, he may be paid the present or agreed value of the claim, taking any uncertainty into account;

(2) arrangement for future payment, or possible payment, on the happening of the contingency or on liquidation may be made by creating a trust, giving a mortgage, obtaining a bond or security from a distributee, or otherwise.

Source: Laws 1974, LB 354, § 170, UPC § 3-810.

30-2493 Counterclaims.

In allowing a claim the personal representative may deduct any counterclaim which the estate has against the claimant. In determining a claim against an estate a court shall reduce the amount allowed by the amount of any counterclaims and, if the counterclaims exceed the claim, render a judgment against the claimant in the amount of the excess. A counterclaim, liquidated or

unliquidated, may arise from a transaction other than that upon which the claim is based. A counterclaim may give rise to relief exceeding in amount or different in kind from that sought in the claim.

Source: Laws 1974, LB 354, § 171, UPC § 3-811.

30-2494 Execution and levies prohibited.

No execution may issue upon nor may any levy be made against any property of the estate under any judgment against a decedent or a personal representative, but this section shall not be construed to prevent the enforcement of mortgages, pledges or other liens existing at the time of death upon real or personal property in an appropriate proceeding.

Source: Laws 1974, LB 354, § 172, UPC § 3-812.

A judgment lien on the proceeds from a sale is not a claim subject to the provisions of the Nebraska Probate Code. A judgment lien against decedent in existence prior to the death of decedent falls within this exclusion of the Nebraska Probate Code. McCook Nat. Bank v. Bennett, 248 Neb. 567, 537 N.W.2d 353 (1995).

30-2495 Compromise of claims.

When a claim against the estate has been presented, the personal representative may, if it appears for the best interest of the estate, compromise the claim, whether due or not due, absolute or contingent, liquidated or unliquidated.

Source: Laws 1974, LB 354, § 173, UPC § 3-813.

30-2496 Encumbered assets.

If any assets of the estate are encumbered by mortgage, pledge, lien, or other security interest, the personal representative may pay the encumbrance or any part thereof, renew or extend any obligation secured by the encumbrance or convey or transfer the assets to the creditor in satisfaction of his lien, in whole or in part, whether or not the holder of the encumbrance has filed a claim, if it appears to be for the best interest of the estate. Payment of an encumbrance does not increase the share of the distributee entitled to the encumbered assets unless the distributee is entitled to exoneration.

Source: Laws 1974, LB 354, § 174, UPC § 3-814.

Personal representative has discretion to satisfy an encumbrance immediately if it is in the best interests of the estate. McCook Nat. Bank v. Bennett, 248 Neb. 567, 537 N.W.2d 353 (1995).

30-2497 Administration in more than one state; duty of personal representative.

(a) All assets of estates being administered in this state are subject to all claims, allowances and charges existing or established against the personal representative wherever appointed.

(b) If the estate either in this state or as a whole is insufficient to cover all family exemptions and allowances determined by the law of the decedent's domicile, prior charges and claims, after satisfaction of the exemptions, allowances and charges, each claimant whose claim has been allowed either in this state or elsewhere in administrations of which the personal representative is aware is entitled to receive payment of an equal proportion of his claim. If a preference or security in regard to a claim is allowed in another jurisdiction but not in this state, the creditor so benefited is to receive dividends from local assets only upon the balance of his claim after deducting the amount of the benefit.

(c) In case the family exemptions and allowances, prior charges and claims of the entire estate exceed the total value of the portions of the estate being administered separately and this state is not the state of the decedent's last domicile, the claims allowed in this state shall be paid their proportion if local assets are adequate for the purpose, and the balance of local assets shall be transferred to the domiciliary personal representative. If local assets are not sufficient to pay all claims allowed in this state the amount to which they are entitled, local assets shall be marshaled so that each claim allowed in this state is paid its proportion as far as possible, after taking into account all dividends on claims allowed in this state from assets in other jurisdictions.

Source: Laws 1974, LB 354, § 175, UPC § 3-815.

30-2498 Final distribution to domiciliary representative.

The estate of a nonresident decedent being administered by a personal representative appointed in this state shall, if there is a personal representative of the decedent's domicile willing to receive it, be distributed to the domiciliary personal representative for the benefit of the successors of the decedent unless (1) by virtue of the decedent's will, if any, and applicable choice of law rules, the successors are identified pursuant to the local law of this state without reference to the local law of the decedent's domicile; (2) the personal representative of this state, after reasonable inquiry, is unaware of the existence or identity of a domiciliary personal representative; or (3) the court orders otherwise in a proceeding for a closing order under section 30-24,115 or incident to the closing of a supervised administration. In other cases, distribution of the estate of a decedent shall be made in accordance with the other parts of this article.

Source: Laws 1974, LB 354, § 176, UPC § 3-816.

PART 9

SPECIAL PROVISIONS RELATING TO DISTRIBUTION

30-2499 Successors' rights if no administration.

In the absence of administration, the heirs and devisees are entitled to the estate in accordance with the terms of a probated will or the laws of intestate succession. Devisees may establish title by the probated will to devised property. Persons entitled to property by homestead allowance, exemption or intestacy may establish title thereto by proof of the decedent's ownership, his death, and their relationship to the decedent. Successors take subject to all charges incident to administration, including the claims of creditors and allowances of surviving spouse and dependent children, and subject to the rights of others resulting from abatement, retainer, advancement, and ademption.

Source: Laws 1974, LB 354, § 177, UPC § 3-901; Laws 1975, LB 481, § 18.

30-24,100 Distribution; order in which assets appropriated; abatement.

(a) Except as provided in subsection (b) and except as provided in connection with the share of the surviving spouse who elects to take an elective share, shares of distributees abate, without any preference or priority as between real and personal property, in the following order: (1) property not disposed of by the will; (2) residuary devises; (3) general devises; (4) specific devises. For

purposes of abatement, a general devise charged on any specific property or fund is a specific devise to the extent of the value of the property on which it is charged, and upon the failure or insufficiency of the property on which it is charged, a general devise to the extent of the failure or insufficiency. Abatement within each classification is in proportion to the amounts of property each of the beneficiaries would have received if full distribution of the property had been made in accordance with the terms of the will.

(b) If the will expresses an order of abatement, or if the testamentary plan or the express or implied purpose of the devise would be defeated by the order of abatement stated in subsection (a), the shares of the distributees abate as may be found necessary to give effect to the intention of the testator.

(c) If the subject of a preferred devise is sold or used incident to administration, abatement shall be achieved by appropriate adjustments in, or contribution from, other interests in the remaining assets.

Source: Laws 1974, LB 354, § 178, UPC § 3-902.

30-24,101 Right of retainer.

Unless a different intention is indicated by the will, the amount of a noncontingent indebtedness of a successor to the estate if due, or its present value if not due, shall be offset against the successor's interest; but the successor has the benefit of any defense which would be available to him in a direct proceeding for recovery of the debt.

Source: Laws 1974, LB 354, § 179, UPC § 3-903.

30-24,102 Interest on general pecuniary devise.

General pecuniary devises bear interest at the legal rate beginning one year after the first appointment of a personal representative until payment, unless a contrary intent is indicated by the will.

Source: Laws 1974, LB 354, § 180, UPC § 3-904.

A will is an instrument in writing. Therefore, when interest is required to be paid on a pecuniary devise pursuant to this section, the legal rate of interest called for is 12 percent per annum, as required by section 45-104. In re Estate of Peterson, 230 Neb. 744, 433 N.W.2d 500 (1988).

30-24,103 Penalty clause for contest.

A provision in a will purporting to penalize any interested person for contesting the will or instituting other proceedings relating to the estate is unenforceable if probable cause exists for instituting proceedings.

Source: Laws 1974, LB 354, § 181, UPC § 3-905.

30-24,104 Distribution in kind; valuation; method.

(a) Unless a contrary intention is indicated by the will, the distributable assets of a decedent's estate shall be distributed in kind to the extent possible through application of the following provisions:

(1) A specific devisee is entitled to distribution of the thing devised to him, and a spouse or child who has selected particular assets of an estate as provided in section 30-2323 shall receive the items selected.

(2) Any homestead or family allowance or devise payable in money may be satisfied by value in kind provided

(i) the person entitled to the payment has not demanded payment in cash;

(ii) the property distributed in kind is valued at fair market value as of the date of its distribution, and

(iii) no residuary devisee has requested that the asset in question remain a part of the residue of the estate.

(3) For the purpose of valuation under paragraph (2), securities regularly traded on recognized exchanges, if distributed in kind, are valued at the price for the last sale of like securities traded on the business day prior to distribution or, if there was no sale on that day, at the median between amounts bid and offered at the close of that day. Assets consisting of sums owed the decedent or the estate by solvent debtors as to which there is no known dispute or defense are valued at the sum due with accrued interest or discounted to the date of distribution. For assets which do not have readily ascertainable values, a valuation as of a date not more than thirty days prior to the date of distribution, if otherwise reasonable, controls. For purposes of facilitating distribution, the personal representative may ascertain the value of the assets as of the time of the proposed distribution in any reasonable way, including the employment of qualified appraisers, even if the assets may have been previously appraised.

(4) The residuary estate shall be distributed in kind if there is no objection to the proposed distribution and it is practicable to distribute undivided interests. In other cases, residuary property may be converted into cash for distribution.

(b) After the probable charges against the estate are known, the personal representative may mail or deliver a proposal for distribution to all persons who have a right to object to the proposed distribution. The right of any distributee to object to the proposed distribution on the basis of the kind or value of asset he is to receive, if not waived earlier in writing, terminates if he fails to object in writing received by the personal representative within thirty days after mailing or delivery of the proposal.

Source: Laws 1974, LB 354, § 182, UPC § 3-906.

The time limitation on objections found in subsection (b) of this section is not limited in its application to distribution under a will. In re Estate of Marsh, 247 Neb. 17, 524 N.W.2d 571 (1994).

Once a settlement agreement is entered into, the distribution of the property is pursuant to the agreement and cannot be affected by a section concerning the distribution of property in kind. In re Estate of Marsh, 2 Neb. App. 649, 513 N.W.2d 35 (1994).

30-24,105 Distribution in kind; evidence.

If distribution in kind is made, the personal representative shall execute an instrument or deed of distribution assigning, transferring, or releasing the assets to the distributee as evidence of the distributee's title to the property. If the distribution is of real property, the deed of distribution shall be recorded with the register of deeds in each county in which such real property is situated and shall indicate the court in which probate proceedings were conducted.

Source: Laws 1974, LB 354, § 183, UPC § 3-907; Laws 1984, LB 405, § 1; Laws 2001, LB 105, § 1.

30-24,106 Distribution; right or title of distributee.

Proof that a distributee has received an instrument or deed of distribution of assets in kind, or payment in distribution, from a personal representative is conclusive evidence that the distributee has succeeded to the interest of the estate in the distributed assets, as against all persons interested in the estate,

except that the personal representative may recover the assets or their value if the distribution was improper.

Source: Laws 1974, LB 354, § 184, UPC § 3-908.

30-24,107 Improper distribution; liability of distributee.

Unless the distribution or payment no longer can be questioned because of adjudication, estoppel, or limitation, a distributee of property improperly distributed or paid, or a claimant who was improperly paid, is liable to return the property improperly received and its income since distribution if he has the property. If he does not have the property, then he is liable to return the value as of the date of disposition of the property improperly received and its income and gain received by him.

Source: Laws 1974, LB 354, § 185, UPC § 3-909.

30-24,108 Purchases from distributees protected.

If property distributed in kind or a security interest therein is acquired by a purchaser or lender for value from a distributee who has received an instrument or deed of distribution from the personal representative, the purchaser or lender takes title free of any claims of the estate and incurs no personal liability to the estate, whether or not the distribution was proper. To be protected under this provision, a purchaser or lender need not inquire whether a personal representative acted properly in making the distribution in kind.

Source: Laws 1974, LB 354, § 186, UPC § 3-910.

30-24,109 Partition for purpose of distribution.

When two or more heirs or devisees are entitled to distribution of undivided interests in any real or personal property of the estate, the personal representative or one or more of the heirs or devisees may petition the court, prior to the formal or informal closing of the estate, to make partition. After notice to the interested heirs or devisees, the court shall partition the property in the same manner as provided by the law for civil actions of partition. The court may direct the personal representative to sell any property which cannot be partitioned without prejudice to the owners and which cannot conveniently be allotted to any one party.

Source: Laws 1974, LB 354, § 187, UPC § 3-911.

If the court finds that the real estate in question cannot be partitioned without prejudice or conveniently allotted to one person, it shall direct the personal representative to sell the property and perform the other duties that would otherwise be those of a referee. In re Estate of Kentopp v. Kentopp, 206 Neb. 776, 295 N.W.2d 275 (1980).

This section gives the county court exclusive original jurisdiction over actions to partition or sell real estate in a decedent's estate during the pendency of estate proceedings. In re Estate of Kentopp v. Kentopp, 206 Neb. 776, 295 N.W.2d 275 (1980).

30-24,110 Private agreements among successors to decedent binding on personal representative.

Subject to the rights of creditors and taxing authorities, competent successors may agree among themselves to alter the interests, shares, or amounts to which they are entitled under the will of the decedent, or under the laws of intestacy, in any way that they provide in a written contract executed by all who are affected by its provisions. The personal representative shall abide by the terms of the agreement subject to his obligation to administer the estate for the

benefit of creditors, to pay all taxes and costs of administration, and to carry out the responsibilities of his office for the benefit of any successors of the decedent who are not parties. Personal representatives of decedents' estates are not required to see to the performance of trusts if the trustee thereof is another person who is willing to accept the trust. Accordingly, trustees of a testamentary trust are successors for the purposes of this section. Nothing herein relieves trustees of any duties owed to beneficiaries of trusts.

Source: Laws 1974, LB 354, § 188, UPC § 3-912.

30-24,111 Distributions to trustee.

(a) Before distributing to a trustee, the personal representative may require that the trust be registered if the state in which it is to be administered requires registration and that the trustee inform the beneficiaries as provided in section 30-3878.

(b) If the trust instrument does not excuse the trustee from giving bond, the personal representative may petition the appropriate court to require that the trustee post bond if he or she apprehends that distribution might jeopardize the interests of persons who are not able to protect themselves, and he or she may withhold distribution until the court has acted.

(c) No inference of negligence on the part of the personal representative shall be drawn from his or her failure to exercise the authority conferred by subsections (a) and (b).

Source: Laws 1974, LB 354, § 189, UPC § 3-913; Laws 2003, LB 130, § 129.

30-24,112 Disposition of unclaimed assets.

Disposition of unclaimed assets, fees, legacies, devises, and distributive shares shall be subject to the provisions of sections 25-2714 to 25-2717.

Source: Laws 1974, LB 354, § 190.

30-24,113 Distribution to persons under disability.

A personal representative may discharge his obligation to distribute to any person under legal disability by distributing to his conservator, or any other person authorized by this code or otherwise to give a valid receipt and discharge for the distribution.

Source: Laws 1974, LB 354, § 191, UPC § 3-915.

30-24,114 Apportionment of estate taxes.

Estate taxes shall be apportioned as provided in section 77-2108.

Source: Laws 1974, LB 354, § 192.

PART 10

CLOSING ESTATES

30-24,115 Formal proceedings terminating administration, testate or intestate; order of general protection.

(a) A personal representative or any interested person may petition for an order of complete settlement of the estate. The personal representative may

petition at any time, and any other interested person may petition after one year from the appointment of the original personal representative except that no petition under this section may be entertained until the time for presenting claims which arose prior to the death of the decedent has expired. The petition may request the court to determine testacy, if not previously determined, to consider the final account or compel or approve an accounting and distribution, to construe any will or determine heirs and adjudicate the final settlement and distribution of the estate. After notice to all interested persons and hearing, the court may enter an order or orders, on appropriate conditions, determining the persons entitled to distribution of the estate and, as circumstances require, approving settlement and directing or approving distribution of the estate and discharging the personal representative from further claim or demand of any interested person.

(b) If one or more heirs or devisees were omitted as parties in, or were not given notice of, a previous formal testacy proceeding, the court, on proper petition for an order of complete settlement of the estate under this section, and after notice to the omitted or unnotified persons and other interested parties determined to be interested on the assumption that the previous order concerning testacy is conclusive as to those given notice of the earlier proceeding, may determine testacy as it affects the omitted persons and confirm or alter the previous order of testacy as it affects all interested persons as appropriate in the light of the new proofs. In the absence of objection by an omitted or unnotified person, evidence received in the original testacy proceeding shall constitute prima facie proof of due execution of any will previously admitted to probate, or of the fact that the decedent left no valid will if the prior proceedings determined this fact.

Source: Laws 1974, LB 354, § 193, UPC § 3-1001.

30-24,116 Formal proceedings terminating testate administration; order construing will without adjudicating testacy.

A personal representative administering an estate under an informally probated will or any devisee under an informally probated will may petition for an order of settlement of the estate which will not adjudicate the testacy status of the decedent. The personal representative may petition at any time, and a devisee may petition after one year, from the appointment of the original personal representative, except that no petition under this section may be entertained until the time for presenting claims which arose prior to the death of the decedent has expired. The petition may request the court to consider the final account or compel or approve an accounting and distribution, to construe the will and adjudicate final settlement and distribution of the estate. After notice to all devisees and the personal representative and hearing, the court may enter an order or orders, on appropriate conditions, determining the persons entitled to distribution of the estate under the will and, as circumstances require, approving settlement and directing or approving distribution of the estate and discharging the personal representative from further claim or demand of any devisee who is a party to the proceeding and those he represents. If it appears that a part of the estate is intestate, the proceedings shall be dismissed or amendments made to meet the provisions of section 30-24,115.

Source: Laws 1974, LB 354, § 194, UPC § 3-1002.

30-24,117 Closing estates; by sworn statement of personal representative.

(a) Unless prohibited by order of the court and except for estates being administered in supervised administration proceedings, a personal representative may close an estate by filing with the court no earlier than five months after the date of original appointment of a general personal representative for the estate, a verified statement stating that he, or a prior personal representative whom he has succeeded, has:

(1) published notice to creditors as provided by section 30-2483 and that the first publication occurred more than four months prior to the date of the statement;

(2) fully administered the estate of the decedent by making payment, settlement or other disposition of all claims which were presented, expenses of administration and estate, inheritance and other death taxes, except as specified in the statement, and that the assets of the estate have been distributed to the persons entitled. If any claims remain undischarged, the statement shall state whether the personal representative has distributed the estate subject to possible liability with the agreement of the distributees or it shall state in detail other arrangements which have been made to accommodate outstanding liabilities; and

(3) sent a copy thereof to all distributees of the estate and to all creditors or other claimants of whom he is aware whose claims are neither paid nor barred and has furnished a full account in writing of his administration to the distributees whose interests are affected thereby.

(b) If no proceedings involving the personal representative are pending in the court one year after the closing statement is filed, the appointment of the personal representative terminates.

Source: Laws 1974, LB 354, § 195, UPC § 3-1003.

30-24,118 Liability of distributees to claimants.

After assets of an estate have been distributed and subject to section 30-24,120, an undischarged claim not barred may be prosecuted in a proceeding against one or more distributees. No distributee shall be liable to claimants for amounts in excess of the value of his distribution as of the time of distribution. As between distributees, each shall bear the cost of satisfaction of unbarred claims as if the claim had been satisfied in the course of administration. Any distributee who shall have failed to notify other distributees of the demand made upon him by the claimant in sufficient time to permit them to join in any proceeding in which the claim was asserted against him loses his right of contribution against other distributees.

Source: Laws 1974, LB 354, § 196, UPC § 3-1004.

30-24,119 Limitations on proceedings against personal representative.

Unless previously barred by adjudication and except as provided in the closing statement, the rights of successors and of creditors whose claims have not otherwise been barred against the personal representative for breach of fiduciary duty are barred unless a proceeding to assert the same is commenced within six months after the filing of the closing statement. The rights barred by reason of the filing of the closing statement do not include rights to recover

from a personal representative for fraud, misrepresentation, or inadequate disclosure related to the settlement of the decedent's estate.

Source: Laws 1974, LB 354, § 197, UPC § 3-1005; Laws 1978, LB 650, § 37.

This section provides claimants with a limited right to proceed against a personal representative after the personal representative has already been discharged, where the personal representative has committed a breach of fiduciary duty. Mach v. Schmer, 4 Neb. App. 819, 550 N.W.2d 385 (1996).

30-24,120 Limitations on actions and proceedings against distributees.

Unless previously adjudicated in a formal testacy proceeding or in a proceeding settling the accounts of a personal representative or otherwise barred, the claim of any claimant to recover from a distributee who is liable to pay the claim, and the right of any heir or devisee, or of a successor personal representative acting in their behalf, to recover property improperly distributed or the value thereof from any distributee is forever barred at the later of (1) three years after the decedent's death; or (2) one year after the time of distribution thereof. This section does not bar an action to recover property or value received as the result of fraud.

Source: Laws 1974, LB 354, § 198, UPC § 3-1006.

30-24,121 Certificate discharging liens securing fiduciary performance.

After his appointment has terminated, the personal representative, his sureties, or any successor of either, upon the filing of a verified application showing, so far as is known by the applicant, that no action concerning the estate is pending in any court, is entitled to receive a certificate from the registrar that the personal representative appears to have fully administered the estate in question. The certificate evidences discharge of any lien on any property given to secure the obligation of the personal representative in lieu of bond or any surety, but does not preclude action against the personal representative or the surety.

Source: Laws 1974, LB 354, § 199, UPC § 3-1007.

30-24,122 Subsequent administration.

If other property of the estate is discovered after an estate has been settled and the personal representative discharged or his appointment terminated, the court upon petition of any interested person and upon notice may appoint the same or a successor personal representative to administer the subsequently discovered estate. If a new appointment is made, unless the court orders otherwise, the provisions of this code apply as appropriate; but no claim previously barred may be asserted in the subsequent administration.

Source: Laws 1974, LB 354, § 200, UPC § 3-1008.

PART 11

COMPROMISE OF CONTROVERSIES

30-24,123 Effect of approval of agreements involving trusts, inalienable interests, or interests of third persons.

A compromise of any controversy as to admission to probate of any instrument offered for formal probate as the will of a decedent, the construction, validity, or effect of any probated will, the rights or interests in the estate of the

decedent of any successor, or the administration of the estate, if approved in a formal proceeding in the court for that purpose, is binding on all the parties thereto including those unborn, unascertained or who could not be located. An approved compromise is binding even though it may affect a trust or an inalienable interest. A compromise does not impair the rights of creditors or of taxing authorities who are not parties to it.

Source: Laws 1974, LB 354, § 201, UPC § 3-1101.

Sections 30-24,123 and 30-24,124 allow competent parties having beneficial interests in an estate pursuant to a will clouded by a good faith contest or controversy to reach a settlement agreement, which will be approved by a court if the agreement is just and reasonable. In re Estate of Marsh, 2 Neb. App. 649, 513 N.W.2d 35 (1994).

30-24,124 Procedure for securing court approval of compromise.

The procedure for securing court approval of a compromise is as follows:

(1) The terms of the compromise shall be set forth in an agreement in writing which shall be executed by all competent persons and parents acting for any minor child having beneficial interests or having claims which will or may be affected by the compromise. Execution is not required by any person whose identity cannot be ascertained or whose whereabouts is unknown and cannot reasonably be ascertained.

(2) Any interested person, including the personal representative or a trustee, then may submit the agreement to the court for its approval and for execution by the personal representative, the trustee of every affected testamentary trust, and other fiduciaries and representatives.

(3) After notice to all interested persons or their representatives, including the personal representative of the estate and all affected trustees of trusts, the court, if it finds that the contest or controversy is in good faith and that the effect of the agreement upon the interests of persons represented by fiduciaries or other representatives is just and reasonable, shall make an order approving the agreement and directing all fiduciaries under its supervision to execute the agreement. Minor children represented only by their parents may be bound only if their parents join with other competent persons in execution of the compromise. Upon the making of the order and the execution of the agreement, all further disposition of the estate is in accordance with the terms of the agreement.

Source: Laws 1974, LB 354, § 202, UPC § 3-1102.

Under subdivision (1) of this section, a settlement agreement made in open court on the record, agreed to by all of the parties to the litigation, and approved by the court is enforceable. In re Estate of Mithofer, 243 Neb. 722, 502 N.W.2d 454 (1993).

Under subdivision (3) of this section, once a compromise agreement is entered into and approved by the court, the disposition of the property in the estate is in accordance with the terms of the agreement. In re Estate of Marsh, 2 Neb. App. 649, 513 N.W.2d 35 (1994).

PART 12

COLLECTION OF PERSONAL PROPERTY BY AFFIDAVIT AND SUMMARY ADMINISTRATION PROCEDURE FOR SMALL ESTATES

30-24,125 Collection of personal property by affidavit.

(a) Thirty days after the death of a decedent, any person indebted to the decedent or having possession of tangible personal property or an instrument evidencing a debt, obligation, stock, or chose in action belonging to the decedent shall make payment of the indebtedness or deliver the tangible

personal property or an instrument evidencing a debt, obligation, stock, or chose in action to a person claiming to be the successor of the decedent upon being presented an affidavit made by or on behalf of the successor stating:

(1) the value of all of the personal property in the decedent's estate, wherever located, less liens and encumbrances, does not exceed twenty-five thousand dollars;

(2) thirty days have elapsed since the death of the decedent as shown in a certified or authenticated copy of the decedent's death certificate attached to the affidavit;

(3) the claiming successor's relationship to the decedent or, if there is no relationship, the basis of the successor's claim to the personal property;

(4) the person or persons claiming as successors under the affidavit swear or affirm that all statements in the affidavit are true and material and further acknowledge that any false statement may subject the person or persons to penalties relating to perjury under section 28-915;

(5) no application or petition for the appointment of a personal representative is pending or has been granted in any jurisdiction; and

(6) the claiming successor is entitled to payment or delivery of the property.

(b) A transfer agent of any security shall change the registered ownership on the books of a corporation from the decedent to the successor or successors upon the presentation of an affidavit as provided in subsection (a).

(c) In addition to compliance with the requirements of subsection (a), a person seeking a transfer of a certificate of title to a motor vehicle, motorboat, all-terrain vehicle, or minibike shall be required to furnish to the Department of Motor Vehicles an affidavit showing applicability of this section and compliance with the requirements of this section to authorize the department to issue a new certificate of title.

Source: Laws 1974, LB 354, § 203, UPC § 3-1201; Laws 1996, LB 909, § 1; Laws 1999, LB 100, § 4; Laws 1999, LB 141, § 6; Laws 2004, LB 560, § 2.

30-24,126 Effect of affidavit.

The person paying, delivering, transferring, or issuing personal property or the evidence thereof pursuant to affidavit is discharged and released to the same extent as if he dealt with a personal representative of the decedent. He is not required to see to the application of the personal property or evidence thereof or to inquire into the truth of any statement in the affidavit. If any person to whom an affidavit is delivered refuses to pay, deliver, transfer, or issue any personal property or evidence thereof, it may be recovered or its payment, delivery, transfer, or issuance compelled upon proof of their right in a proceeding brought for the purpose by or on behalf of the persons entitled thereto. Any person to whom payment, delivery, transfer or issuance is made is answerable and accountable therefor to any personal representative of the estate or to any other person having a superior right.

Source: Laws 1974, LB 354, § 204, UPC § 3-1202.

30-24,127 Small estates; summary administrative procedure.

If it appears from the inventory and appraisal that the value of the entire estate, less liens and encumbrances, does not exceed homestead allowance, exempt property, family allowance, costs and expenses of administration, reasonable funeral expenses, and reasonable and necessary medical and hospital expenses of the last illness of the decedent, the personal representative, without giving notice to creditors, may immediately disburse and distribute the estate to the persons entitled thereto and file a closing statement as provided in section 30-24,128.

Source: Laws 1974, LB 354, § 205, UPC § 3-1203.

30-24,128 Small estates; closing by sworn statement of personal representative.

(a) Unless prohibited by order of the court and except for estates being administered by supervised personal representatives, a personal representative may close an estate administered under the summary procedures of section 30-24,127 by filing with the court, at any time after disbursement and distribution of the estate, a verified statement stating that:

(1) to the best knowledge of the personal representative, the value of the entire estate, less liens and encumbrances, did not exceed homestead allowance, exempt property, family allowance, costs and expenses of administration, reasonable funeral expenses, and reasonable and necessary medical and hospital expenses of the last illness of the decedent;

(2) the personal representative has fully administered the estate by disbursing and distributing it to the persons entitled thereto; and

(3) the personal representative has sent a copy of the closing statement to all distributees of the estate and to all creditors or other claimants of whom he is aware whose claims are neither paid nor barred and has furnished a full account in writing of his administration to the distributees whose interests are affected.

(b) If no actions or proceedings involving the personal representative are pending in the court one year after the closing statement is filed, the appointment of the personal representative terminates.

(c) A closing statement filed under this section has the same effect as one filed under section 30-24,117.

Source: Laws 1974, LB 354, § 206, UPC § 3-1204.

PART 13

SUCCESSION TO REAL PROPERTY BY AFFIDAVIT FOR SMALL ESTATES

30-24,129 Succession to real property by affidavit.

(a) Thirty days after the death of a decedent, any person claiming as successor to the decedent's interest in real property in this state may file or cause to be filed on his or her behalf, with the register of deeds office of a county in which the real property of the decedent that is the subject of the affidavit is located, an affidavit describing the real property owned by the decedent and the interest of the decedent in the property. The affidavit shall be signed by all persons claiming as successors or by parties legally acting on their behalf and shall be prima facie evidence of the facts stated in the affidavit. The affidavit shall state:

(1) the value of the decedent's interest in all real property in the decedent's estate located in this state does not exceed twenty-five thousand dollars. The value of the decedent's interest shall be determined from the value of the property as shown on the assessment rolls for the year in which the decedent died;

(2) thirty days have elapsed since the death of the decedent as shown in a certified or authenticated copy of the decedent's death certificate attached to the affidavit;

(3) no application or petition for the appointment of a personal representative is pending or has been granted in any jurisdiction;

(4) the claiming successor is entitled to the real property by reason of the homestead allowance, exempt property allowance, or family allowance, by intestate succession, or by devise under the will of the decedent;

(5) the claiming successor has made an investigation and has been unable to determine any subsequent will;

(6) no other person has a right to the interest of the decedent in the described property;

(7) the claiming successor's relationship to the decedent and the value of the entire estate of the decedent; and

(8) the person or persons claiming as successors under the affidavit swear or affirm that all statements in the affidavit are true and material and further acknowledge that any false statement may subject the person or persons to penalties relating to perjury under section 28-915.

(b) The recorded affidavit and certified or authenticated copy of the decedent's death certificate shall also be recorded by the claiming successor in any other county in this state in which the real property of the decedent that is the subject of the affidavit is located.

Source: Laws 1999, LB 100, § 2.

30-24,130 Effect of affidavit.

(a) A successor named in an affidavit under section 30-24,129 shall have the same protection as a distributee who has received a deed of distribution from a personal representative as provided in section 30-24,106.

(b) A purchaser of real property from or lender to a person named as a successor in an affidavit under section 30-24,129 shall have the same protection as a person purchasing from or lending to a distributee who has received a deed of distribution from a personal representative as provided in section 30-24,108.

(c) Nothing in this section affects or prevents any proceeding to enforce any mortgage, pledge, or other lien upon the real property described in the affidavit.

Source: Laws 1999, LB 100, § 3.

ARTICLE 25

FOREIGN REPRESENTATIVES; ANCILLARY ADMINISTRATION

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30-2501. Definitions.

Section

PART 2
POWERS OF FOREIGN REPRESENTATIVES

30-2502. Payment of debt and delivery of property to domiciliary foreign personal representative without local administration.
30-2503. Payment or delivery discharges.
30-2504. Resident creditor notice.
30-2505. Proof of authority; bond.
30-2506. Powers.
30-2507. Power of representatives in transition.
30-2508. Ancillary and other local administrations; provisions governing.

PART 3
JURISDICTION OVER FOREIGN REPRESENTATIVES

30-2509. Jurisdiction by act of foreign personal representative.
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30-2511. Service on foreign personal representative.

PART 4
JUDGMENTS AND PERSONAL REPRESENTATIVE

30-2512. Effect of adjudication for or against personal representative.

PART 1

DEFINITIONS

30-2501 Definitions.

In this article

(1) Local administration means administration by a personal representative appointed in this state pursuant to appointment proceedings described in Article 24.

(2) Local personal representative includes any personal representative appointed in this state pursuant to appointment proceedings described in Article 24 and excludes foreign personal representatives who acquire the power of a local personal representative pursuant to section 30-2506.

(3) Resident creditor means a person domiciled in, or doing business in this state, who is, or could be, a claimant against an estate of a nonresident decedent.

Source: Laws 1974, LB 354, § 207, UPC § 4-101.

PART 2

POWERS OF FOREIGN REPRESENTATIVES

30-2502 Payment of debt and delivery of property to domiciliary foreign personal representative without local administration.

At any time after the expiration of sixty days from the death of a nonresident decedent, any person indebted to the estate of the nonresident decedent or having possession or control of personal property, or of an instrument evidencing a debt, obligation, stock or chose in action belonging to the estate of the nonresident decedent may pay the debt, deliver the personal property, or the instrument evidencing the debt, obligation, stock or chose in action, to the domiciliary foreign personal representative of the nonresident decedent upon being presented with proof of his appointment and an affidavit made by or on behalf of the representative stating:

(1) the date of the death of the nonresident decedent,

(2) that no local administration, or application or petition therefor, is pending in this state,

(3) that the domiciliary foreign personal representative is entitled to payment or delivery.

Source: Laws 1974, LB 354, § 208, UPC § 4-201.

30-2503 Payment or delivery discharges.

Payment or delivery made in good faith on the basis of the proof of authority and affidavit releases the debtor or person having possession of the personal property to the same extent as if payment or delivery had been made to a local personal representative.

Source: Laws 1974, LB 354, § 209, UPC § 4-202.

30-2504 Resident creditor notice.

Payment or delivery under section 30-2503 may not be made if a resident creditor of the nonresident decedent has notified the debtor of the nonresident decedent or the person having possession of the personal property belonging to the nonresident decedent that the debt should not be paid nor the property delivered to the domiciliary foreign personal representative.

Source: Laws 1974, LB 354, § 210, UPC § 4-203.

30-2505 Proof of authority; bond.

If no local administration or application or petition therefor is pending in this state, a domiciliary foreign personal representative may file with a court in this state in a county in which property belonging to the decedent is located, authenticated copies of his appointment and of any official bond he has given.

Source: Laws 1974, LB 354, § 211, UPC § 4-204.

30-2506 Powers.

A domiciliary foreign personal representative who has complied with section 30-2505 may exercise as to assets in this state all powers of a local personal representative and may maintain actions and proceedings in this state subject to any conditions imposed upon nonresident parties generally.

Source: Laws 1974, LB 354, § 212, UPC § 4-205.

30-2507 Power of representatives in transition.

The power of a domiciliary foreign personal representative under section 30-2502 or 30-2506 shall be exercised only if there is no administration or application therefor pending in this state. An application or petition for local administration of the estate terminates the power of the foreign personal representative to act under section 30-2506, but the local court may allow the foreign personal representative to exercise limited powers to preserve the estate. No person who, before receiving actual notice of a pending local administration, has changed his position in reliance upon the powers of a foreign personal representative shall be prejudiced by reason of the application or petition for, or grant of, local administration. The local personal representative is subject to all duties and obligations which have accrued by virtue of the

exercise of the powers by the foreign personal representative and may be substituted for him in any action or proceedings in this state.

Source: Laws 1974, LB 354, § 213, UPC § 4-206.

30-2508 Ancillary and other local administrations; provisions governing.

In respect to a nonresident decedent, the provisions of Article 24 of this code govern (1) proceedings, if any, in a court of this state for probate of the will, appointment, removal, supervision, and discharge of the local personal representative, and any other order concerning the estate; and (2) the status, powers, duties and liabilities of any local personal representative and the rights of claimants, purchasers, distributees and others in regard to a local administration.

Source: Laws 1974, LB 354, § 214, UPC § 4-207.

PART 3

JURISDICTION OVER FOREIGN REPRESENTATIVES

30-2509 Jurisdiction by act of foreign personal representative.

A foreign personal representative submits himself personally to the jurisdiction of the courts of this state in any proceeding relating to the estate by (1) filing authenticated copies of his appointment as provided in section 30-2505, (2) receiving payment of money or taking delivery of personal property under section 30-2502, or (3) doing any act as a personal representative in this state which would have given the state jurisdiction over him as an individual. Jurisdiction under (2) is limited to the money or value of personal property collected.

Source: Laws 1974, LB 354, § 215, UPC § 4-301.

30-2510 Jurisdiction by act of decedent.

In addition to jurisdiction conferred by section 30-2509, a foreign personal representative is subject to the jurisdiction of the courts of this state to the same extent that his decedent was subject to jurisdiction immediately prior to death.

Source: Laws 1974, LB 354, § 216, UPC § 4-302.

30-2511 Service on foreign personal representative.

Service of process may be made upon the foreign personal representative who has submitted himself or herself to the jurisdiction of the court under section 30-2509 or is subject to jurisdiction under section 30-2510 in the manner provided for service of a summons in a civil action.

Source: Laws 1974, LB 354, § 217, UPC § 4-303; Laws 1983, LB 447, § 45.

PART 4

JUDGMENTS AND PERSONAL REPRESENTATIVE

30-2512 Effect of adjudication for or against personal representative.

An adjudication rendered in any jurisdiction, which has an applicable provision of law similar in reciprocal effect to this provision, in favor of or against

any personal representative of the estate is as binding on the local personal representative as if he were a party to the adjudication.

Source: Laws 1974, LB 354, § 218, UPC § 4-401.

ARTICLE 26

PROTECTION OF PERSONS UNDER DISABILITY AND THEIR PROPERTY

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Section

PART 4
PROTECTION OF PROPERTY OF PERSONS UNDER DISABILITY AND MINORS

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PART 1

GENERAL PROVISIONS

30-2601 Definitions and use of terms.

Unless otherwise apparent from the context, in the Nebraska Probate Code:

(1) Incapacitated person means any person who is impaired by reason of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, or other cause (except minority) to the extent that the person lacks sufficient understanding or capacity to make or communicate responsible decisions concerning himself or herself;

(2) A protective proceeding is a proceeding under the provisions of section 30-2630 to determine that a person cannot effectively manage or apply his or her estate to necessary ends, either because the person lacks the ability or is otherwise inconvenienced, or because the person is a minor, and to secure administration of the person's estate by a conservator or other appropriate relief;

(3) A protected person is a minor or other person for whom a conservator has been appointed or other protective order has been made;

(4) A ward is a person for whom a guardian has been appointed. A minor ward is a minor for whom a guardian has been appointed solely because of minority;

(5) Full guardianship means the guardian has been granted all powers which may be conferred upon a guardian by law; and

(6) Limited guardianship means any guardianship which is not a full guardianship.

Source: Laws 1974, LB 354, § 219, UPC § 5-101; Laws 1997, LB 466, § 5.

30-2601.01 Guardians and conservators; training curricula.

The State Court Administrator shall approve training curricula for persons appointed as guardians and conservators. Such training curricula shall include, but not be limited to:

(1) The rights of wards under sections 30-2601 to 30-2661 specifically and under the laws of the United States generally;

(2) The duties and responsibilities of guardians;

(3) Reporting requirements;

(4) Least restrictive options in the areas of housing, medical care, and psychiatric care; and

(5) Resources to assist guardians in fulfilling their duties.

Source: Laws 1993, LB 782, § 4.

30-2601.02 Legislative intent.

The Legislature recognizes the need for providing mechanisms for intervening in the lives of certain persons who are impaired by reason of disability. It is the intent of the Legislature to authorize the use of guardianships and conservatorships for such intervention. It is also the intent of the Legislature to encourage the least restrictive alternative possible on the impaired person's exercise of personal and civil rights consistent with the impaired person's need for services by encouraging judges to utilize limited guardianships if appropriate.

Source: Laws 1997, LB 466, § 4.

30-2602 Jurisdiction of subject matter; consolidation of proceedings.

(a) The court has jurisdiction over protective proceedings and guardianship proceedings.

(b) When both guardianship and protective proceedings as to the same person are commenced or pending in the same court, the proceedings may be consolidated.

Source: Laws 1974, LB 354, § 220, UPC § 5-102.

30-2603 Payment or delivery to minor.

Any person under a duty to pay or deliver money or personal property to a minor may perform this duty, in amounts not exceeding twenty-five thousand dollars per annum, by paying or delivering the money or property to:

(1) The minor, if he or she has attained the age of eighteen years or is married;

(2) Any person having the care and custody of the minor with whom the minor resides;

(3) A guardian of the minor; or

(4) A financial institution incident to a deposit in a federally insured savings account in the sole name of the minor and giving notice of the deposit to the minor.

This section does not apply if the person making payment or delivery has actual knowledge that a conservator has been appointed or proceedings for appointment of a conservator of the estate of the minor are pending. The persons, other than the minor or any financial institution under subdivision (4) of this section, receiving money or property for a minor are obligated to apply the money to the support and education of the minor but may not pay themselves except by way of reimbursement for out-of-pocket expenses for goods and services necessary for the minor's support. Any excess sums shall be preserved for future support of the minor, and any balance not so used and any property received for the minor must be turned over to the minor when he or she attains majority. Persons who pay or deliver in accordance with provisions of this section are not responsible for the proper application thereof.

Source: Laws 1974, LB 354, § 221, UPC § 5-103; Laws 1992, LB 1000, § 1; Laws 2006, LB 1115, § 27.

30-2604 Delegation of powers by parent or guardian.

A parent or a guardian of a minor or incapacitated person, by a properly executed power of attorney, may delegate to another person, for a period not exceeding six months, any of his powers regarding care, custody, or property of the minor child or ward, except his power to consent to marriage or adoption of a minor ward.

Source: Laws 1974, LB 354, § 222, UPC § 5-104.

PART 2

GUARDIANS OF MINORS

30-2605 Status of guardian of minor; general.

A person becomes a guardian of a minor by acceptance of a testamentary appointment or upon appointment by the court. The guardianship status

continues until terminated, without regard to the location from time to time of the guardian and minor ward.

Source: Laws 1974, LB 354, § 223, UPC § 5-201.

Cross References

Guardian ad litem, appointment, see section 43-272.01.

30-2606 Testamentary appointment of guardian of minor; notice.

The parent of a minor may appoint by will a guardian of an unmarried minor. Subject to the right of the minor under section 30-2607, a testamentary appointment becomes effective upon filing the guardian's acceptance in the court in which the will is probated if, before acceptance, both parents are dead or the surviving parent is adjudged incapacitated. If both parents are dead, an effective appointment by the parent who died later has priority. This state recognizes a testamentary appointment effected by filing the guardian's acceptance under a will probated in another state which is the testator's domicile. Upon acceptance of appointment, written notice of acceptance must be given by the guardian to the minor and to the person having his care, or to his nearest adult relation.

Source: Laws 1974, LB 354, § 224, UPC § 5-202.

30-2607 Objection by minor of fourteen or older to testamentary appointment.

A minor of fourteen or more years may prevent an appointment of his testamentary guardian from becoming effective, or may cause a previously accepted appointment to terminate, by filing with the court in which the will is probated a written objection to the appointment before it is accepted or within thirty days after notice of its acceptance. An objection may be withdrawn. An objection does not preclude appointment by the court in a proper proceeding of the testamentary nominee, or any other suitable person.

Source: Laws 1974, LB 354, § 225, UPC § 5-203.

30-2608 Natural guardians; court appointment of guardian of minor; standby guardian; conditions for appointment; child born out of wedlock; additional considerations; filings.

(a) The father and mother are the natural guardians of their minor children and are duly entitled to their custody and to direct their education, being themselves competent to transact their own business and not otherwise unsuitable. If either dies or is disqualified for acting, or has abandoned his or her family, the guardianship devolves upon the other except as otherwise provided in this section.

(b) In the appointment of a parent as a guardian when the other parent has died and the child was born out of wedlock, the court shall consider the wishes of the deceased parent as expressed in a valid will executed by the deceased parent. If in such valid will the deceased parent designates someone other than the other natural parent as guardian for the minor children, the court shall take into consideration the designation by the deceased parent. In determining whether or not the natural parent should be given priority in awarding custody, the court shall also consider the natural parent's acknowledgment of paternity,

payment of child support, and whether the natural parent is a fit, proper, and suitable custodial parent for the child.

(c) The court may appoint a standby guardian for a minor whose parent is chronically ill or near death. The appointment of a guardian under this subsection does not suspend or terminate the parent's parental rights of custody to the minor. The standby guardian's authority would take effect, if the minor is left without a remaining parent, upon (1) the death of the parent, (2) the mental incapacity of the parent, or (3) the physical debilitation and consent of the parent.

(d) The court may appoint a guardian for a minor if all parental rights of custody have been terminated or suspended by prior or current circumstances or prior court order. A guardian appointed by will as provided in section 30-2606 whose appointment has not been prevented or nullified under section 30-2607 has priority over any guardian who may be appointed by the court but the court may proceed with an appointment upon a finding that the testamentary guardian has failed to accept the testamentary appointment within thirty days after notice of the guardianship proceeding.

(e) The petition and all other court filings for a guardianship proceeding shall be filed with the clerk of the county court. The party shall state in the petition whether such party requests that the proceeding be heard by the county court or, in cases in which a separate juvenile court already has jurisdiction over the child in need of a guardian under the Nebraska Juvenile Code, such separate juvenile court. Such proceeding is considered a county court proceeding even if heard by a separate juvenile court judge and an order of the separate juvenile court in such guardianship proceeding has the force and effect of a county court order. The testimony in a guardianship proceeding heard before a separate juvenile court judge shall be preserved as in any other separate juvenile court proceeding. The clerks of the district courts shall transfer all guardianship petitions and other guardianship filings which were filed with such clerks prior to August 28, 1999, to the clerk of the county court where the separate juvenile court which heard the proceeding is situated. The clerk of such county court shall file and docket such petitions and other filings.

Source: Laws 1974, LB 354, § 226, UPC § 5-204; Laws 1995, LB 712, § 18; Laws 1998, LB 1041, § 4; Laws 1999, LB 375, § 1.

Cross References

Nebraska Juvenile Code, see section 43-2,129.

The priority provision of subsection (d) of this section is intended to address circumstances in which a court-appointed guardian comes into existence before a parental nomination is discovered or accepted, so that the authority of the court-appointed guardian will be terminated in favor of the parental nomination. In re Estate of Jeffrey B., 268 Neb. 761, 688 N.W.2d 135 (2004).

Pursuant to subsection (3) of section 43-285, when a separate juvenile court or county court sitting as a juvenile court awards custody of a minor to the Department of Health and Human Services, the court has authority to award custody to a family the department has designated as suitable guardians without resorting to a proceeding under this section. In re Guardianship of Rebecca B. et al., 260 Neb. 922, 621 N.W.2d 289 (2000).

Trial court's ruling that parental rights had been suspended because of the then current circumstances was not erroneous. In re Guardianship of Zyla, 251 Neb. 163, 555 N.W.2d 768 (1996).

In a parent's habeas corpus proceeding directed at child custody, a court may not deprive a parent of a minor's custody unless it is affirmatively shown that the parent seeking habeas corpus relief is unfit to perform the parental duties imposed by the parent-child relationship or has legally lost parental rights in the child. Uhing v. Uhing, 241 Neb. 368, 488 N.W.2d 366 (1992).

30-2609 Court appointment of guardian of minor; venue.

The venue for guardianship proceedings for a minor is in the place where the minor resides or is present or where property is located if he is a nonresident of this state.

Source: Laws 1974, LB 354, § 227, UPC § 5-205.

30-2610 Court appointment of guardian of minor; qualification; priority of minor's nominee.

The court may appoint as guardian any person whose appointment would be in the best interests of the minor. The court shall appoint a person nominated by the minor, if the minor is fourteen years of age or older, unless the court finds the appointment contrary to the best interests of the minor.

Source: Laws 1974, LB 354, § 228, UPC § 5-206.

30-2611 Court appointment of guardian of minor; procedure.

(a) Notice of the time and place of hearing of a petition for the appointment of a guardian of a minor is to be given by the petitioner in the manner prescribed by section 30-2220 to:

(1) the minor, if he is fourteen or more years of age;

(2) the person who has had the principal care and custody of the minor during the sixty days preceding the date of the petition; and

(3) any living parent of the minor.

(b) Upon hearing, if the court finds that a qualified person seeks appointment, venue is proper, the required notices have been given, the requirements of section 30-2608 have been met, and the welfare and best interests of the minor will be served by the requested appointment, it shall make the appointment. In other cases the court may dismiss the proceedings, or make any other disposition of the matter that will best serve the interest of the minor.

(c) If necessary, the court may appoint a temporary guardian, with the status of an ordinary guardian of a minor, but the authority of a temporary guardian shall not last longer than six months. In an emergency, the court may appoint a temporary guardian of a minor without notice, pending notice and hearing.

(d) If, at any time in the proceeding, the court determines that the interests of the minor are or may be inadequately represented, it may appoint an attorney to represent the minor, giving consideration to the preference of the minor if the minor is fourteen years of age or older.

Source: Laws 1974, LB 354, § 229, UPC § 5-207; Laws 1978, LB 650, § 20.

30-2612 Consent to service by acceptance of appointment; notice.

By accepting a testamentary or court appointment as guardian, a guardian submits personally to the jurisdiction of the court in any proceeding relating to the guardianship that may be instituted by any interested person. Notice of any proceeding shall be delivered to the guardian, or mailed to him by ordinary mail at his address as listed in the court records and to his address as then known to the petitioner. Letters of guardianship must indicate whether the guardian was appointed by will or by court order.

Source: Laws 1974, LB 354, § 230, UPC § 5-208.

30-2613 Powers and duties of guardian of minor.

(1) A guardian of a minor has the powers and responsibilities of a parent who has not been deprived of custody of his minor and unemancipated child, except that a guardian is not legally obligated to provide from his own funds for the ward and is not liable to third persons by reason of the parental relationship for

acts of the ward. In particular, and without qualifying the foregoing, a guardian has the following powers and duties:

(a) He must take reasonable care of his ward's personal effects and commence protective proceedings if necessary to protect other property of the ward.

(b) He may receive money payable for the support of the ward to the ward's parent, guardian or custodian under the terms of any statutory benefit or insurance system, or any private contract, devise, trust, conservatorship or custodianship. He also may receive money or property of the ward paid or delivered by virtue of section 30-2603. Any sums so received shall be applied to the ward's current needs for support, care and education, except as provided in subdivisions (2) and (3) of this section. He must exercise due care to conserve any excess for the ward's future needs unless a conservator has been appointed for the estate of the ward, in which case such excess shall be paid over at least annually to the conservator. Sums so received by the guardian are not to be used for compensation for his services except as approved by order of court. A guardian may institute proceedings to compel the performance by any person of a duty to support the ward or to pay sums for the welfare of the ward.

(c) The guardian is empowered to facilitate the ward's education, social, or other activities and to authorize medical or other professional care, treatment, or advice. A guardian is not liable by reason of this consent for injury to the ward resulting from the negligence or acts of third persons unless it would have been illegal for a parent to have consented. A guardian may consent to the marriage or adoption of his ward.

(d) A guardian must report the condition of his ward and of the ward's estate which has been subject to his possession or control, as ordered by court on petition of any person interested in the minor's welfare or as required by court rule, and upon termination of the guardianship settle his accounts with the ward or his legal representatives and pay over and deliver all of the estate and effects remaining in his hands or due from him on settlement to the person or persons who shall be lawfully entitled thereto.

(2) The appointment of a guardian for a minor shall not relieve his parent or parents, liable for the support of such minor, from their obligation to provide for such minor. For the purposes of guardianship of minors, the application of guardianship income and principal after payment of debts and charges of managing the estate, in relationship to the respective obligations owed by fathers, mothers, and others, for the support, maintenance and education of the minor shall be:

(a) The income and property of the father and mother of the minor in such manner as they can reasonably afford, regard being had to the situation of the family and to all the circumstances of the case;

(b) The guardianship income, in whole or in part, as shall be judged reasonable considering the extent of the guardianship income and the parents' financial ability;

(c) The income and property of any other person having a legal obligation to support the minor, in such manner as the person can reasonably afford, regard being had to the situation of the person's family and to all the circumstances of the case; and

(d) The guardianship principal, either personal or real estate, in whole or in part, as shall be judged for the best interest of the minor, considering all the circumstances of the minor and those liable for his support.

(3) Notwithstanding the provisions of subsection (2) of this section, the court may from time to time authorize the guardian to use so much of the guardianship income or principal, whether personal or real estate, as it may deem proper, considering all the circumstances of the minor and those liable for his support, if it is shown that (a) an emergency exists which justifies an expenditure, or (b) a fund has been given to the minor for a special purpose and the court can, with reasonable certainty, ascertain such purpose.

(4) The court may require a guardian to furnish a bond in an amount and conditioned in accordance with the provisions of section 30-2640.

Source: Laws 1974, LB 354, § 231, UPC § 5-209.

30-2614 Termination of appointment of guardian; general.

A guardian's authority and responsibility terminates upon the death, resignation or removal of the guardian or upon the minor's death, adoption, marriage or attainment of majority, but termination does not affect his liability for prior acts, nor his obligation to account for funds and assets of his ward. Resignation of a guardian does not terminate the guardianship until it has been approved by the court. A testamentary appointment under an informally probated will terminates if the will is later denied probate in a formal proceeding.

Source: Laws 1974, LB 354, § 232, UPC § 5-210.

30-2615 Proceedings subsequent to appointment; venue.

(a) The court where the ward resides has concurrent jurisdiction with the court which appointed the guardian, or in which acceptance of a testamentary appointment was filed, over resignation, removal, accounting and other proceedings relating to the guardianship.

(b) If the court located where the ward resides is not the court in which acceptance of appointment is filed, the court in which proceedings subsequent to appointment are commenced shall in all appropriate cases notify the other court, in this or another state, and after consultation with that court determine whether to retain jurisdiction or transfer the proceedings to the other court, whichever is in the best interest of the ward. A copy of any order accepting a resignation or removing a guardian shall be sent to the court in which acceptance of appointment is filed.

Source: Laws 1974, LB 354, § 233, UPC § 5-211.

30-2616 Resignation or removal proceedings.

(a) Any person interested in the welfare of a ward, or the ward, if fourteen or more years of age, may petition for removal of a guardian on the ground that removal would be in the best interest of the ward. A guardian may petition for permission to resign. A petition for removal or for permission to resign may, but need not, include a request for appointment of a successor guardian.

(b) After notice and hearing on a petition for removal or for permission to resign, the court may terminate the guardianship and make any further order that may be appropriate.

(c) If, at any time in the proceeding, the court determines that the interests of the ward are, or may be, inadequately represented, it may appoint an attorney to represent the minor, giving consideration to the preference of the minor if the minor is fourteen or more years of age.

Source: Laws 1974, LB 354, § 234, UPC § 5-212.

An attorney appointed under subsection (c) of this section is an advocate for the minor child and is not a guardian ad litem. In re Guardianship of Robert D., 269 Neb. 820, 696 N.W.2d 461 (2005).

Whether to appoint an attorney to represent a minor child pursuant to subsection (c) of this section is a matter entrusted to the discretion of the trial court. In re Guardianship of Robert D., 269 Neb. 820, 696 N.W.2d 461 (2005).

This section does not distinguish between guardians appointed by will or by the court; consequently, whether appointed by will or by the court, the standard for removal of the guardian of a minor pursuant to this section is the same: the best interests of the ward. In re Estate of Jeffrey B., 268 Neb. 761, 688 N.W.2d 135 (2004).

In guardianship termination proceedings involving a biological or adoptive parent, the parental preference principle serves to establish a rebuttable presumption that the best interests of a child are served by reuniting the child with his or her parent. In re Guardianship of D.J., 268 Neb. 239, 682 N.W.2d 238 (2004).

PART 3

GUARDIANS OF INCAPACITATED PERSONS

30-2617 Testamentary appointment of guardian for incapacitated person.

(a) The parent of an incapacitated person may by will appoint a guardian of the incapacitated person. A testamentary appointment by a parent becomes effective when, after having given seven days' prior written notice of his intention to do so to the incapacitated person and to the person having his care or to his nearest adult relative, the guardian files acceptance of appointment in the court in which the will is informally or formally probated if, prior thereto, both parents are dead or the surviving parent is adjudged incapacitated. If both parents are dead, an effective appointment by the parent who died later has priority unless it is terminated by the denial of probate in formal proceedings.

(b) The spouse of a married incapacitated person may by will appoint a guardian of the incapacitated person. The appointment becomes effective when, after having given seven days' prior written notice of his intention to do so to the incapacitated person and to the person having his care or to his nearest adult relative, the guardian files acceptance of appointment in the court in which the will is informally or formally probated. An effective appointment by a spouse has priority over an appointment by a parent unless it is terminated by the denial of probate in formal proceedings.

(c) This state shall recognize a testamentary appointment effected by filing acceptance under a will probated at the testator's domicile in another state.

(d) On the filing with the court in which the will was probated of written objection to the appointment by the person for whom a testamentary appointment of guardian has been made, the appointment is terminated. An objection does not prevent appointment by the court in a proper proceeding of the testamentary nominee or any other suitable person upon an adjudication of incapacity in proceedings under the succeeding sections of this part.

Source: Laws 1974, LB 354, § 235, UPC § 5-301.

Cross References

Vulnerable adult, appointment of guardian ad litem, see section 28-387.

30-2618 Venue.

The venue for guardianship proceedings for an incapacitated person is in the place where the incapacitated person resides or is present, or where property is located if he is a nonresident. If the incapacitated person is admitted to an institution pursuant to order of a court of competent jurisdiction, venue is also in the county in which that court sits.

Source: Laws 1974, LB 354, § 236, UPC § 5-302.

30-2619 Procedure for court appointment of a guardian of a person alleged to be incapacitated.

(a) The person alleged to be incapacitated or any person interested in his or her welfare may petition for a finding of incapacity and appointment of a guardian. The petition shall be verified and shall contain specific allegations with regard to each of the areas as provided under section 30-2619.01 in which the petitioner claims that the person alleged to be incapacitated lacks sufficient understanding to make or communicate responsible decisions concerning his or her own person. An interested person may file a motion to make more definite and certain requesting a specific description of the functional limitations and physical and mental condition of the person alleged to be incapacitated with the specific reasons prompting the request for guardianship.

(b) Upon the filing of a petition, the court shall set a date for hearing on the issues of incapacity and unless the person alleged to be incapacitated has retained counsel of his or her own choice or has otherwise indicated a desire for an attorney of his or her own choice, the court may appoint an attorney to represent him or her in the proceeding. The court may appoint a guardian ad litem to advocate for the best interests of the person alleged to be incapacitated.

(c) The person alleged to be incapacitated may be examined by a physician appointed by the court. The physician shall submit his or her report in writing to the court and may be interviewed by a visitor, if so appointed pursuant to sections 30-2619.01 and 30-2624, sent by the court.

(d) The person alleged to be incapacitated is entitled to be present at the hearing in person and to see and hear all evidence bearing upon his or her condition. He or she is entitled to be present by counsel, to compel the attendance of witnesses, to present evidence, to cross-examine witnesses, including the court-appointed physician and the visitor appointed by the court pursuant to sections 30-2619.01 and 30-2624, and to appeal any final orders or judgments. The issue may be determined at a closed hearing only if the person alleged to be incapacitated or his or her counsel so requests.

Source: Laws 1974, LB 354, § 237, UPC § 5-303; Laws 1978, LB 650, § 21; Laws 1982, LB 428, § 1; Laws 1993, LB 782, § 5; Laws 1997, LB 466, § 6.

An evidentiary hearing should be held expediently on a guardianship or conservatorship petition, and temporary guardians and conservators are intended to exercise their powers in a limited manner and for a limited period of time. In re Guardianship & Conservatorship of Larson, 270 Neb. 837, 708 N.W.2d 262 (2006).

Proceedings initiated to appoint a guardian are special proceedings. In re Guardianship & Conservatorship of Larson, 270 Neb. 837, 708 N.W.2d 262 (2006).

The rule that a true evidentiary hearing is required to support a finding of incompetency cannot be circumvented by continuous extensions of a temporary guardianship, nor are numerous reports by a guardian ad litem a substitute for an evidentiary hearing. In re Guardianship & Conservatorship of Larson, 270 Neb. 837, 708 N.W.2d 262 (2006).

Subsection (a) of this section is neither unconstitutionally vague nor overbroad. In re Guardianship and Conservatorship of Sim, 225 Neb. 181, 403 N.W.2d 721 (1987).

30-2619.01 Visitor appointment; conduct evaluation; duties.

Following the filing of a petition, the court may appoint a visitor and direct such visitor to conduct an evaluation of the allegations of incapacity as

provided under this section. To conduct the evaluation of the allegations of incapacity, the visitor shall interview the allegedly incapacitated person, the person seeking appointment as guardian, the agencies providing services to the allegedly incapacitated person, and other persons and agencies that may provide relevant information. The visitor shall also visit the present place of abode of the person alleged to be incapacitated and, if any change of residence is anticipated, the place it is proposed that he or she will be detained or reside if the requested appointment is made, and submit his or her report in writing to the court.

As part of the evaluation of allegations of incapacity, a visitor, if appointed, shall obtain evidence relating to the allegedly incapacitated person's ability to make, communicate, or carry out responsible decisions concerning his or her person with regard to:

(1) Selecting his or her place of abode within or without this state;

(2) Arranging for his or her medical care;

(3) Protecting his or her personal effects;

(4) Giving necessary consents, approvals, or releases;

(5) Arranging for training, education, or other habilitating services appropriate to him or her;

(6) Applying for private or governmental benefits to which he or she may be entitled;

(7) Instituting proceedings to compel any person liable for the support of the proposed ward to support him or her if no conservator has been appointed for the proposed ward;

(8) Entering into contractual agreements if no conservator has been appointed for the proposed ward;

(9) Receiving money and tangible property deliverable to him or her and applying such money and property to his or her expenses for room and board, medical care, personal effects, training, education, and habilitative services; and

(10) Any other area of inquiry which the court may direct.

Source: Laws 1982, LB 428, § 2.

Cross References

For fees and costs of visitor, see sections 30-2620.01 and 30-2643.
For qualifications of visitor, see section 30-2624.

Section is neither vague nor overbroad. In re Guardianship and Conservatorship of Sim, 225 Neb. 181, 403 N.W.2d 721 (1987).

30-2619.02 Visitor's evaluation; how conducted.

The guardianship evaluation by the visitor shall be conducted with minimum interference with the allegedly incapacitated person's activities. Any interviews and examinations shall take place in the usual residence unless the visitor deems it necessary to conduct the interview or examination elsewhere. In cases of such necessity, the interview or examination shall take place during normal business hours.

Source: Laws 1982, LB 428, § 3.

30-2619.03 Visitor's evaluation report; contents.

The visitor shall file an evaluation report based upon the evaluation of the allegations of incapacity with the court within sixty days of the filing of the guardianship petition. Copies of the evaluation report shall be made available to the guardian ad litem, the proposed ward, and the petitioner. The evaluation report shall contain:

(1) A record of the visitor's interviews;

(2) Evidence obtained in each of the categories listed in section 30-2619.01;

(3) Recommendations as to the need of the proposed ward for a guardian in each of the areas listed in section 30-2619.01;

(4) The visitor's opinion as to the appropriateness of the person seeking appointment as guardian;

(5) Recommendations as to other appropriate candidates; and

(6) The visitor's opinion as to the needed duration of the guardianship.

Source: Laws 1982, LB 428, § 4.

30-2619.04 Visitor's evaluation report; responses.

The petitioner and the proposed ward shall have ten judicial days to file responses to the visitor's evaluation report.

Source: Laws 1982, LB 428, § 5.

30-2620 Findings; appointment of guardian; authority and responsibility of guardian.

The court may appoint a guardian if it is satisfied by clear and convincing evidence that the person for whom a guardian is sought is incapacitated and that the appointment is necessary or desirable as the least restrictive alternative available for providing continuing care or supervision of the person of the person alleged to be incapacitated. If the court finds that a guardianship should be created, the guardianship shall be a limited guardianship unless the court finds by clear and convincing evidence that a full guardianship is necessary. If a limited guardianship is created, the court shall, at the time of appointment or later, specify the authorities and responsibilities which the guardian and ward, acting together or singly, shall have with regard to:

(1) Selecting the ward's place of abode within or without this state;

(2) Arranging for medical care for the ward;

(3) Protecting the personal effects of the ward;

(4) Giving necessary consent, approval, or releases on behalf of the ward;

(5) Arranging for training, education, or other habilitating services appropriate for the ward;

(6) Applying for private or governmental benefits to which the ward may be entitled;

(7) Instituting proceedings to compel any person under a duty to support the ward or to pay sums for the welfare of the ward to perform such duty, if no conservator has been appointed;

(8) Entering into contractual arrangements on behalf of the ward, if no conservator has been appointed; and

(9) Receiving money and tangible property deliverable to the ward and applying such money and property to the ward's expenses for room and board,

medical care, personal effects, training, education, and habilitating services, if no conservator has been appointed, or requesting the conservator to expend the ward's estate by payment to third persons to meet such expenses.

In a limited guardianship, the powers shall be endorsed upon the letters of appointment of the guardian and shall be treated as specific limitations upon the general powers, rights, and duties accorded by law to the guardian. In a full guardianship, the letters of appointment shall specify that the guardian is granted all powers conferred upon guardians by law. After appointment, the ward may retain an attorney for the sole purpose of challenging the guardianship, the terms of the guardianship, or the actions of the guardian on behalf of the ward.

Source: Laws 1974, LB 354, § 238, UPC § 5-304; Laws 1982, LB 428, § 6; Laws 1993, LB 782, § 6; Laws 1997, LB 466, § 7.

A guardian for an incapacitated person appointed pursuant to this section is not entitled to quasi-judicial immunity with respect to the function of selecting the ward's place of abode by the guardian. Frey v. Blanket Corp., 255 Neb. 100, 582 N.W.2d 336 (1998).

A court may appoint a guardian when clear and convincing evidence establishes (1) that the person for whom a guardian is sought is incapacitated and (2) that the appointment is necessary or desirable as the least restrictive alternative available for providing continuing care or supervision of the person alleged to be incapacitated. In re Guardianship and Conservatorship of Hartwig, 11 Neb. App. 526, 656 N.W.2d 268 (2003).

30-2620.01 Attorney, guardian ad litem, physician, and visitor; fees and costs; in forma pauperis proceedings; frivolous actions.

The reasonable fees and costs of an attorney, a guardian ad litem, a physician, and a visitor appointed by the court for the person alleged to be incapacitated shall be allowed, disallowed, or adjusted by the court and may be paid from the estate of the ward if the ward possesses an estate or, if not, shall be paid by the county in which the proceedings are brought or by the petitioner as costs of the action. An action under sections 30-2601 to 30-2661 may be initiated or defended in forma pauperis in accordance with sections 25-2301 to 25-2310. The court may assess attorney's fees and costs against the petitioner upon a showing that the action was frivolous in accordance with sections 25-824 to 25-824.03.

Source: Laws 1982, LB 428, § 7; Laws 1993, LB 782, § 7; Laws 1999, LB 689, § 14.

30-2621 Acceptance of appointment; consent to jurisdiction.

By accepting appointment, a guardian submits personally to the jurisdiction of the court in any proceeding relating to the guardianship that may be instituted by any interested person. Notice of any proceeding shall be delivered to the guardian or mailed to him by ordinary mail at his address as listed in the court records and to his address as then known to the petitioner.

Source: Laws 1974, LB 354, § 239, UPC § 5-305.

30-2622 Termination of guardianship for incapacitated person; liability for prior acts; obligation to account.

The authority and responsibility of a guardian for an incapacitated person terminates upon the death of the guardian or ward, the determination of incapacity of the guardian, or upon removal or resignation as provided in section 30-2623. Testamentary appointment under an informally probated will terminates if the will is later denied probate in a formal proceeding. Termi-

nation does not affect his liability for prior acts nor his obligation to account for funds and assets of his ward.

Source: Laws 1974, LB 354, § 240, UPC § 5-306; Laws 1975, LB 481, § 19.

30-2623 Removal or resignation of guardian; termination of incapacity.

(a) On petition of the ward or any person interested in his welfare, the court may remove a guardian and appoint a successor if in the best interests of the ward. On petition of the guardian, the court may accept his resignation and make any other order which may be appropriate.

(b) An order adjudicating incapacity may specify a minimum period, not exceeding one year, during which no petition for an adjudication that the ward is no longer incapacitated may be filed without special leave. Subject to this restriction, the ward or any person interested in his welfare may petition for an order that he is no longer incapacitated, and for removal or resignation of the guardian. A request for this order may be made by informal letter to the court or judge and any person who knowingly interferes with transmission of this kind of request to the court or judge may be adjudged guilty of contempt of court.

(c) Before removing a guardian, accepting the resignation of a guardian, or ordering that a ward's incapacity has terminated, the court, following the same procedures to safeguard the rights of the ward as apply to a petition for appointment of a guardian, may send a visitor to the residence of the present guardian and to the place where the ward resides or is detained, to observe conditions and report in writing to the court.

Source: Laws 1974, LB 354, § 241, UPC § 5-307.

By using the phrase ''any person interested in his welfare,'' the Legislature intended to allow persons who are interested in a protected person, but who do not satisfy the definition of ''interested person,'' to bring matters affecting the welfare of protected persons to the attention of the local probate court. In re Guardianship of Gilmore, 11 Neb. App. 876, 662 N.W.2d 221 (2003).

30-2624 Visitor; qualifications.

A visitor shall be trained in law, nursing, social work, mental health, mental retardation, gerontology, or developmental disabilities and shall be an officer, employee, or special appointee of the court with no personal interest in the proceedings.

Any qualified person may be appointed visitor of a proposed ward, except that it shall be unlawful for any owner, part owner, manager, administrator, or employee, or any spouse of an owner, part owner, manager, administrator, or employee of a nursing home, room and board home, convalescent home, group care home, or institution providing residential care to any person physically or mentally handicapped, infirm, or aged to be appointed visitor of any such person residing, being under care, receiving treatment, or being housed in any such home or institution within the State of Nebraska.

The court shall select the visitor who has the expertise to most appropriately evaluate the needs of the person who is allegedly incapacitated.

The court shall maintain a current list of persons trained in or having demonstrated expertise in the areas of mental health, mental retardation, drug abuse, alcoholism, gerontology, nursing, and social work, for the purpose of appointing a suitable visitor.

Source: Laws 1974, LB 354, § 242, UPC § 5-308; Laws 1982, LB 428, § 8.

30-2625 Notices in guardianship proceedings.

(a) In a proceeding for the appointment of a guardian for a person alleged to be incapacitated or the removal of a guardian of a ward other than the appointment of a temporary guardian or temporary suspension of a guardian, notice of hearing shall be given to each of the following:

(1) The ward or the person alleged to be incapacitated and his or her spouse, parents, and adult children;

(2) Any person who is serving as guardian or conservator of the ward or who has care and custody of a person alleged to be incapacitated; and

(3) If no other person is notified under subdivision (1) of this subsection, at least one of the closest adult relatives of the ward or person alleged to be incapacitated, if any can be found.

(b) Notice which is appropriate to the circumstances of the ward or person alleged to be incapacitated shall be served personally at least fourteen days prior to the hearing on the ward or person alleged to be incapacitated and his or her spouse and parents if they can be found within the state. The court may require the petitioner to serve notice in alternative formats or with appropriate auxiliary aids and services if necessary to ensure equally effective communication with the ward or person alleged to be incapacitated, including, but not limited to, the use of braille, sign language, large print, reading aloud, or other reasonable accommodation for the known disabilities of the individual based on the allegations specified in the petition. Waiver of notice by the person alleged to be incapacitated shall not be effective unless he or she attends the hearing and the court determines that the waiver is appropriate.

(c) In addition to notifying him or her of the filing of the petition and the time and place of the hearing on the petition, the notice required to be served upon the person alleged to be incapacitated shall list the following rights of the person:

(1) The right to request the appointment of an attorney;

(2) The right to present evidence in his or her own behalf;

(3) The right to request that the power of the guardian, if appointed, be limited by the court;

(4) The right to be notified regarding how to contact the temporary guardian if a temporary guardian is appointed;

(5) The right to compel attendance of witnesses;

(6) The right to cross-examine witnesses, including the court-appointed physician;

(7) The right to appeal any final order; and

(8) The right to request a hearing closed to the public.

(d) If a temporary guardian has been appointed, the notice required in subsection (c) of this section shall include a notice of such appointment and of the right to request an expedited hearing pursuant to section 30-2626.

Source: Laws 1974, LB 354, § 243, UPC § 5-309; Laws 1978, LB 650, § 38; Laws 1982, LB 428, § 9; Laws 1993, LB 782, § 8; Laws 1997, LB 466, § 8.

30-2626 Temporary guardians; power of court.

(a) If a person alleged to be incapacitated has no guardian and an emergency exists, the court may, pending notice and hearing, exercise the power of a guardian or enter an ex parte order appointing a temporary guardian to address the emergency. The order and letters of temporary guardianship shall specify the powers and duties of the temporary guardian limiting the powers and duties to those necessary to address the emergency.

(b) When the court takes action to exercise the powers of a guardian or to appoint a temporary guardian under subsection (a) of this section, an expedited hearing shall be held if requested by the person alleged to be incapacitated, or by any interested party, if the request is filed more than ten business days prior to the date set for the hearing on the petition for appointment of the guardian. If an expedited hearing is to be held, the hearing shall be held within ten business days after the request is received. At the hearing on the temporary appointment, the petitioner shall have the burden of showing by a preponderance of the evidence that temporary guardianship continues to be necessary to address the emergency situation. Unless the person alleged to be incapacitated has counsel of his or her own choice, the court may appoint an attorney to represent the person alleged to be incapacitated at the hearing as provided in section 30-2619.

(c) If an expedited hearing is requested, notice shall be served as provided in section 30-2625. The notice shall specify that a temporary guardian has been appointed and shall be given at least twenty-four hours prior to the expedited hearing.

(d) At the expedited hearing, the court may render a judgment authorizing the temporary guardianship to continue beyond the original ten-day period. The judgment shall prescribe the specific powers and duties of the temporary guardian in the letters of temporary guardianship and shall be effective for a single ninety-day period. For good cause shown, the court may extend the temporary guardianship for successive ninety-day periods.

(e) The temporary guardianship shall terminate at the end of the ninety-day period in which the temporary guardianship is valid or at any time prior thereto if the court deems the circumstances leading to the order for temporary guardianship no longer exist or if an order has been entered as a result of a hearing pursuant to section 30-2619 which has been held during the ninety-day period.

(f) If the court denies the request for the ex parte order, the court may, in its discretion, enter an order for an expedited hearing pursuant to subsections (b) through (e) of this section.

(g) If the petitioner requests the entry of an order of temporary guardianship pursuant to subsection (a) of this section without requesting an ex parte order, the court may hold an expedited hearing pursuant to subsections (b) through (e) of this section.

(h) If an appointed guardian is not effectively performing his or her duties and the court further finds that the welfare of the incapacitated person requires immediate action, it may, pending notice and hearing in accordance with section 30-2220, appoint a temporary guardian for the incapacitated person for a specified period not to exceed ninety days. For good cause shown, the court may extend the temporary guardianship for successive ninety-day periods. A temporary guardian appointed pursuant to this subsection has only the powers and duties specified in the previously appointed guardian's letters of guardian-

ship, and the authority of any permanent guardian previously appointed by the court is suspended so long as a temporary guardian has authority.

(i) A temporary guardian may be removed at any time. A temporary guardian shall make any report the court requires. In other respects the provisions of the Nebraska Probate Code concerning guardians apply to temporary guardians.

Source: Laws 1974, LB 354, § 244, UPC § 5-310; Laws 1978, LB 650, § 22; Laws 1993, LB 782, § 9; Laws 1997, LB 466, § 9.

An evidentiary hearing should be held expediently on a guardianship or conservatorship petition, and temporary guardians and conservators are intended to exercise their powers in a limited manner and for a limited period of time. In re Guardianship & Conservatorship of Larson, 270 Neb. 837, 708 N.W.2d 262 (2006).

30-2627 Who may be guardian; priorities; bond.

(a) Any competent person or a suitable institution may be appointed guardian of a person alleged to be incapacitated, except that it shall be unlawful for any agency providing residential care in an institution or community-based program, or any owner, part owner, manager, administrator, employee, or spouse of an owner, part owner, manager, administrator, or employee of any nursing home, room and board home, assisted-living facility, or institution engaged in the care, treatment, or housing of any person physically or mentally handicapped, infirm, or aged to be appointed guardian of any such person residing, being under care, receiving treatment, or being housed in any such home, facility, or institution within the State of Nebraska. Nothing in this subsection shall prevent the spouse, adult child, parent, or other relative of the person alleged to be incapacitated from being appointed guardian or prevent the guardian officer for one of the Nebraska veterans homes as provided in section 80-327 from being appointed guardian or conservator for the person alleged to be incapacitated. It shall be unlawful for any county attorney or deputy county attorney appointed as guardian for a person alleged to be incapacitated to circumvent his or her duties or the rights of the ward pursuant to the Nebraska Mental Health Commitment Act by consenting to inpatient or outpatient psychiatric treatment over the objection of the ward.

(b) Persons who are not disqualified under subsection (a) of this section and who exhibit the ability to exercise the powers to be assigned by the court have priority for appointment as guardian in the following order:

(1) A person nominated most recently by one of the following methods:

(i) A person nominated by the incapacitated person in a power of attorney or a durable power of attorney;

(ii) A person acting under a power of attorney or durable power of attorney; or

(iii) A person nominated by an attorney in fact who is given power to nominate in a power of attorney or a durable power of attorney executed by the incapacitated person;

(2) The spouse of the incapacitated person;

(3) An adult child of the incapacitated person;

(4) A parent of the incapacitated person, including a person nominated by will or other writing signed by a deceased parent;

(5) Any relative of the incapacitated person with whom he or she has resided for more than six months prior to the filing of the petition;

(6) A person nominated by the person who is caring for him or her or paying benefits to him or her.

(c) When appointing a guardian, the court shall take into consideration the expressed wishes of the allegedly incapacitated person. The court, acting in the best interest of the incapacitated person, may pass over a person having priority and appoint a person having lower priority or no priority. With respect to persons having equal priority, the court shall select the person it deems best qualified to serve.

(d) In its order of appointment, unless waived by the court, the court shall require any person appointed as guardian to successfully complete within three months of such appointment a training program approved by the State Court Administrator. If the person appointed as guardian does not complete the training program, the court shall issue an order to show cause why such person should not be removed as guardian.

(e) The court may require a guardian to furnish a bond in an amount and conditioned in accordance with the provisions of sections 30-2640 and 30-2641.

Source: Laws 1974, LB 354, § 245, UPC § 5-311; Laws 1982, LB 428, § 10; Laws 1985, LB 292, § 2; Laws 1993, LB 782, § 10; Laws 1997, LB 396, § 2; Laws 1997, LB 466, § 10; Laws 1997, LB 608, § 1.

Cross References

Nebraska Mental Health Commitment Act, see section 71-901.
Training program, curricula, see section 30-2601.01.

30-2628 General powers, rights, and duties of guardian.

(a) Except as limited by an order entered pursuant to section 30-2620, a guardian of an incapacitated person has the same powers, rights, and duties respecting his or her ward that a parent has respecting his or her unemancipated minor child, except that a guardian is not liable to third persons for acts of the ward solely by reason of the parental relationship. In particular, and without qualifying the foregoing, a guardian has the following powers and duties, except as may be specified by order of the court:

(1) To the extent that it is consistent with the terms of any order by a court of competent jurisdiction relating to detention or commitment of the ward, he or she is entitled to custody of the person of his or her ward and may establish the ward's place of abode within or without this state. When establishing the ward's place of abode, a guardian shall make every reasonable effort to ensure that the placement is the least restrictive alternative. A guardian shall authorize a placement to a more restrictive environment only after careful evaluation of the need for such placement. The guardian may obtain a professional evaluation or assessment that such placement is in the best interest of the ward.

(2) If entitled to custody of his or her ward, he or she shall make provision for the care, comfort, and maintenance of his or her ward and, whenever appropriate, arrange for his or her training and education. Without regard to custodial rights of the ward's person, he or she shall take reasonable care of his or her ward's clothing, furniture, vehicles, and other personal effects and commence protective proceedings if other property of his or her ward is in need of protection.

(3) A guardian may give any consents or approvals that may be necessary to enable the ward to receive medical, psychiatric, psychological, or other professional care, counsel, treatment, or service. When making such medical or psychiatric decisions, the guardian shall consider and carry out the intent of the ward expressed prior to incompetency to the extent allowable by law. Notwithstanding this provision or any other provision of the Nebraska Probate Code, the ward may authorize the release of financial, medical, and other confidential records pursuant to sections 20-161 to 20-166.

(4) If no conservator for the estate of the ward has been appointed, he or she may:

(i) Institute proceedings to compel any person under a duty to support the ward or to pay sums for the welfare of the ward to perform his or her duty;

(ii) Receive money and tangible property deliverable to the ward and apply the money and property for support, care, and education of the ward; but he or she may not use funds from his or her ward's estate for room and board which he or she, his or her spouse, parent, or child has furnished the ward unless a charge for the service is approved by order of the court made upon notice to at least one of the next of kin of the ward, if notice is possible. He or she must exercise care to conserve any excess for the ward's needs; and

(iii) Exercise a settlor's powers with respect to revocation, amendment, or distribution of trust property when authorized by a court acting under the authority of subsection (f) of section 30-3854. In acting under the authority of subsection (f) of section 30-3854, the court shall proceed in the same manner as provided under subdivision (3) of section 30-2637.

(5) A guardian is required to report the condition of his or her ward and of the estate which has been subject to his or her possession or control, at least every year and as required by the court or court rule. The court shall receive from any interested person, for a period of thirty days after the filing of the guardian's report, any comments with regard to the need for continued guardianship or amendment of the guardianship order. If the court has reason to believe that additional rights should be returned to the ward or assigned to the guardian, the court shall set a date for a hearing and may provide all protections as set forth for the original finding of incapacity and appointment of a guardian.

(6) If a conservator has been appointed, all of the ward's estate received by the guardian in excess of those funds expended to meet current expenses for support, care, and education of the ward must be paid to the conservator for management as provided in the Nebraska Probate Code, and the guardian must account to the conservator for funds expended.

(b) Any guardian of one for whom a conservator also has been appointed shall control the custody and care of the ward, and is entitled to receive reasonable sums for his or her services and for room and board furnished to the ward as agreed upon between him or her and the conservator, provided the amounts agreed upon are reasonable under the circumstances. The guardian may request the conservator to expend the ward's estate by payment to third persons or institutions for the ward's care and maintenance.

(c) Nothing in subdivision (a)(3) of this section or in any other part of this section shall be construed to alter the decisionmaking authority of an attorney

in fact designated and authorized under sections 30-3401 to 30-3432 to make health care decisions pursuant to a power of attorney for health care.

Source: Laws 1974, LB 354, § 246, UPC § 5-312; Laws 1982, LB 428, § 11; Laws 1993, LB 782, § 11; Laws 1997, LB 466, § 11; Laws 2003, LB 130, § 130.

30-2629 Proceedings subsequent to appointment; venue.

(a) The court where the ward resides has concurrent jurisdiction with the court which appointed the guardian, or in which acceptance of a testamentary appointment was filed, over resignation, removal, accounting, and other proceedings relating to the guardianship.

(b) If the court located where the ward resides is not the court in which acceptance of appointment is filed, the court in which proceedings subsequent to appointment are commenced shall in all appropriate cases notify the other court, in this or another state, and after consultation with that court determine whether to retain jurisdiction or transfer the proceedings to the other court, whichever may be in the best interest of the ward. A copy of any order accepting a resignation or removing a guardian shall be sent to the court in which acceptance of appointment is filed.

(c) Any action or proposed action by a guardian may be challenged at any time by any interested person.

Source: Laws 1974, LB 354, § 247, UPC § 5-313; Laws 1997, LB 466, § 12.

PART 4

PROTECTION OF PROPERTY OF PERSONS
UNDER DISABILITY AND MINORS

30-2630 Protective proceedings.

Upon petition and after notice and hearing in accordance with the provisions of this part, the court may appoint a conservator or make other protective order for cause as follows:

(1) Appointment of a conservator or other protective order may be made in relation to the estate and property affairs of a minor if the court is satisfied by clear and convincing evidence that a minor owns money or property that requires management or protection which cannot otherwise be provided, has or may have business affairs which may be jeopardized or prevented by his or her minority, or that funds are needed for his or her support and education and that protection is necessary or desirable to obtain or provide funds.

(2) Appointment of a conservator or other protective order may be made in relation to the estate and property affairs of a person if the court is satisfied by clear and convincing evidence that (i) the person is unable to manage his or her property and property affairs effectively for reasons such as mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, confinement, or lack of discretion in managing benefits received from public funds, detention by a foreign power, or disappearance; and (ii) the person has property which will be wasted or dissipated unless proper management is provided, or that funds are needed for the support, care, and welfare of

the person or those entitled to be supported by him or her and that protection is necessary or desirable to obtain or provide funds.

Source: Laws 1974, LB 354, § 248, UPC § 5-401; Laws 1982, LB 428, § 12; Laws 1993, LB 782, § 12.

Subsection (2) of this section is neither vague nor overbroad. In re Guardianship and Conservatorship of Sim, 225 Neb. 181, 403 N.W.2d 721 (1987).

One may not have his or her property taken away and placed in the hands of a conservator merely because he or she is aged or infirm or because his or her mind is to some extent impaired by age or disease. In re Estate of Wagner, 220 Neb. 32, 367 N.W.2d 736 (1985).

Record supported finding that an 80-year-old woman was unable by reason of advanced age to manage her property and that it would be wasted or dissipated unless proper management was provided, and thus supported the appointment of a conservator. In re Estate of Oltmer, 214 Neb. 830, 336 N.W.2d 560 (1983).

Facts of case held adequate to show need for appointment of a conservator. In re Estate of Carlson, 214 Neb. 453, 334 N.W.2d 437 (1983).

A court may appoint a conservator in relation to the estate and property affairs of a person when clear and convincing evidence establishes that the person for whom a conservator is sought (1) is unable to manage his or her property and (2) has property which will be wasted or dissipated unless proper management is provided, or if it is necessary or desirable to obtain funds for the support of the person. In re Guardianship & Conservatorship of Hartwig, 11 Neb. App. 526, 656 N.W.2d 268 (2003).

30-2630.01 Temporary conservator; power of court.

(a) If a person alleged to be in need of protection under section 30-2630 has no conservator and an emergency exists, the court may, pending notice and hearing, exercise the power of a conservator or enter an emergency protective order appointing a temporary conservator to address the emergency.

(b) When the court takes action to exercise the powers of a conservator or to appoint a temporary conservator under subsection (a) of this section, an expedited hearing shall be held if requested by the person alleged to be in need of protection, or by any interested party, if the request is filed more than ten business days prior to the date set for the hearing on the petition for appointment of the conservator. If an expedited hearing is to be held, the hearing shall be held within ten business days after the request is received. At the hearing on the temporary appointment, the petitioner shall have the burden of showing by a preponderance of the evidence that temporary conservatorship continues to be necessary to address the emergency situation. Unless the person alleged to be in need of protection has counsel of his or her own choice, the court may appoint an attorney to represent the person at the hearing as provided in section 30-2636.

(c) If an expedited hearing is requested, notice shall be served as provided in section 30-2634. The notice shall specify that a temporary conservator has been appointed and shall be given at least twenty-four hours prior to the expedited hearing.

(d) At the expedited hearing, the court may render a judgment authorizing the temporary conservatorship to continue beyond the original ten-day period. The judgment shall prescribe the specific powers and duties of the temporary conservator in the letters of temporary conservatorship and shall be effective for a ninety-day period. For good cause shown, the court may extend the temporary conservatorship for successive ninety-day periods.

(e) The temporary conservatorship shall terminate at the end of the ninety-day period in which the temporary conservatorship is valid or at any time prior thereto if the court deems the circumstances leading to the order for temporary conservatorship no longer exist or if an order has been entered as a result of a hearing pursuant to section 30-2636 which has been held during the ninety-day period.

(f) If the court denies the request for the ex parte order, the court may, in its discretion, enter an order for an expedited hearing pursuant to subsections (b) through (e) of this section.

(g) If the petitioner requests the entry of an order of temporary conservatorship pursuant to subsection (a) of this section without requesting an ex parte order, the court may hold an expedited hearing pursuant to subsections (b) through (e) of this section.

(h) A temporary conservator may be removed at any time. A temporary conservator shall make any report the court requires. In other respects the provisions of the Nebraska Probate Code concerning conservators apply to temporary conservators.

Source: Laws 1993, LB 782, § 13; Laws 1997, LB 466, § 13.

30-2631 Protective proceedings; jurisdiction of affairs of protected persons.

After the service of notice in a proceeding seeking the appointment of a conservator or other protective order and until termination of the proceeding, the court in which the petition is filed has:

(1) exclusive jurisdiction to determine the need for a conservator or other protective order until the proceedings are terminated;

(2) exclusive jurisdiction to determine how the estate of the protected person which is subject to the laws of this state shall be managed, expended or distributed to or for the use of the protected person or any of his dependents;

(3) concurrent jurisdiction to determine the validity of claims against the person or estate of the protected person and his title to any property or claim.

Source: Laws 1974, LB 354, § 249, UPC § 5-402.

30-2632 Venue.

Venue for proceedings under this part is:

(1) In the place in this state where the person to be protected resides whether or not a guardian has been appointed in another place; or

(2) If the person to be protected does not reside in this state, in any place where he has property.

Source: Laws 1974, LB 354, § 250, UPC § 5-403.

30-2633 Original petition for appointment or protective order.

(a) The person to be protected, any person who is interested in his or her estate, property affairs, or welfare including his or her parent, guardian, or custodian, or any person who would be adversely affected by lack of effective management of his or her property and property affairs may petition for the appointment of a conservator or for other appropriate protective order.

(b) The petition shall set forth, to the extent known, the interest of the petitioner; the name, age, residence, and address of the person to be protected; the name and address of his or her guardian, if any; the name and address of his or her nearest relative known to the petitioner; a general statement of his or her property with an estimate of the value thereof, including any compensation, insurance, pension, or allowance to which he or she is entitled; and specific allegations regarding the necessity of the appointment of a conservator or other protective order. If the appointment of a conservator is requested, the

petition shall also set forth the name and address of the person whose appointment is sought and the basis of his or her priority for appointment. An interested person may file a motion to make more definite and certain requesting a specific description of the functional limitations and physical and mental condition of the person sought to be protected with the specific reasons prompting the request for conservatorship.

Source: Laws 1974, LB 354, § 251, UPC § 5-404; Laws 1982, LB 428, § 13; Laws 1993, LB 782, § 14; Laws 1997, LB 466, § 14.

Proceedings initiated to appoint a conservator are special proceedings. In re Guardianship & Conservatorship of Larson, 270 Neb. 837, 708 N.W.2d 262 (2006).

30-2634 Notice; waiver.

(a) In a proceeding for appointment of a conservator or other protective order, notice of hearing shall be given to each of the following:

(1) The person to be protected and his or her spouse, parents, and adult children;

(2) Any person who is serving as guardian or conservator or who has care and custody of the person to be protected; and

(3) If no other person is notified under subdivision (1) of this subsection, at least one of the closest adult relatives of the person to be protected, if any can be found.

(b) Notice which is appropriate to the circumstances of the person to be protected shall be served personally at least fourteen days prior to the hearing on the person to be protected and his or her spouse and parents if they can be found within the state. The court may require the petitioner to serve notice in alternative formats or with appropriate auxiliary aids and services if necessary to ensure equally effective communication with the protected person or person in need of protection, including, but not limited to, the use of braille, sign language, large print, reading aloud, or other reasonable accommodation for the known disabilities of the individual based on the allegations specified in the petition.

(c) If petitioners are the natural parents or if petitioner is a surviving natural parent or a parent who has been given sole and exclusive custody of the minor in a legal proceeding, petitioners or petitioner may waive notice to parents and may also waive notice to the minor, if the minor is under the age of fourteen years. Waiver of notice by the person to be protected shall not be effective unless he or she attends the hearing and the court determines that the waiver is appropriate. The court may, in its discretion, direct that notice be given as provided in section 30-2220 or in any other manner and to any other persons as the court may determine.

(d) Notice of a petition for appointment of a conservator or other initial protective order, and of any subsequent hearing, must be given to any person who has filed a request for notice under section 30-2635 and to interested persons and other persons as the court may direct. Except as otherwise provided in subsections (a) and (b) of this section, notice shall be given in accordance with section 30-2220.

(e) In addition to notifying him or her of the filing of the petition and the time and place of the hearing on the petition, the notice required to be served upon the person to be protected shall list the following rights of the person:

(1) The right to request the appointment of an attorney;

(2) The right to present evidence in his or her own behalf;

(3) The right to be notified regarding how to contact the temporary conservator if a temporary conservator is appointed;

(4) The right to compel attendance of witnesses;

(5) The right to cross-examine witnesses, including the court-appointed physician;

(6) The right to appeal any final order; and

(7) The right to request a hearing closed to the public.

(f) If a temporary conservator has been appointed, the notice required in subsection (e) of this section shall include a notice of such appointment and the right to request an expedited hearing pursuant to section 30-2630.01.

Source: Laws 1974, LB 354, § 252, UPC § 5-405; Laws 1978, LB 650, § 39; Laws 1993, LB 782, § 15; Laws 1997, LB 466, § 15.

30-2635 Protective proceedings; request for notice; interested person.

Any interested person who desires to be notified before any order is made in a protective proceeding may file with the registrar a request for notice subsequent to payment of any fee required by statute or court rule. The clerk shall mail a copy of the demand to the conservator if one has been appointed. A request is not effective unless it contains a statement showing the interest of the person making it and his address, or that of his attorney, and is effective only as to matters occurring after the filing. Any governmental agency paying or planning to pay benefits to the person to be protected is an interested person in protective proceedings.

Source: Laws 1974, LB 354, § 253, UPC § 5-406.

30-2636 Procedure concerning hearing and order on original petition.

(a) Upon receipt of a petition for appointment of a conservator or other protective order because of minority, the court shall set a date for hearing on the matters alleged in the petition. If, at any time in the proceeding, the court determines that the interests of the minor are or may be inadequately represented, the court may appoint an attorney to represent the minor, giving consideration to the choice of the minor if he or she is fourteen years of age or older. A lawyer appointed by the court to represent a minor has the powers and duties of a guardian ad litem.

(b) Upon receipt of a petition for appointment of a conservator or other protective order for reasons other than minority, the court shall set a date for hearing. Unless the person to be protected has counsel of his or her own choice, the court may appoint an attorney to represent him or her in the proceeding. The court may appoint a guardian ad litem to advocate for the best interests of the person to be protected. If the alleged disability is mental illness, mental deficiency, physical illness or disability, chronic use of drugs, or chronic intoxication, the court may direct that the person to be protected be examined by a physician designated by the court, preferably a physician who is not connected with any institution in which the person is a patient or is detained. The court may send a visitor to interview the person to be protected. The visitor may be a guardian ad litem or an officer or employee of the court.

(c) After hearing, upon finding that clear and convincing evidence exists for the appointment of a conservator or other protective order, the court shall make an appointment or other appropriate protective order.

Source: Laws 1974, LB 354, § 254, UPC § 5-407; Laws 1978, LB 650, § 23; Laws 1993, LB 782, § 16.

30-2637 Permissible court orders.

The court has the following powers which may be exercised directly or through a conservator with respect to the estate and affairs of protected persons:

(1) While a petition for appointment of a conservator or other protective order is pending and after preliminary hearing and without notice to others, the court has power to preserve and apply the property of the person to be protected as may be required for his or her benefit or the benefit of his or her dependents.

(2) After hearing and upon determining that a basis for an appointment or other protective order exists with respect to a minor without other disability, the court has all those powers over the estate and affairs of the minor which are or might be necessary for the best interests of the minor, the minor's family, and members of the minor's household.

(3) After hearing and upon determining by clear and convincing evidence that a basis for an appointment or other protective order exists with respect to a person for reasons other than minority, the court has, for the benefit of the person and members of his or her household, all the powers over his or her estate and affairs which he or she could exercise if present and not under disability except the power to make a will. These powers include, but are not limited to, power to make gifts, to convey or release his or her contingent and expectant interests in property including marital property rights and any right of survivorship incident to joint tenancy or tenancy by the entirety, to exercise or release his or her powers as trustee, personal representative, custodian for minors, conservator, or donee of a power of appointment, to enter into contracts, to create revocable or irrevocable trusts of property of the estate which may extend beyond his or her disability or life, to exercise or release his or her powers as settlor of a revocable trust as provided in subsection (f) of section 30-3854, to exercise options of the disabled person to purchase securities or other property, to exercise his or her rights to elect options and change beneficiaries under insurance and annuity policies and to surrender the policies for their cash value, to exercise his or her right to an elective share in the estate of his or her deceased spouse, and to renounce any interest by testate or intestate succession or by inter vivos transfer.

(4) The court may exercise or direct the exercise of its authority to exercise or release powers of appointment of which the protected person is donee, to renounce interests, to make gifts in trust or otherwise exceeding twenty percent of any year's income of the estate, or to change beneficiaries under insurance and annuity policies, only if satisfied, after notice and hearing, that it is in the best interests of the protected person, and that he or she either is incapable of consenting or has consented to the proposed exercise of power.

(5) An order made pursuant to this section determining by clear and convincing evidence that a basis for appointment of a conservator or other protective

order exists has no effect on the capacity of the protected person to make a will.

Source: Laws 1974, LB 354, § 255, UPC § 5-408; Laws 1993, LB 782, § 17; Laws 1997, LB 466, § 16; Laws 2003, LB 130, § 131.

Under subsection (3) of this section, the court may take action on behalf of a protected person or the court may direct a conservator to take those actions if the court determines by clear and convincing evidence that such actions are in the best interests of the protected person. Subsection (3) of this section gives the court the power to exercise all powers over the estate of a settlor which the settlor could exercise if he or she were not under disability, except the power to make a will. In re Guardianship & Conservatorship of Garcia, 262 Neb. 205, 631 N.W.2d 464 (2001).

Adjudication of what constitutes best interests must be had with reference to existing rules of law. In re Estate of Carlson, 214 Neb. 453, 334 N.W.2d 437 (1983).

30-2638 Protective arrangements and single transactions authorized.

(a) If it is established in a proper proceeding that a basis exists as described in section 30-2630 for affecting the property and affairs of a person, the court, without appointing a conservator, may authorize, direct or ratify any transaction necessary or desirable to achieve any security, service, or care arrangement meeting the foreseeable needs of the protected person. Protective arrangements include, but are not limited to, payment, delivery, deposit or retention of funds or property, sale, mortgage, lease or other transfer of property, entry into an annuity contract, a contract for life care, a deposit contract, a contract for training and education, or addition to or establishment of a suitable trust.

(b) When it has been established in a proper proceeding that a basis exists as described in section 30-2630 for affecting the property and affairs of a person, the court, without appointing a conservator, may authorize, direct or ratify any contract, trust or other transaction relating to the protected person's financial affairs or involving his estate if the court determines that the transaction is in the best interests of the protected person.

(c) Before approving a protective arrangement or other transaction under this section, the court shall consider the interests of creditors and dependents of the protected person and, in view of his disability, whether the protected person needs the continuing protection of a conservator. The court may appoint a special conservator to assist in the accomplishment of any protective arrangement or other transaction authorized under this section who shall have the authority conferred by the order and serve until discharged by order after report to the court of all matters done pursuant to the order of appointment.

Source: Laws 1974, LB 354, § 256, UPC § 5-409.

30-2639 Who may be appointed conservator; priorities.

(a) The court may appoint an individual, or a corporation with general power to serve as trustee, as conservator of the estate of a protected person, except that it shall be unlawful for any agency providing residential care in an institution or community-based program or any owner, part owner, manager, administrator, employee, or spouse of an owner, part owner, manager, administrator, or employee of any nursing home, room and board home, assisted-living facility, or institution engaged in the care, treatment, or housing of any person physically or mentally handicapped, infirm, or aged to be appointed conservator of any such person residing, being under care, receiving treatment, or being housed in any such home, facility, or institution within the State of Nebraska. Nothing in this subsection shall prevent the spouse, adult child, parent, or other relative of the person in need of protection from being appointed conservator.

(b) Persons who are not disqualified under subsection (a) of this section and who exhibit the ability to exercise the powers to be assigned by the court have priority for appointment as conservator in the following order:

(1) A person nominated most recently by one of the following methods:

(i) A person nominated by the protected person in a power of attorney or durable power of attorney;

(ii) A person acting under a power of attorney or durable power of attorney; or

(iii) A person nominated by an attorney in fact who is given power to nominate in a power of attorney or a durable power of attorney executed by the protected person;

(2) A conservator, guardian of property, or other like fiduciary appointed or recognized by the appropriate court of any other jurisdiction in which the protected person resides;

(3) An individual or corporation nominated by the protected person if he or she is fourteen or more years of age and has, in the opinion of the court, sufficient mental capacity to make an intelligent choice;

(4) The spouse of the protected person;

(5) An adult child of the protected person;

(6) A parent of the protected person or a person nominated by the will of a deceased parent;

(7) Any relative of the protected person with whom he or she has resided for more than six months prior to the filing of the petition;

(8) A person nominated by the person who is caring for him or her or paying benefits to him or her.

(c) When appointing a conservator, the court shall take into consideration the expressed wishes of the person to be protected. A person having priority listed in subdivision (2), (4), (5), (6), or (7) of subsection (b) of this section may nominate in writing a person to serve in his or her stead. With respect to persons having equal priority, the court shall select the person it deems best qualified of those willing to serve. The court, acting in the best interest of the protected person, may pass over a person having priority and appoint a person having lower priority or no priority.

(d) In its order of appointment, unless waived by the court, the court shall require any person appointed as conservator to successfully complete within three months of such appointment a training program approved by the State Court Administrator. If the person appointed as conservator does not complete the training program, the court shall issue an order to show cause why such person should not be removed as conservator.

Source: Laws 1974, LB 354, § 257, UPC § 5-410; Laws 1985, LB 292, § 3; Laws 1993, LB 782, § 18; Laws 1997, LB 466, § 17; Laws 1997, LB 608, § 2.

Cross References

Training program, curricula, see section 30-2601.01.

When an attorney in fact may be accountable to a conservator of an estate for unauthorized transfers of property made to himself or herself, a county court may properly find it is in the principal's best interests to bypass the attorney in fact's priority for appointment as the principal's conservator and to appoint a disinterested third party as the conservator. In re Conservatorship of Anderson, 262 Neb. 51, 628 N.W.2d 233 (2001).

30-2640 Bond.

The court may require a conservator to furnish a bond conditioned upon faithful discharge of all duties of the trust according to law, with sureties as it shall specify and may eliminate the requirement or decrease or increase the required amount of any such bond previously furnished. The amount of the bond may be fixed at the discretion of the court, but if not otherwise fixed by the court, the amount of the bond shall be in the amount of the aggregate capital value of the personal property of the estate in his or her control plus one year's estimated income from all sources minus the value of securities deposited under arrangements requiring an order of the court for their removal. The court, in lieu of sureties on a bond, may accept other security for the performance of the bond, including a pledge of securities or a mortgage of land. The court may consider the desires of the protected person as expressed in any written power of attorney in determining whether a bond shall be required and the amount thereof.

Source: Laws 1974, LB 354, § 258, UPC § 5-411; Laws 1985, LB 292, § 4.

30-2641 Terms and requirements of bonds.

(a) The following requirements and provisions apply to any bond required under section 30-2640:

(1) Unless otherwise provided by the terms of the approved bond, sureties are jointly and severally liable with the conservator and with each other;

(2) By executing an approved bond of a conservator, the surety consents to the jurisdiction of the court which issued letters to the primary obligor in any proceeding pertaining to the fiduciary duties of the conservator and naming the surety as a party defendant. Notice of any proceeding shall be delivered to the surety or mailed to him by registered or certified mail at his address as listed with the court where the bond is filed and to his address as then known to the petitioner;

(3) On petition of a successor conservator or any interested person, a proceeding may be initiated against a surety for breach of the obligation of the bond of the conservator;

(4) The bond of the conservator is not void after the first recovery but may be proceeded against from time to time until the whole penalty is exhausted.

(b) No proceeding may be commenced against the surety on any matter as to which an action or proceeding against the primary obligor is barred by adjudication or limitation.

Source: Laws 1974, LB 354, § 259, UPC § 5-412.

Subsection (b) of this section prohibits an action against a surety on a guardian bond if the same action cannot be taken against the primary obligor because of an adjudication or limitation. Sawyer v. State Surety Co., 251 Neb. 440, 558 N.W.2d 43 (1997).

30-2642 Acceptance of appointment; consent to jurisdiction.

By accepting appointment, a conservator submits personally to the jurisdiction of the court in any proceeding relating to the estate that may be instituted by any interested person. Notice of any proceeding shall be delivered to the conservator, or mailed to him by registered or certified mail at his address as listed in the petition for appointment or as thereafter reported to the court and to his address as then known to the petitioner.

Source: Laws 1974, LB 354, § 260, UPC § 5-413.

30-2643 Attorney, guardian ad litem, physician, conservator, special conservator, and visitor; compensation and expenses; in forma pauperis proceedings; frivolous actions.

The reasonable fees and costs of an attorney, a guardian ad litem, a physician, a conservator, a special conservator, and a visitor appointed by the court for the person to be protected shall be allowed, disallowed, or adjusted by the court and may be paid from the estate of the protected person if the protected person possesses an estate or, if not, shall be paid by the county in which the proceedings are brought or by the petitioner as costs of the action. An action under sections 30-2601 to 30-2661 may be initiated or defended in forma pauperis in accordance with sections 25-2301 to 25-2310. The court may assess attorney's fees and costs against the petitioner upon a showing that the action was frivolous in accordance with sections 25-824 to 25-824.03.

Source: Laws 1974, LB 354, § 261, UPC § 5-414; Laws 1993, LB 782, § 19; Laws 1999, LB 689, § 15.

A guardian is entitled to attorney fees reasonably incurred in the successful defense of his actions as a fiduciary. In re Guardianship of Bremer, 209 Neb. 267, 307 N.W.2d 504 (1981).

30-2644 Death, resignation, or removal of conservator.

The court may remove a conservator for good cause, upon notice and hearing, or accept the resignation of a conservator. After his death, resignation or removal, the court may appoint another conservator on such notice as the court may direct. A conservator so appointed succeeds to the title and powers of his predecessor.

Source: Laws 1974, LB 354, § 262, UPC § 5-415.

The court sets forth the grounds for "good cause" to remove a conservator. In re Conservatorship of Estate of Marsh, 5 Neb. App. 899, 566 N.W.2d 783 (1997).

30-2645 Petitions for orders subsequent to appointment.

(a) Any person interested in the welfare of a person for whom a conservator has been appointed may file a petition in the appointing court for an order (1) requiring bond or security or additional bond or security, or reducing bond, (2) requiring an accounting for the administration of the trust, (3) directing distribution, (4) removing the conservator and appointing a temporary or successor conservator, or (5) granting other appropriate relief.

(b) A conservator may petition the appointing court for instructions concerning his fiduciary responsibility.

(c) Upon notice and hearing, the court may give appropriate instructions or make any appropriate order.

Source: Laws 1974, LB 354, § 263, UPC § 5-416.

The county court erred as a matter of law in failing to hold an evidentiary hearing and in failing to resolve the disputed issues in the conservatorship proceedings when this section provides that the court may enter orders upon notice and hearing. In re Guardianship & Conservatorship of Trobough, 267 Neb. 661, 676 N.W.2d 364 (2004).

30-2646 General duty of conservator.

In the exercise of his or her powers, a conservator is to act as a fiduciary and shall comply with the prudent investor rule set forth in sections 30-3883 to 30-3889.

Source: Laws 1974, LB 354, § 264, UPC § 5-417; Laws 1997, LB 54, § 15; Laws 2003, LB 130, § 132.

30-2647 Inventory and records.

Within ninety days after his appointment, every conservator shall prepare and file with the appointing court a complete inventory of the estate of the protected person together with his oath or affirmation that it is complete and accurate so far as he is informed. The conservator shall provide a copy thereof to the protected person if he can be located, has attained the age of fourteen years, and has sufficient mental capacity to understand these matters, and to any parent or guardian with whom the protected person resides. The conservator shall keep suitable records of his administration and exhibit the same on request of any interested person.

Source: Laws 1974, LB 354, § 265, UPC § 5-418.

A conservator has a duty to provide suitable records of his or her administration under this section, and therefore, probate courts have the power to enforce compliance with this section in proper situations. In re Guardianship & Conservatorship of Borowiak, 10 Neb. App. 22, 624 N.W.2d 72 (2001).

Generally, ''suitable records'' means those papers and original documents supporting and verifying the conservator's accounts, but a more precise definition depends on the case before the court dealing with a request for compliance with this section. In re Guardianship & Conservatorship of Borowiak, 10 Neb. App. 22, 624 N.W.2d 72 (2001).

The term ''suitable records'' within this section may include bank statements, canceled checks, deposit slips, and certificates of deposit. In re Guardianship & Conservatorship of Borowiak, 10 Neb. App. 22, 624 N.W.2d 72 (2001).

30-2648 Accounts.

Every conservator must account to the court for his administration of the trust upon his resignation or removal, and at other times as the court may direct. On termination of the protected person's minority or disability, a conservator may account to the court, or he may account to the former protected person or his personal representative. Subject to appeal or vacation within the time permitted, an order, made upon notice and hearing, allowing an intermediate account of a conservator, adjudicates as to his liabilities concerning the matters considered in connection therewith; and an order, made upon notice and hearing, allowing a final account adjudicates as to all previously unsettled liabilities of the conservator to the protected person or his successors relating to the conservatorship. In connection with any account, the court may require a conservator to submit to a physical check of the estate in his control, to be made in any manner the court may specify.

Source: Laws 1974, LB 354, § 266, UPC § 5-419.

The word ''compensation'' in the context of letters of conservatorship and Neb. Ct. R. of Cty. Cts. 43 (rev. 2000) includes any form of payment or remuneration made to the conservator from assets of the protected person. In re Conservatorship of Hanson, 268 Neb. 200, 682 N.W.2d 207 (2004).

An order allowing an intermediate account adjudicates as to the liabilities of the conservator only if made upon notice and hearing and then only concerning the matters considered. In re Conservatorship of Estate of Lindauer, 221 Neb. 146, 376 N.W.2d 1 (1985).

30-2649 Conservators; title by appointment.

The appointment of a conservator vests in him title as trustee to all property of the protected person, presently held or thereafter acquired, including title to any property theretofore held for the protected person by custodians or attorneys in fact. The appointment of a conservator is not a transfer or alienation within the meaning of general provisions of any federal or state statute or regulation, insurance policy, pension plan, contract, will or trust instrument, imposing restrictions upon or penalties for transfer or alienation by the protected person of his rights or interest, but this section does not restrict the ability of persons to make specific provisions by contract or dispositive instrument relating to a conservator.

Source: Laws 1974, LB 354, § 267, UPC § 5-420.

30-2650 Recording of conservator's letters.

Letters of conservatorship are evidence of transfer of all assets of a protected person to the conservator. An order terminating a conservatorship is evidence of transfer of all assets of the estate from the conservator to the protected person, or his successors. Subject to the requirements of general statutes governing the filing or recordation of documents of title to land or other property, letters of conservatorship, and orders terminating conservatorships, may be filed or recorded to give record notice of title as between the conservator and the protected person.

Source: Laws 1974, LB 354, § 268, UPC § 5-421.

30-2651 Encumbrance or transaction involving conflict of interest; voidable; exceptions.

Any sale or encumbrance to a conservator, his spouse, agent or attorney, or any corporation or trust in which he has a substantial beneficial interest, or any transaction which is affected by a substantial conflict of interest is voidable unless the transaction is approved by the court after notice to interested persons and others as directed by the court.

Source: Laws 1974, LB 354, § 269, UPC § 5-422.

30-2652 Persons dealing with conservators; protection.

A person who in good faith either assists a conservator or deals with him for value in any transaction, other than those requiring a court order as provided in section 30-2637, is protected as if the conservator properly exercised the power. The fact that a person knowingly deals with a conservator does not alone require the person to inquire into the existence of a power or the propriety of its exercise, except that restrictions on powers of conservators which are endorsed on letters as provided in section 30-2655 are effective as to third persons. A person is not bound to see to the proper application of estate assets paid or delivered to a conservator. The protection here expressed extends to instances in which some procedural irregularity or jurisdictional defect occurred in proceedings leading to the issuance of letters. The protection here expressed is not by substitution for that provided by comparable provisions of the laws relating to commercial transactions and laws simplifying transfers of securities by fiduciaries.

Source: Laws 1974, LB 354, § 270, UPC § 5-423.

30-2653 Powers of conservator in administration.

(a) A conservator has all of the powers conferred herein and any additional powers conferred by law on trustees in this state. In addition, a conservator of the estate of a minor, as to whom no one has parental rights, has the duties and powers of a guardian of a minor described in section 30-2613 until the minor attains his majority, but the parental rights so conferred on a conservator do not preclude appointment of a guardian as provided by part 2.

(b) A conservator has power without court authorization or confirmation, to invest and reinvest funds of the estate as would a trustee.

(c) A conservator, acting reasonably in efforts to accomplish the purpose for which he was appointed, may act without court authorization or confirmation to

(1) collect, hold and retain assets of the estate including land in another state, until, in his judgment, disposition of the assets should be made, and the assets may be retained even though they include an asset in which he is personally interested;

(2) receive additions to the estate;

(3) continue or participate in the operation of any business or other enterprise;

(4) acquire an undivided interest in an estate asset in which the conservator, in any fiduciary capacity, holds an undivided interest;

(5) invest and reinvest estate assets in accordance with subsection (b);

(6) deposit estate funds in a bank including a bank operated by the conservator;

(7) acquire or dispose of an estate asset including land in another state for cash or on credit, at public or private sale; and to manage, develop, improve, exchange, partition, change the character of, or abandon an estate asset;

(8) make ordinary or extraordinary repairs or alterations in buildings or other structures, to demolish any improvements, to raze existing or erect new party walls or buildings;

(9) subdivide, develop, or dedicate land to public use; to make or obtain the vacation of plats and adjust boundaries; to adjust differences in valuation on exchange or to partition by giving or receiving considerations; and to dedicate easements to public use without consideration;

(10) enter for any purpose into a lease as lessor or lessee with or without option to purchase or renew for a term within or extending beyond the term of the conservatorship;

(11) enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement;

(12) grant an option involving disposition of an estate asset, to take an option for the acquisition of any asset;

(13) vote a security, in person or by general or limited proxy;

(14) pay calls, assessments, and any other sums chargeable or accruing against or on account of securities;

(15) sell or exercise stock subscription or conversion rights; to consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise;

(16) hold a security in the name of a nominee or in other form without disclosure of the conservatorship so that title to the security may pass by delivery, but the conservator is liable for any act of the nominee in connection with the stock so held;

(17) insure the assets of the estate against damage or loss, and the conservator against liability with respect to third persons;

(18) borrow money to be repaid from estate assets or otherwise; to advance money for the protection of the estate or the protected person, and for all expenses, losses, and liability sustained in the administration of the estate or

because of the holding or ownership of any estate assets, and the conservator has a lien on the estate as against the protected person for advances so made;

(19) pay or contest any claim; to settle a claim by or against the estate or the protected person, except a wrongful death, tort, or similar claim, by compromise, arbitration, or otherwise; and to release, in whole or in part, any claim belonging to the estate to the extent that the claim is uncollectible;

(20) pay taxes, assessments, compensation of the conservator, and other expenses incurred in the collection, care, administration and protection of the estate;

(21) allocate items of income or expense to either estate income or principal, as provided by law, including creation of reserves out of income for depreciation, obsolescence, or amortization, or for depletion in mineral or timber properties;

(22) pay any sum distributable to a protected person or his dependent without liability to the conservator, by paying the sum to the distributee or by paying the sum for the use of the distributee either to his guardian or, if none, to a relative or other person with custody of his person;

(23) employ persons, including attorneys, auditors, investment advisors, or agents, even though they are associated with the conservator, to advise or assist him in the performance of his administrative duties; to act upon their recommendation without independent investigation; and instead of acting personally, to employ one or more agents to perform any act of administration, whether or not discretionary;

(24) prosecute or defend actions, claims or proceedings in any jurisdiction for the protection of estate assets and of the conservator in the performance of his duties; and

(25) execute and deliver all instruments which will accomplish or facilitate the exercise of the powers vested in the conservator.

(d) A conservator with court approval may settle a wrongful death, tort, or similar claim by or against the estate or the protected person by compromise, arbitration, or otherwise, and release, in whole or in part, any claim belonging to the estate to the extent that the claim is uncollectible.

Source: Laws 1974, LB 354, § 271, UPC § 5-424.

Partition, if well founded, is an absolute right, and a conservator need not obtain a license to so act. Cofer v. Perkins, 199 Neb. 327, 258 N.W.2d 807 (1977).

30-2654 Distributive duties and powers of conservator.

(a) A conservator may expend or distribute income or principal of the estate without court authorization or confirmation for the support, education, care or benefit of the protected person, except as provided in section 30-2613 if the protected person be a minor, and his dependents in accordance with the following principles:

(1) The conservator is to consider recommendations relating to the appropriate standard of support, education and benefit for the protected person made by a parent or guardian, if any. He may not be surcharged for sums paid to persons or organizations actually furnishing support, education or care to the protected person pursuant to the recommendations of a parent or guardian of the protected person unless he knows that the parent or guardian is deriving

personal financial benefit therefrom, including relief from any personal duty of support, or unless the recommendations are clearly not in the best interests of the protected person.

(2) The conservator is to expend or distribute sums reasonably necessary for the support, education, care or benefit of the protected person with due regard to (i) the size of the estate, the probable duration of the conservatorship and the likelihood that the protected person, at some future time, may be fully able to manage his affairs and the estate which has been conserved for him; (ii) the accustomed standard of living of the protected person and members of his household; (iii) other funds or sources used for the support of the protected person.

(3) The conservator may expend funds of the estate for the support of persons legally dependent on the protected person and others who are members of the protected person's household who are unable to support themselves, and who are in need of support.

(4) Funds expended under this subsection may be paid by the conservator to any person, including the protected person, to reimburse for expenditures which the conservator might have made, or in advance for services to be rendered to the protected person when it is reasonable to expect that they will be performed and where advance payments are customary or reasonably necessary under the circumstances.

(b) If the estate is ample to provide for the purposes implicit in the distributions authorized by the preceding subsections, a conservator for a protected person other than a minor has power to make gifts to charity and other objects as the protected person might have been expected to make, in amounts which do not exceed in total for any year twenty percent of the income from the estate upon court approval.

(c) When a minor who has not been adjudged disabled under section 30-2630(2) attains his majority, his conservator, after meeting all prior claims and expenses of administration, shall pay over and distribute all funds and properties to the former protected person as soon as possible.

(d) When the conservator is satisfied that a protected person's disability (other than minority) has ceased, the conservator, after meeting all prior claims and expenses of administration, shall pay over and distribute all funds and properties to the former protected person as soon as possible.

(e) If a protected person dies, the conservator shall deliver to the court for safekeeping any will of the deceased protected person which may have come into his possession, inform the executor or a beneficiary named therein that he has done so, and retain the estate for delivery to a duly appointed personal representative of the decedent or other persons entitled thereto. If after forty days from the death of the protected person no other person has been appointed personal representative and no application or petition for appointment is before the court, the conservator may apply to exercise the powers and duties of a personal representative so that he may proceed to administer and distribute the decedent's estate without additional or further appointment. Upon application for an order granting the powers of a personal representative to a conservator, after notice to any person demanding notice under section 30-2413 and to any person nominated executor in any will of which the applicant is aware, the court may order the conferral of the power upon determining that there is no objection, and endorse the letters of the conserva-

tor to note that the formerly protected person is deceased and that the conservator has acquired all of the powers and duties of a personal representative. The making and entry of an order under this section shall have the effect of an order of appointment of a personal representative as provided in section 30-2421 and parts 6 to 10 of Article 24 except that estate in the name of the conservator, after administration, may be distributed to the decedent's successors without prior retransfer to the conservator as personal representative.

Source: Laws 1974, LB 354, § 272, UPC § 5-425.

Under subsection (a)(2) of this section, a conservator is to expend or distribute sums reasonably necessary for the support, education, care, or benefit of the protected person. The cost, including a reasonable attorney fee, of initiating a good faith petition for the appointment of a conservator, where such appointment is determined to be in the best interests of the protected person, constitutes a necessary expenditure on behalf of the protected person and is compensable out of the conservatorship estate. In re Guardianship & Conservatorship of Donley, 262 Neb. 282, 631 N.W.2d 839 (2001).

30-2655 Limitation of powers of conservator.

The court may, at the time of appointment or later, limit the powers of a conservator otherwise conferred by sections 30-2653 and 30-2654, or previously conferred by the court, and may at any time relieve him of any limitation. If the court limits any power conferred on the conservator by section 30-2653 or 30-2654, the limitation shall be endorsed upon his letters of appointment.

Source: Laws 1974, LB 354, § 273, UPC § 5-426.

30-2656 Preservation of estate plan.

In investing the estate, and in selecting assets of the estate for distribution under subsections (a) and (b) of section 30-2654, in utilizing powers of revocation or withdrawal available for the support of the protected person, and exercisable by the conservator or the court, the conservator and the court should take into account any known estate plan of the protected person, including his will, any revocable trust of which he is settlor, and any contract, transfer or joint ownership arrangement with provisions for payment or transfer of benefits or interests at his death to another or others which he may have originated. The conservator may examine the will of the protected person.

Source: Laws 1974, LB 354, § 274, UPC § 5-427.

30-2657 Claims against protected person; enforcement.

(a) A conservator must pay from the estate all just claims against the estate and against the protected person arising before or after the conservatorship upon their presentation and allowance. A claim may be presented by either of the following methods: (1) the claimant may deliver or mail to the conservator a written statement of the claim indicating its basis, the name and address of the claimant and the amount claimed; (2) the claimant may file a written statement of the claim, in the form prescribed by rule, with the clerk of the court and deliver or mail a copy of the statement to the conservator. A claim is deemed presented on the first to occur of receipt of the written statement of claim by the conservator, or the filing of the claim with the court. A presented claim is allowed if it is not disallowed by written statement mailed by the conservator to the claimant within sixty days after its presentation. The presentation of a claim tolls any statute of limitation relating to the claim until thirty days after its disallowance.

(b) A claimant whose claim has not been paid may petition the court for determination of his claim at any time before it is barred by the applicable

statute of limitation and, upon due proof, procure an order for its allowance and payment from the estate. If a proceeding is pending against a protected person at the time of appointment of a conservator or is initiated against the protected person thereafter, the moving party must give notice of the proceeding to the conservator if the outcome is to constitute a claim against the estate.

(c) If it appears that the estate in conservatorship is likely to be exhausted before all existing claims are paid, preference is to be given to prior claims for the care, maintenance and education of the protected person or his dependents and existing claims for expenses of administration.

Source: Laws 1974, LB 354, § 275, UPC § 5-428.

30-2658 Individual liability of conservator.

(a) Unless otherwise provided in the contract, a conservator is not individually liable on a contract properly entered into in his fiduciary capacity in the course of administration of the estate unless he fails to reveal his representative capacity and identify the estate in the contract.

(b) The conservator is individually liable for obligations arising from ownership or control of property of the estate or for torts committed in the course of administration of the estate only if he is personally at fault.

(c) Claims based on contracts entered into by a conservator in his fiduciary capacity, on obligations arising from ownership or control of the estate, or on torts committed in the course of administration of the estate may be asserted against the estate by proceeding against the conservator in his fiduciary capacity, whether or not the conservator is individually liable therefor.

(d) Any question of liability between the estate and the conservator individually may be determined in a proceeding for accounting, surcharge, or indemnification, or other appropriate proceeding or action.

Source: Laws 1974, LB 354, § 276, UPC § 5-429.

30-2659 Termination of proceeding.

The protected person, his personal representative, the conservator or any other interested person may petition the court to terminate the conservatorship. A protected person seeking termination is entitled to the same rights and procedures as in an original proceeding for a protective order. The court, upon determining after notice and hearing that the minority or disability of the protected person has ceased, may terminate the conservatorship. Upon termination, title to assets of the estate passes to the former protected person or to his successors subject to provision in the order for expenses of administration or to conveyances from the conservator to the former protected person or his successors, to evidence the transfer.

Source: Laws 1974, LB 354, § 277, UPC § 5-430.

30-2660 Payment of debt and delivery of property to foreign conservator without local proceedings.

Any person indebted to a protected person, or having possession of property or of an instrument evidencing a debt, stock, or chose in action belonging to a protected person may pay or deliver to a conservator, guardian of the estate or other like fiduciary appointed by a court of the state of residence of the

protected person, upon being presented with proof of his appointment and an affidavit made by him or on his behalf stating:

(1) that no protective proceeding relating to the protected person is pending in this state; and

(2) that the foreign conservator is entitled to payment or to receive delivery. If the person to whom the affidavit is presented is not aware of any protective proceeding pending in this state, payment or delivery in response to the demand and affidavit discharges the debtor or possessor.

Source: Laws 1974, LB 354, § 278, UPC § 5-431.

30-2661 Domiciliary foreign conservator may file; when; powers.

If no local conservator has been appointed and no petition in a protective proceeding is pending in this state, a domiciliary foreign conservator may file, with a court in this state in a county in which property belonging to the protected person is located, authenticated copies of his appointment and of any official bond he has given. Thereafter, he may exercise as to assets in this state all powers of a local conservator and may maintain actions and proceedings in this state subject to any conditions imposed upon nonresident parties generally.

Source: Laws 1974, LB 354, § 279.

PART 5

POWERS OF ATTORNEY

30-2662 Repealed. Laws 1985, LB 292, § 15.

30-2663 Repealed. Laws 1985, LB 292, § 15.

30-2664 Act, how cited.

Sections 30-2664 to 30-2672 shall be known and may be cited as the Uniform Durable Power of Attorney Act.

Source: Laws 1985, LB 292, § 5.

30-2665 Durable power of attorney, defined.

As used in the Uniform Durable Power of Attorney Act, unless the context otherwise requires, durable power of attorney shall mean a power of attorney by which a principal designates another his or her attorney in fact in writing and the writing contains the words This power of attorney shall not be affected by subsequent disability or incapacity of the principal or This power of attorney shall become effective upon the disability or incapacity of the principal or similar words showing the intent of the principal that the authority conferred shall be exercisable notwithstanding the principal's subsequent disability or incapacity.

Source: Laws 1985, LB 292, § 6.

30-2666 Durable power of attorney not affected by disability.

All acts done by an attorney in fact pursuant to a durable power of attorney during any period of disability or incapacity of the principal have the same

effect and inure to the benefit of and bind the principal and his or her successors in interest as if the principal were competent and not disabled.

Source: Laws 1985, LB 292, § 7.

As a matter of law, the sale of a specifically bequeathed property by an attorney in fact must be treated as the act of a competent principal who, by such act, impliedly revoked the specific bequest of such property. Under the common law, ademption by implied revocation necessarily results from such a transfer. In re Estate of Bauer, 270 Neb. 91, 700 N.W.2d 572 (2005).

An attorney in fact who is acting under a durable general power of attorney to change the beneficiary designation of a principal's life insurance policy does not effect a gratuitous transfer of the principal's assets when the attorney in fact, or any third party having a relationship with the attorney in fact, does not benefit from the change, and the uncontroverted evidence establishes that the change was made in accordance with the principal's express instructions. First Colony Life Ins. Co. v. Gerdes, 267 Neb. 632, 676 N.W.2d 58 (2004).

30-2667 Fiduciary; relation to attorney in fact; appointment procedure.

(1) If, following execution of a durable power of attorney, a court of the principal's domicile appoints a conservator, guardian of the estate, or other fiduciary charged with the management of all of the principal's property or all of his or her property except specified exclusions, the attorney in fact shall be accountable to the fiduciary as well as to the principal. The fiduciary shall have the same power to revoke or amend the power of attorney that the principal would have had if he or she were not disabled or incapacitated.

(2) A principal may nominate, by a durable power of attorney, the conservator, guardian of the estate, or guardian of the person for consideration by the court if protective proceedings for the principal's person or estate are thereafter commenced. The court shall make its appointment in accordance with the principal's most recent nomination in a durable power of attorney except for good cause or disqualification. A principal in a power of attorney or a durable power of attorney may waive the requirement that the conservator, guardian of the estate, or guardian of the person be required to post a bond.

Source: Laws 1985, LB 292, § 8.

30-2668 Power of attorney; death of principal; effect.

(1) The death of a principal who has executed a written power of attorney, durable or otherwise, does not revoke or terminate the agency as to the attorney in fact or other person, who, without actual knowledge of the death of the principal, acts in good faith under the power. Any action so taken, unless otherwise invalid or unenforceable, binds successors in interest of the principal.

(2) The disability or incapacity of a principal who has previously executed a written power of attorney that is not a durable power of attorney does not revoke or terminate the agency as to the attorney in fact or other person, who, without actual knowledge of the disability or incapacity of the principal, acts in good faith under the power. Any action so taken, unless otherwise invalid or unenforceable, binds the principal and his or her successors in interest.

Source: Laws 1985, LB 292, § 9.

30-2669 Proof of continuance of power of attorney by affidavit.

As to acts undertaken in good faith reliance thereon, an affidavit executed by the attorney in fact under a power of attorney, durable or otherwise, stating that he or she did not have at the time of exercise of the power actual knowledge of the termination of the power by revocation or of the principal's death, disability, or incapacity is conclusive proof of the nonrevocation or nontermination of the power at that time. If the exercise of the power of

attorney requires execution and delivery of any instrument that is recordable, the affidavit when authenticated for record is likewise recordable. This section shall not affect any provision in a power of attorney for its termination by expiration of time or occurrence of an event other than express revocation or a change in the principal's capacity.

Source: Laws 1985, LB 292, § 10.

30-2670 Previously executed power of attorney; effect.

The validity and enforceability of a power of attorney executed prior to September 6, 1985, shall be governed by the law in effect on the date of execution of such power of attorney.

Source: Laws 1985, LB 292, § 11.

30-2671 Durable power of attorney; determination of validity; jurisdiction.

The county court and the district court of the principal's domicile shall have concurrent jurisdiction to determine the validity and enforceability of a durable power of attorney.

Source: Laws 1985, LB 292, § 12.

30-2672 Construction of act.

The Uniform Durable Power of Attorney Act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of such act among states enacting it.

Source: Laws 1985, LB 292, § 13.

ARTICLE 27
NONPROBATE TRANSFERS

Section
30-2701. Repealed. Laws 1993, LB 250, § 34.
30-2702. Repealed. Laws 1993, LB 250, § 34.
30-2703. Repealed. Laws 1993, LB 250, § 34.
30-2704. Repealed. Laws 1993, LB 250, § 34.
30-2705. Repealed. Laws 1993, LB 250, § 34.
30-2706. Repealed. Laws 1993, LB 250, § 34.
30-2707. Repealed. Laws 1993, LB 250, § 34.
30-2708. Repealed. Laws 1993, LB 250, § 34.
30-2709. Repealed. Laws 1993, LB 250, § 34.
30-2710. Repealed. Laws 1993, LB 250, § 34.
30-2711. Repealed. Laws 1993, LB 250, § 34.
30-2712. Repealed. Laws 1993, LB 250, § 34.
30-2713. Repealed. Laws 1993, LB 250, § 34.
30-2714. Repealed. Laws 1993, LB 250, § 34.
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30-2724. Alteration of rights.
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30-2727. Authority of financial institution.
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30-2734. Definitions.
30-2735. Registration in beneficiary form; sole or joint tenancy ownership.
30-2736. Registration in beneficiary form; applicable law.
30-2737. Registration in beneficiary form; when.
30-2738. Form of registration in beneficiary form.
30-2739. Effect of registration in beneficiary form.
30-2740. Ownership on death of owner.
30-2741. Protection of registering entity.
30-2742. Nontestamentary transfer on death.
30-2743. Transfer; when not effective.
30-2744. Terms, conditions, and forms for registration.
30-2745. Application of sections.
30-2746. Sections, how construed.

30-2701 Repealed. Laws 1993, LB 250, § 34.

30-2702 Repealed. Laws 1993, LB 250, § 34.

30-2703 Repealed. Laws 1993, LB 250, § 34.

30-2704 Repealed. Laws 1993, LB 250, § 34.

30-2705 Repealed. Laws 1993, LB 250, § 34.

30-2706 Repealed. Laws 1993, LB 250, § 34.

30-2707 Repealed. Laws 1993, LB 250, § 34.

30-2708 Repealed. Laws 1993, LB 250, § 34.

30-2709 Repealed. Laws 1993, LB 250, § 34.

30-2710 Repealed. Laws 1993, LB 250, § 34.

30-2711 Repealed. Laws 1993, LB 250, § 34.

30-2712 Repealed. Laws 1993, LB 250, § 34.

30-2713 Repealed. Laws 1993, LB 250, § 34.

30-2714 Repealed. Laws 1993, LB 250, § 34.

PART 1

PROVISIONS RELATING TO EFFECT OF DEATH

30-2715 Nonprobate transfers on death.

(a) A provision for a nonprobate transfer on death in an insurance policy, contract of employment, bond, mortgage, promissory note, certificated or uncertificated security, account agreement, custodial agreement, deposit agreement, compensation plan, pension plan, individual retirement plan, employee benefit plan, trust, marital property agreement, or other written instrument of a similar nature is nontestamentary. This subsection includes a written provision that:

(1) money or other benefits due to, controlled by, or owned by a decedent before death must be paid after the decedent's death to a person whom the decedent designates either in the instrument or in a separate writing, including a will, executed either before or at the same time as the instrument, or later;

(2) money due or to become due under the instrument ceases to be payable in the event of death of the promisee or the promisor before payment or demand; or

(3) any property controlled by or owned by the decedent before death which is the subject of the instrument passes to a person the decedent designates either in the instrument or in a separate writing, including a will, executed either before or at the same time as the instrument, or later.

(b) This section does not limit rights of creditors under other laws of this state.

Source: Laws 1993, LB 250, § 1.

PART 2

MULTIPLE-PERSON ACCOUNTS

SUBPART A

DEFINITIONS AND GENERAL PROVISIONS

30-2716 Definitions.

In sections 30-2716 to 30-2733:

(1) Account means a contract of deposit between a depositor and a financial institution, and includes a checking account, savings account, certificate of deposit, and share account.

(2) Agent means a person authorized to make account transactions for a party.

(3) Beneficiary means a person named as one to whom sums on deposit in an account are payable on request after death of all parties or for whom a party is named as trustee.

(4) Financial institution means an organization authorized to do business under state or federal laws relating to financial institutions, and includes a bank, trust company, savings bank, building and loan association, savings and loan company or association, and credit union.

(5) Multiple-party account means an account payable on request to one or more of two or more parties, whether or not a right of survivorship is mentioned.

(6) Party means a person who, by the terms of an account, has a present right, subject to request, to payment from the account other than as a beneficiary or agent.

(7) Payment of sums on deposit includes withdrawal, payment to a party or third person pursuant to check or other request, and a pledge of sums on deposit by a party, or a setoff, reduction, or other disposition of all or part of an account pursuant to a pledge.

(8) POD designation means the designation of (i) a beneficiary in an account payable on request to one party during the party's lifetime and on the party's death to one or more beneficiaries, or to one or more parties during their lifetimes and on death of all of them to one or more beneficiaries, or (ii) a beneficiary in an account in the name of one or more parties as trustee for one or more beneficiaries if the relationship is established by the terms of the account and there is no subject of the trust other than the sums on deposit in the account, whether or not payment to the beneficiary is mentioned.

(9) Receive, as it relates to notice to a financial institution, means receipt in the office or branch office of the financial institution in which the account is established, but if the terms of the account require notice at a particular place, in the place required.

(10) Request means a request for payment complying with all terms of the account, including special requirements concerning necessary signatures and regulations of the financial institution; but, for purposes of sections 30-2716 to 30-2733, if terms of the account condition payment on advance notice, a request for payment is treated as immediately effective and a notice of intent to withdraw is treated as a request for payment.

(11) Sums on deposit means the balance payable on an account, including interest and dividends earned, whether or not included in the current balance, and any deposit life insurance proceeds added to the account by reason of death of a party.

(12) Terms of the account include the deposit agreement and other terms and conditions, including the form, of the contract of deposit.

Source: Laws 1993, LB 250, § 2.

30-2717 Limitation on scope of sections.

Sections 30-2716 to 30-2733 do not apply to (i) an account established for a partnership, limited liability company, joint venture, or other organization for a business purpose, (ii) an account controlled by one or more persons as an agent or trustee for a corporation, unincorporated association, or charitable or civic organization, or (iii) a fiduciary or trust account in which the relationship is established other than by the terms of the account.

Source: Laws 1993, LB 250, § 3; Laws 1994, LB 884, § 56.

30-2718 Types of account; existing accounts.

(a) An account may be for a single party or multiple parties. A multiple-party account may be with or without a right of survivorship between the parties. Subject to subsection (c) of section 30-2723, either a single-party account or a

multiple-party account may have a POD designation, an agency designation, or both.

(b) An account established before, on, or after September 9, 1993, whether in the form prescribed in section 30-2719 or in any other form, is either a single-party account or a multiple-party account, with or without right of survivorship, and with or without a POD designation or an agency designation, within the meaning of sections 30-2716 to 30-2733, and is governed by such sections.

Source: Laws 1993, LB 250, § 4.

30-2719 Forms.

(a) A contract of deposit that contains provisions in substantially the form provided in this subsection establishes the type of account provided, and the account is governed by the provisions of sections 30-2716 to 30-2733 applicable to an account of that type.

UNIFORM SINGLE- OR MULTIPLE-PARTY ACCOUNT FORM

PARTIES (Name One Or More Parties):
....

OWNERSHIP (Select One And Initial):
.....SINGLE-PARTY ACCOUNT
.....MULTIPLE-PARTY ACCOUNT
Parties own account in proportion to net contributions unless there is clear and convincing evidence of a different intent.

RIGHTS AT DEATH (Select One And Initial):
.....SINGLE-PARTY ACCOUNT
At death of party, ownership passes as part of party's estate.
.....SINGLE-PARTY ACCOUNT WITH POD (PAY ON DEATH) DESIGNATION
(Name One Or More Beneficiaries):
....
At death of party, ownership passes to POD beneficiaries and is not part of party's estate.
.....MULTIPLE-PARTY ACCOUNT WITH RIGHT OF SURVIVORSHIP
At death of party, ownership passes to surviving parties.
.....MULTIPLE-PARTY ACCOUNT WITH RIGHT OF SURVIVORSHIP AND POD (PAY ON DEATH) DESIGNATION
(Name One Or More Beneficiaries):
....
At death of last surviving party, ownership passes to POD beneficiaries and is not part of last surviving party's estate.
.....MULTIPLE-PARTY ACCOUNT WITHOUT RIGHT OF SURVIVORSHIP
At death of party, deceased party's ownership passes as part of deceased party's estate.

AGENCY (POWER OF ATTORNEY) DESIGNATION (Optional)
Agents may make account transactions for parties but have no ownership or rights at death unless named as POD beneficiaries.
(To Add Agency Designation To Account, Name One Or More Agents):
....
(Select One And Initial):

. . . . .AGENCY DESIGNATION SURVIVES DISABILITY OR INCAPACITY OF PARTIES
. . . . .AGENCY DESIGNATION TERMINATES ON DISABILITY OR INCAPACITY OF PARTIES

(b) A contract of deposit that does not contain provisions in substantially the form provided in subsection (a) of this section is governed by the provisions of sections 30-2716 to 30-2733 applicable to the type of account that most nearly conforms to the depositor's intent.

Source: Laws 1993, LB 250, § 5.

30-2720 Designation of agent.

(a) By a writing signed by all parties, the parties may designate as agent of all parties on an account a person other than a party.

(b) Unless the terms of an agency designation provide that the authority of the agent terminates on disability or incapacity of a party, the agent's authority survives disability and incapacity. The agent may act for a disabled or incapacitated party until the authority of the agent is terminated.

(c) Death of the sole party or last surviving party terminates the authority of an agent.

Source: Laws 1993, LB 250, § 6.

30-2721 Applicability of sections.

The provisions of sections 30-2722 to 30-2726 concerning beneficial ownership as between parties or as between parties and beneficiaries apply only to controversies between those persons and their creditors and other successors, and do not apply to the rights of those persons to payment as determined by the terms of the account. Sections 30-2727 to 30-2733 govern the liability and setoff rights of financial institutions that make payments pursuant to such sections.

Source: Laws 1993, LB 250, § 7.

SUBPART B

OWNERSHIP AS BETWEEN PARTIES AND OTHERS

30-2722 Ownership during lifetime.

(a) In this section, net contribution of a party means the sum of all deposits to an account made by or for the party, less all payments from the account made to or for the party which have not been paid to or applied to the use of another party and a proportionate share of any charges deducted from the account, plus a proportionate share of any interest or dividends earned, whether or not included in the current balance. The term includes deposit life insurance proceeds added to the account by reason of death of the party whose net contribution is in question.

(b) During the lifetime of all parties, an account belongs to the parties in proportion to the net contribution of each to the sums on deposit, unless there is clear and convincing evidence of a different intent. As between parties married to each other, in the absence of proof otherwise, the net contribution of each is presumed to be an equal amount.

(c) A beneficiary in an account having a POD designation has no right to sums on deposit during the lifetime of any party.

(d) An agent in an account with an agency designation has no beneficial right to sums on deposit.

Source: Laws 1993, LB 250, § 8.

A certificate of deposit in the names of multiple parties is a type of joint account. Peterson v. Peterson, 230 Neb. 479, 432 N.W.2d 231 (1988).

In view of the language of this section, clear and convincing evidence is required to sustain a finding of undue influence in effecting a change in the ownership of a joint account. Peterson v. Peterson, 230 Neb. 479, 432 N.W.2d 231 (1988).

Like testamentary devices, under this section the creation of a joint account, without more, accomplishes no present transfer of title to property. Peterson v. Peterson, 230 Neb. 479, 432 N.W.2d 231 (1988).

A joint account, during the lifetime of the parties, belongs to the parties in proportion to the net contributions by each to the account, unless there is clear and convincing evidence of other intent. Craig v. Hastings State Bank, 221 Neb. 746, 380 N.W.2d 618 (1986).

The exclusive method for altering the form of an existing joint account is by a signed written notice given by a party to the financial institution during the life of the party. Linehan v. First Nat. Bank of Gordon, 7 Neb. App. 54, 579 N.W.2d 157 (1998).

Pursuant to subsection (b) of this section, the placing of nonmarital funds in joint tenancy by the spouse owning such funds does not create a presumption of a gift. LaBenz v. LaBenz, 6 Neb. App. 491, 575 N.W.2d 161 (1998).

30-2723 Rights at death.

(a) Except as otherwise provided in sections 30-2716 to 30-2733, on death of a party sums on deposit in a multiple-party account belong to the surviving party or parties. If two or more parties survive and one is the surviving spouse of the decedent, the amount to which the decedent, immediately before death, was beneficially entitled under section 30-2722 belongs to the surviving spouse. If two or more parties survive and none is the surviving spouse of the decedent, the amount to which the decedent, immediately before death, was beneficially entitled under such section belongs to the surviving parties in equal shares, and augments the proportion to which each survivor, immediately before the decedent's death, was beneficially entitled under section 30-2722, and the right of survivorship continues between the surviving parties.

(b) In an account with a POD designation:

(1) On death of one of two or more parties, the rights in sums on deposit are governed by subsection (a) of this section.

(2) On death of the sole party or the last survivor of two or more parties, sums on deposit belong to the surviving beneficiary or beneficiaries. If two or more beneficiaries survive, sums on deposit belong to them in equal and undivided shares, and there is no right of survivorship in the event of death of a beneficiary thereafter. If no beneficiary survives, sums on deposit belong to the estate of the last surviving party.

(c) Sums on deposit in a single-party account without a POD designation, or in a multiple-party account that, by the terms of the account, is without right of survivorship, are not affected by death of a party, but the amount to which the decedent, immediately before death, was beneficially entitled under section 30-2722 is transferred as part of the decedent's estate. A POD designation in a multiple-party account without right of survivorship is ineffective. For purposes of this section, designation of an account as a tenancy in common establishes that the account is without right of survivorship.

(d) The ownership right of a surviving party or beneficiary, or of the decedent's estate, in sums on deposit is subject to requests for payment made by a party before the party's death, whether paid by the financial institution before or after death, or unpaid. The surviving party or beneficiary, or the decedent's estate, is liable to the payee of an unpaid request for payment. The

liability is limited to a proportionate share of the amount transferred under this section, to the extent necessary to discharge the request for payment.

Source: Laws 1993, LB 250, § 9.

Pursuant to subsection (d), unpaid checks written on a party's account before the party's death must be paid by the beneficiary of the sums on deposit in the decedent's account. In re Estate of Lamplaugh, 270 Neb. 941, 708 N.W.2d 645 (2005).

To establish a valid joint account, it is not necessary the beneficiary or donee have knowledge of its creation, sign signature cards, or deposit or withdraw funds to the account. The intent of the depositor is the significant consideration in determining the effect of a joint account. In re Estate of Lienemann, 222 Neb. 169, 382 N.W.2d 595 (1986).

30-2724 Alteration of rights.

(a) Rights at death under section 30-2723 are determined by the type of account at the death of a party. The type of account may be altered by written notice given by a party to the financial institution to change the type of account or to stop or vary payment under the terms of the account. The notice must be signed by a party and received by the financial institution during the party's lifetime.

(b) A right of survivorship arising from the express terms of the account, section 30-2723, or a POD designation, may not be altered by will.

Source: Laws 1993, LB 250, § 10.

The use of the word ''may'' in subsection (a) of this section grants a party the right to alter the type of account the party owns, but a party must give his or her financial institution signed written notice to exercise that right. Newman v. Thomas, 264 Neb. 801, 652 N.W.2d 565 (2002).

Under the current version of article 27 of the Nebraska Probate Code, signed written notice is required for transforming a non-pay-on-death, single-party account into a multiparty or pay-on-death account. Newman v. Thomas, 264 Neb. 801, 652 N.W.2d 565 (2002).

30-2725 Accounts and transfers nontestamentary.

Except as provided in sections 30-2313 to 30-2319 (elective share of surviving spouse) or as a consequence of, and to the extent directed by, section 30-2726, a transfer resulting from the application of section 30-2723 is effective by reason of the terms of the account involved and sections 30-2716 to 30-2733 and is not testamentary or subject to sections 30-2201 to 30-2512 (estate administration).

Source: Laws 1993, LB 250, § 11.

30-2726 Rights of creditors and others.

(a) If other assets of the estate are insufficient, a transfer resulting from a right of survivorship or POD designation under sections 30-2716 to 30-2733 is not effective against the estate of a deceased party to the extent needed to pay claims against the estate, statutory allowances to the surviving spouse and children, taxes, and expenses of administration.

(b) A surviving party or beneficiary who receives payment from an account after death of a party is liable to account to the personal representative of the decedent for a proportionate share of the amount received to which the decedent, immediately before death, was beneficially entitled under section 30-2722, to the extent necessary to discharge the amounts described in subsection (a) of this section remaining unpaid after application of the decedent's estate. A proceeding to assert the liability for claims against the estate and statutory allowances may not be commenced unless the personal representative has received a written demand by the surviving spouse, a creditor, a child, or a person acting for a child of the decedent. The proceeding must be commenced within one year after death of the decedent.

(c) A surviving party or beneficiary under sections 30-2716 to 30-2733 against whom a proceeding to account is brought may join as a party to the proceeding a surviving party or beneficiary of any other account of the decedent or a surviving owner or beneficiary under sections 30-2734 to 30-2745 of any securities or securities account of the decedent or proceeds thereof.

(d) Sums recovered by the personal representative must be administered as part of the decedent's estate. This section does not affect the protection from claims of the personal representative or estate of a deceased party provided in section 30-2732 for a financial institution that makes payment in accordance with the terms of the account.

Source: Laws 1993, LB 250, § 12.

SUBPART C

PROTECTION OF FINANCIAL INSTITUTIONS

30-2727 Authority of financial institution.

A financial institution may enter into a contract of deposit for a multiple-party account to the same extent it may enter into a contract of deposit for a single-party account, and may provide for a POD designation and an agency designation in either a single-party account or a multiple-party account. A financial institution need not inquire as to the source of a deposit to an account or as to the proposed application of a payment from an account.

Source: Laws 1993, LB 250, § 13.

30-2728 Payment on multiple-party account.

A financial institution, on request, may pay sums on deposit in a multiple-party account to:

(1) one or more of the parties, whether or not another party is disabled, incapacitated, or deceased when payment is requested and whether or not the party making the request survives another party; or

(2) the personal representative, if any, or, if there is none, the heirs or devisees of a deceased party in accordance with sections 30-24,125 and 30-24,126 if proof of death is presented to the financial institution showing that the deceased party was the survivor of all other persons named on the account either as a party or beneficiary, unless the account is without right of survivorship under section 30-2723.

Source: Laws 1993, LB 250, § 14.

30-2729 Payment on POD designation.

A financial institution, on request, may pay sums on deposit in an account with a POD designation to:

(1) one or more of the parties, whether or not another party is disabled, incapacitated, or deceased when the payment is requested and whether or not a party survives another party;

(2) the beneficiary or beneficiaries, if proof of death is presented to the financial institution showing that the beneficiary or beneficiaries survived all persons named as parties; or

(3) the personal representative, if any, or, if there is none, the heirs or devisees of a deceased party, if proof of death is presented to the financial institution showing that the deceased party was the survivor of all other persons named on the account either as a party or beneficiary.

Source: Laws 1993, LB 250, § 15.

30-2730 Payment to designated agent.

Subject to the provisions of section 30-2732, a financial institution, on request of an agent under an agency designation for an account, may pay to the agent sums on deposit in the account, whether or not a party is disabled, incapacitated, or deceased when the request is made or received, and whether or not the authority of the agent terminates on the disability or incapacity of a party.

Source: Laws 1993, LB 250, § 16.

30-2731 Payment to minor.

If a financial institution is required or permitted to make payment pursuant to sections 30-2716 to 30-2733 to a minor designated as a beneficiary, payment may be made pursuant to the Nebraska Uniform Transfers to Minors Act or pursuant to any other laws of this state.

Source: Laws 1993, LB 250, § 17.

Cross References

Nebraska Uniform Transfers to Minors Act, see section 43-2701.

30-2732 Discharge.

(a) Payment made pursuant to sections 30-2716 to 30-2733 in accordance with the type of account discharges the financial institution from all claims for amounts so paid, whether or not the payment is consistent with the beneficial ownership of the account as between parties, beneficiaries, or their successors. Payment may be made whether or not a party, beneficiary, or agent is disabled, incapacitated, or deceased when payment is requested, received, or made.

(b) Protection under this section does not extend to payments made after a financial institution has received written notice from a party, or from the personal representative, surviving spouse, or heir or devisee of a deceased party, to the effect that payments in accordance with the terms of the account, including one having an agency designation, should not be permitted, and the financial institution has had a reasonable opportunity to act on it when the payment is made. Unless the notice is withdrawn by the person giving it, the successor of any deceased party must concur in a request for payment if the financial institution is to be protected under this section. Unless a financial institution has been served with process in an action or proceeding, no other notice or other information shown to have been available to the financial institution affects its right to protection under this section.

(c) A financial institution that receives written notice pursuant to this section or otherwise has reason to believe that a dispute exists as to the rights of the parties may refuse, without liability, to make payments in accordance with the terms of the account.

(d) Protection of a financial institution under this section does not affect the rights of parties in disputes between themselves or their successors concerning

the beneficial ownership of sums on deposit in accounts or payments made from accounts.

Source: Laws 1993, LB 250, § 18.

30-2733 Setoff.

Without qualifying any other statutory right to setoff or lien and subject to any contractual provision, if a party is indebted to a financial institution, the financial institution has a right to setoff against the account. The amount of the account subject to setoff is the proportion to which the party is, or immediately before death was, beneficially entitled under section 30-2722 or, in the absence of proof of that proportion, an equal share with all parties.

Source: Laws 1993, LB 250, § 19.

A bank has no right of setoff against the beneficial interest contributed by a nondebtor depositor. Where there is a joint account and proof of net contributions, the amount subject to setoff by the bank is determined by a party's net contribution. Craig v. Hastings State Bank, 221 Neb. 746, 380 N.W.2d 618 (1986).

If a person has the right to withdraw funds from a joint account and is indebted to the bank where the account is maintained, the bank has a right of setoff against such indebtedness. Craig v. Hastings State Bank, 221 Neb. 746, 380 N.W.2d 618 (1986).

This section is subject to agreements between a bank and its depositor. A bank may define by contract with its depositor the extent of its power of setoff. Uttecht v. Norwest Bank of Norfolk, 221 Neb. 222, 376 N.W.2d 11 (1985).

PART 3

UNIFORM TOD SECURITY REGISTRATION

30-2734 Definitions.

In sections 30-2734 to 30-2745:

(1) Beneficiary form means a registration of a security which indicates the present owner of the security and the intention of the owner regarding the person who will become the owner of the security upon the death of the owner.

(2) Register, including its derivatives, means to issue a certificate showing the ownership of a certificated security or, in the case of an uncertificated security, to initiate or transfer an account showing ownership of securities.

(3) Registering entity means a person who originates or transfers a security title by registration, and includes a broker maintaining security accounts for customers and a transfer agent or other person acting for or as an issuer of securities.

(4) Security means a share, participation, or other interest in property, in a business, or in an obligation of an enterprise or other issuer, and includes a certificated security, an uncertificated security, and a security account.

(5) Security account means (i) a reinvestment account associated with a security, a securities account with a broker, a cash balance in a brokerage account, cash, interest, earnings, or dividends earned or declared on a security in an account, a reinvestment account, or a brokerage account, whether or not credited to the account before the owner's death, (ii) an investment management or custody account with a trust company or a trust department of a bank with trust powers, including the securities in the account, a cash balance in the account, and cash, cash equivalents, interest, earnings, or dividends earned or declared on a security in the account, whether or not credited to the account before the owner's death, or (iii) a cash balance or other property held for or due to the owner of a security as a replacement for or product of an account security, whether or not credited to the account before the owner's death.

(6) The words transfer on death or the abbreviation TOD and the words pay on death or the abbreviation POD are used without regard for whether the subject is a money claim against an insurer, such as its own note or bond for money loaned, or is a claim to securities evidenced by conventional title documentation.

Source: Laws 1993, LB 250, § 20; Laws 2004, LB 999, § 23.

30-2735 Registration in beneficiary form; sole or joint tenancy ownership.

Only individuals whose registration of a security shows sole ownership by one individual or multiple ownership by two or more with right of survivorship, rather than as tenants in common, may obtain registration in beneficiary form. Multiple owners of a security registered in beneficiary form hold as joint tenants with right of survivorship, as tenants by the entireties, or as owners of community property held in survivorship form, and not as tenants in common.

Source: Laws 1993, LB 250, § 21.

30-2736 Registration in beneficiary form; applicable law.

A security may be registered in beneficiary form if the form is authorized by sections 30-2734 to 30-2745 or a similar statute of the state of organization of the issuer or registering entity, the location of the registering entity's principal office, the office of its transfer agent or its office making the registration, or by sections 30-2734 to 30-2745 or a similar statute of the law of the state listed as the owner's address at the time of registration. A registration governed by the law of a jurisdiction in which sections 30-2735 to 30-2745 or similar legislation is not in force or was not in force when a registration in beneficiary form was made is nevertheless presumed to be valid and authorized as a matter of contract law.

Source: Laws 1993, LB 250, § 22.

30-2737 Registration in beneficiary form; when.

A security, whether evidenced by certificate or account, is registered in beneficiary form when the registration includes a designation of a beneficiary to take the ownership at the death of the owner or the deaths of all multiple owners.

Source: Laws 1993, LB 250, § 23.

30-2738 Form of registration in beneficiary form.

Registration in beneficiary form may be shown by the words transfer on death or the abbreviation TOD, or by the words pay on death or the abbreviation POD, after the name of the registered owner and before the name of a beneficiary.

Source: Laws 1993, LB 250, § 24.

30-2739 Effect of registration in beneficiary form.

The designation of a TOD or POD beneficiary on a registration in beneficiary form has no effect on ownership until the owner's death. A registration of a

security in beneficiary form may be canceled or changed at any time by the sole owner or all then surviving owners without the consent of the beneficiary.

Source: Laws 1993, LB 250, § 25.

30-2740 Ownership on death of owner.

On death of a sole owner or the last to die of all multiple owners, ownership of securities registered in beneficiary form passes to the beneficiary or beneficiaries who survive all owners. On proof of death of all owners and compliance with any applicable requirements of the registering entity, a security registered in beneficiary form may be reregistered in the name of the beneficiary or beneficiaries who survived the death of all owners. Until division of the security after the death of all owners, multiple beneficiaries surviving the death of all owners hold their interests as tenants in common. If no beneficiary survives the death of all owners, the security belongs to the estate of the deceased sole owner or the estate of the last to die of all multiple owners.

Source: Laws 1993, LB 250, § 26.

30-2741 Protection of registering entity.

(a) A registering entity is not required to offer or to accept a request for security registration in beneficiary form. If a registration in beneficiary form is offered by a registering entity, the owner requesting registration in beneficiary form assents to the protections given to the registering entity by sections 30-2734 to 30-2745.

(b) By accepting a request for registration of a security in beneficiary form, the registering entity agrees that the registration will be implemented on death of the deceased owner as provided in sections 30-2734 to 30-2745.

(c) A registering entity is discharged from all claims to a security by the estate, creditors, heirs, or devisees of a deceased owner if it registers a transfer of the security in accordance with section 30-2740 and does so in good faith reliance (i) on the registration, (ii) on sections 30-2734 to 30-2745, and (iii) on information provided to it by affidavit of the personal representative of the deceased owner, or by the surviving beneficiary or by the surviving beneficiary's representatives, or other information available to the registering entity. The protections of sections 30-2734 to 30-2745 do not extend to a reregistration or payment made after a registering entity has received written notice from any claimant to any interest in the security objecting to implementation of a registration in beneficiary form. No other notice or other information available to the registering entity affects its right to protection under sections 30-2734 to 30-2745.

(d) The protection provided by sections 30-2734 to 30-2745 to the registering entity of a security does not affect the rights of beneficiaries in disputes between themselves and other claimants to ownership of the security transferred or its value or proceeds.

Source: Laws 1993, LB 250, § 27.

30-2742 Nontestamentary transfer on death.

(a) A transfer on death resulting from a registration in beneficiary form is effective by reason of the contract regarding the registration between the owner

and the registering entity and sections 30-2734 to 30-2745 and is not testamentary.

(b) Sections 30-2734 to 30-2745 do not limit the rights of creditors of security owners against beneficiaries and other transferees under other laws of this state.

Source: Laws 1993, LB 250, § 28.

30-2743 Transfer; when not effective.

(a) If other assets of the estate are insufficient, a transfer resulting from a right of survivorship, POD designation or TOD registration under sections 30-2734 to 30-2745 is not effective against the estate of a deceased owner to the extent needed to pay claims against the estate, statutory allowances to the surviving spouse and children, taxes, and expenses of administration.

(b) A surviving owner or beneficiary who receives registered or reregistered securities or securities accounts or proceeds thereof after the death of a party is liable to account to the personal representative of the decedent for a proportionate share of the amount received to which the decedent, immediately before death, was beneficially entitled, to the extent necessary to discharge the amounts described in subsection (a) of this section remaining unpaid after application of the decedent's estate. A proceeding to assert the liability for claims against the estate and statutory allowances may not be commenced unless the personal representative has received a written demand by the surviving spouse, a creditor, a child, or a person acting for a child of the decedent. The proceeding must be commenced within one year after the death of the decedent.

(c) A surviving owner or beneficiary against whom a proceeding to account is brought may join as a party to the proceeding a surviving owner or beneficiary under sections 30-2734 to 30-2745 of any other security or securities account of the decedent or proceeds thereof or a surviving party or beneficiary of any account under sections 30-2716 to 30-2733.

(d) Sums recovered by the personal representative must be administered as a part of the decedent's estate. This section does not affect the protection from claims of the personal representative or estate of a deceased owner provided in section 30-2741 for an issuer or registering entity that makes payment in accordance with the terms of the security registration.

Source: Laws 1993, LB 250, § 29.

30-2744 Terms, conditions, and forms for registration.

(a) A registering entity offering to accept registrations in beneficiary form may establish the terms and conditions under which it will receive requests (i) for registrations in beneficiary form, and (ii) for implementation of registrations in beneficiary form, including requests for cancellation of previously registered TOD beneficiary designations and requests for reregistration to effect a change of beneficiary. The terms and conditions so established may provide for proving death, avoiding or resolving any problems concerning fractional shares, designating primary and contingent beneficiaries, and substituting a named beneficiary's descendants to take in the place of the named beneficiary in the event of the beneficiary's death. Substitution may be indicated by appending to the name of the primary beneficiary the letters LDPS, standing for lineal descen-

dants per stirpes. This designation substitutes a deceased beneficiary's descendants who survive the owner for a beneficiary who fails to so survive, the descendants to be identified and to share in accordance with the law of the beneficiary's domicile at the owner's death governing inheritance by descendants of an intestate. Other forms of identifying beneficiaries who are to take on one or more contingencies, and rules for providing proofs and assurances needed to satisfy reasonable concerns by registering entities regarding conditions and identities relevant to accurate implementation of registrations in beneficiary form, may be contained in a registering entity's terms and conditions.

(b) The following are illustrations of registrations in beneficiary form which a registering entity may authorize:

(1) Sole owner-sole beneficiary: John S Brown TOD (or POD) John S Brown Jr.

(2) Multiple owners-sole beneficiary: John S Brown Mary B Brown JT TEN TOD John S Brown Jr.

(3) Multiple owners-primary and secondary (substituted) beneficiaries: John S Brown Mary B Brown JT TEN TOD John S Brown Jr SUB BENE Peter Q Brown *or* John S Brown Mary B Brown JT TEN TOD John S Brown Jr LDPS.

Source: Laws 1993, LB 250, § 30.

30-2745 Application of sections.

Sections 30-2734 to 30-2745 apply to registrations of securities in beneficiary form made before, on, or after September 9, 1993, by decedents dying on or after such date.

Source: Laws 1993, LB 250, § 31.

30-2746 Sections, how construed.

Sections 30-2715 to 30-2746 shall be so construed as to effectuate their general purpose to make uniform the law of those states which enact them.

Source: Laws 1993, LB 250, § 32.

ARTICLE 28
TRUST ADMINISTRATION

PART 1
TRUST REGISTRATION

Section
30-2801. Transferred to section 30-3816.
30-2802. Transferred to section 30-3817.
30-2803. Transferred to section 30-3819.
30-2804. Repealed. Laws 2003, LB 130, § 143.
30-2805. Transferred to section 30-3820.

PART 2
JURISDICTION OF COURT CONCERNING TRUSTS

30-2806. Repealed. Laws 2003, LB 130, § 143.
30-2807. Repealed. Laws 2003, LB 130, § 143.
30-2808. Repealed. Laws 2003, LB 130, § 143.
30-2809. Repealed. Laws 2003, LB 130, § 143.
30-2810. Repealed. Laws 2003, LB 130, § 143.
30-2811. Repealed. Laws 2003, LB 130, § 143.

PART 3
DUTIES AND LIABILITIES OF TRUSTEES

30-2812. Repealed. Laws 2003, LB 130, § 143.

Section
30-2813. Repealed. Laws 2003, LB 130, § 143.
30-2814. Repealed. Laws 2003, LB 130, § 143.
30-2815. Repealed. Laws 2003, LB 130, § 143.
30-2816. Repealed. Laws 2003, LB 130, § 143.
30-2817. Repealed. Laws 2003, LB 130, § 143.
30-2818. Repealed. Laws 2003, LB 130, § 143.

PART 4
POWERS OF TRUSTEES

30-2819. Repealed. Laws 2003, LB 130, § 143.
30-2820. Repealed. Laws 2003, LB 130, § 143.
30-2821. Repealed. Laws 2003, LB 130, § 143.
30-2822. Repealed. Laws 2003, LB 130, § 143.
30-2823. Repealed. Laws 2003, LB 130, § 143.
30-2824. Repealed. Laws 2003, LB 130, § 143.
30-2825. Repealed. Laws 2003, LB 130, § 143.
30-2826. Repealed. Laws 2003, LB 130, § 143.

PART 1

TRUST REGISTRATION

30-2801 Transferred to section 30-3816.

30-2802 Transferred to section 30-3817.

30-2803 Transferred to section 30-3819.

30-2804 Repealed. Laws 2003, LB 130, § 143.

30-2805 Transferred to section 30-3820.

PART 2

JURISDICTION OF COURT CONCERNING TRUSTS

30-2806 Repealed. Laws 2003, LB 130, § 143.

30-2807 Repealed. Laws 2003, LB 130, § 143.

30-2808 Repealed. Laws 2003, LB 130, § 143.

30-2809 Repealed. Laws 2003, LB 130, § 143.

30-2810 Repealed. Laws 2003, LB 130, § 143.

30-2811 Repealed. Laws 2003, LB 130, § 143.

PART 3

DUTIES AND LIABILITIES OF TRUSTEES

30-2812 Repealed. Laws 2003, LB 130, § 143.

30-2813 Repealed. Laws 2003, LB 130, § 143.

30-2814 Repealed. Laws 2003, LB 130, § 143.

30-2815 Repealed. Laws 2003, LB 130, § 143.

30-2816 Repealed. Laws 2003, LB 130, § 143.

30-2817 Repealed. Laws 2003, LB 130, § 143.

30-2818 Repealed. Laws 2003, LB 130, § 143.

PART 4

POWERS OF TRUSTEES

30-2819 Repealed. Laws 2003, LB 130, § 143.

30-2820 Repealed. Laws 2003, LB 130, § 143.

30-2821 Repealed. Laws 2003, LB 130, § 143.

30-2822 Repealed. Laws 2003, LB 130, § 143.

30-2823 Repealed. Laws 2003, LB 130, § 143.

30-2824 Repealed. Laws 2003, LB 130, § 143.

30-2825 Repealed. Laws 2003, LB 130, § 143.

30-2826 Repealed. Laws 2003, LB 130, § 143.

ARTICLE 29

PROBATE CODE APPLICABILITY PROVISIONS

Section
30-2901. Time for taking effect; provisions for transition.
30-2902. Terms, defined; Revisor of Statutes; duties.

30-2901 Time for taking effect; provisions for transition.

(a) This code shall become operative on January 1, 1977.

(b) Except as provided elsewhere in this code, on the operative date of this code:

(1) the code applies to any wills of decedents dying thereafter;

(2) the code applies to any proceedings in court then pending or thereafter commenced regardless of the time of the death of decedent except to the extent that in the opinion of the court the former procedure should be made applicable in a particular case in the interest of justice or because of infeasibility of application of the procedure of this code;

(3) every personal representative including a person administering an estate of a minor or incompetent holding an appointment on that date, continues to hold the appointment but has only the powers conferred by this code and is subject to the duties imposed with respect to any act occurring or done thereafter;

(4) an act done before the operative date in any proceeding and any accrued right is not impaired by this code. If a right is acquired, extinguished or barred upon the expiration of a prescribed period of time which has commenced to run by the provisions of any statute before the operative date, the provisions shall remain in force with respect to that right.

Source: Laws 1974, LB 354, § 314, UPC § 8-101.

The new code applies to any wills of decedents dying subsequent to the Effective date of code. In re Estate of Florey, 212 Neb. 665, 325 N.W.2d 643 (1982).

This provision makes it clear that estates filed for probate after the Effective date of the 1977 Nebraska Probate Code are governed by the provisions of the 1977 Nebraska Probate Code. Jacobson v. Nemesio, 204 Neb. 180, 281 N.W.2d 552 (1979).

Under this provision, the statute of limitations of the old probate code would have barred this action in Nebraska courts. Therefor, the action against the estate is also barred in federal court after the statute has run. Greyhound Lines v. Lexington State Bank & Trust, 604 F.2d 1151 (8th Cir. 1979).

30-2902 Terms, defined; Revisor of Statutes; duties.

Whenever in the statutes of Nebraska, unless the context otherwise requires:

(1) The term incompetent person or words of similar import occur they shall be taken to mean and apply to incapacitated person or incompetent person as used in this code; and

(2) The term guardian shall be taken to mean and include guardian or conservator as used in this code.

The Revisor of Statutes shall make corrections in the statutes necessitated by this section.

Source: Laws 1974, LB 354, § 315; Laws 1986, LB 1177, § 12.

ARTICLE 30
NONPROBATE CODE PROVISIONS

Section

30-3001. Decedent's estate; all or any part to state; notice to Attorney General.
30-3002. Property, claims, or rights of deceased; interested person establish; complaint; effect.
30-3003. Complaint; person cited; failure to comply; penalty.
30-3004. Person entrusted with part of the estate; complaint; account; failure to account; penalty.
30-3005. Complaint; person cited; proceedings; where held; failure to appear or answer interrogatories; penalty.

30-3001 Decedent's estate; all or any part to state; notice to Attorney General.

Whenever, upon the filing of a petition for probate or administration or thereafter in the administration of any estate, it shall appear that all or any part of the estate is bequeathed or devised or will escheat to the State of Nebraska, the county judge shall, before the appointment of a personal representative, notify the Attorney General of Nebraska by mail of the pendency of such administration and of the probable interests of the state.

Source: Laws 1978, LB 863, § 1.

30-3002 Property, claims, or rights of deceased; interested person establish; complaint; effect.

If any personal representative, heir, devisee, creditor, or other person interested in the estate of any deceased person shall complain to the judge of the county court, on an oath given on information and belief, that any person may have concealed, embezzled, carried away, or disposed of any money, goods, or chattels of the deceased, or that such person may have in his possession or knowledge any deeds, conveyances, bonds, contracts, or other writings, which contain evidence of or tend to disclose the right, title, interest, or claim of the deceased to any real or personal estate, or any claim or demand, or any will of the deceased, the judge may cite such person to appear before the court of probate. Any personal representative, heir, devisee, creditor, or other person

interested in the estate of such deceased person may examine such person upon oath upon the matter of such complaint or direct interrogatories to him. The citation may also direct the person cited to bring with him, for examination by the judge and parties interested, any such documents or writings, or any will of the deceased, which may be in his possession or under his control.

Source: Laws 1978, LB 650, § 24.

30-3003 Complaint; person cited; failure to comply; penalty.

If the person so cited shall refuse to appear and submit to such examination, or to answer such interrogatories as may be put to him touching the matter of such complaint, or to bring with him any of the documents or writings set forth in the citation which may be in his possession or control, the court may, by warrant, commit him to the county jail of the county to remain in custody until he shall submit to the order of the court. All such interrogatories and answers shall be in writing, and shall be signed by the party examined, and filed in the county court.

Source: Laws 1978, LB 650, § 25.

30-3004 Person entrusted with part of the estate; complaint; account; failure to account; penalty.

The judge of the county court, upon the complaint on oath of any personal representative, may cite any person who shall have been entrusted by such personal representative with any part of the estate of the deceased person, to appear before such court, and may require such person to render a full account, on oath, of any money, goods, chattels, bonds, accounts, or other papers belonging to such estate which shall have come to his possession, in trust for such personal representative, and of his proceedings thereon, and if a person so cited shall refuse to appear and render such account, the court may proceed against him as provided in section 30-3003.

Source: Laws 1978, LB 650, § 26.

30-3005 Complaint; person cited; proceedings; where held; failure to appear or answer interrogatories; penalty.

If any such person as described in sections 30-3002 to 30-3004 is not in the county where administration is granted, the proceedings under sections 30-3002 to 30-3004 may be had before the county judge of the county where such person resides or may be found. A certified copy of the written interrogatories, if any, and the examination or other proceeding thereon or connected therewith shall be filed in the county court of the county where administration is granted. If the person so cited refuses to appear or answer such interrogatories as may be allowed to be put to him touching the matter charged, he may be punished as provided in section 30-3003.

Source: Laws 1978, LB 650, § 27.

ARTICLE 31

UNIFORM PRINCIPAL AND INCOME ACT

Section
30-3101. Repealed. Laws 2001, LB 56, § 38.
30-3102. Repealed. Laws 2001, LB 56, § 38.

Section
30-3103. Repealed. Laws 2001, LB 56, § 38.
30-3104. Repealed. Laws 2001, LB 56, § 38.
30-3105. Repealed. Laws 2001, LB 56, § 38.
30-3106. Repealed. Laws 2001, LB 56, § 38.
30-3107. Repealed. Laws 2001, LB 56, § 38.
30-3108. Repealed. Laws 2001, LB 56, § 38.
30-3109. Repealed. Laws 2001, LB 56, § 38.
30-3110. Repealed. Laws 2001, LB 56, § 38.
30-3111. Repealed. Laws 2001, LB 56, § 38.
30-3112. Repealed. Laws 2001, LB 56, § 38.
30-3113. Repealed. Laws 2001, LB 56, § 38.
30-3114. Repealed. Laws 2001, LB 56, § 38.
30-3115. Repealed. Laws 2001, LB 56, § 38.

PART 1
DEFINITIONS AND FIDUCIARY DUTIES

30-3116. Act, how cited.
30-3117. Definitions.
30-3118. Fiduciary duties; general principles.
30-3119. Trustee's power to adjust.
30-3119.01. Conversion to total return trust.
30-3120. Judicial control of discretionary powers.
30-3121. Proposed action; notice; objections.

PART 2
DECEDENT'S ESTATE OR TERMINATING INCOME INTEREST

30-3122. Determination and distribution of net income.
30-3123. Distribution to residuary and remainder beneficiaries.

PART 3
APPORTIONMENT AT BEGINNING AND END OF INCOME INTEREST

30-3124. When right to income begins and ends.
30-3125. Apportionment of receipts and disbursements when decedent dies or income interest begins.
30-3126. Apportionment when income interest ends.

PART 4
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SUBPART 1
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30-3127. Character of receipts.
30-3128. Distribution from trust or estate.
30-3129. Business and other activities conducted by trustee.

SUBPART 2
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30-3130. Principal receipts.
30-3131. Rental property.
30-3132. Obligation to pay money.
30-3133. Insurance policies and similar contracts.

SUBPART 3
RECEIPTS NORMALLY APPORTIONED

30-3134. Insubstantial allocations not required.
30-3135. Deferred compensation, annuities, and similar payments.
30-3136. Liquidating asset.
30-3137. Minerals, water, and other natural resources.
30-3138. Timber.
30-3139. Property not productive of income.
30-3140. Derivatives and options.
30-3141. Asset-backed securities.

PART 5
ALLOCATION OF DISBURSEMENTS DURING ADMINISTRATION OF TRUST

30-3142. Disbursements from income.
30-3143. Disbursements from principal.
30-3144. Transfers from income to principal for depreciation.
30-3145. Transfers from income to reimburse principal.

Section
30-3146. Income taxes.
30-3147. Adjustments between principal and income because of taxes.

PART 6
MISCELLANEOUS PROVISIONS

30-3148. Uniformity of application and construction.
30-3149. Application of act to existing trusts and estates.

30-3101 Repealed. Laws 2001, LB 56, § 38.

30-3102 Repealed. Laws 2001, LB 56, § 38.

30-3103 Repealed. Laws 2001, LB 56, § 38.

30-3104 Repealed. Laws 2001, LB 56, § 38.

30-3105 Repealed. Laws 2001, LB 56, § 38.

30-3106 Repealed. Laws 2001, LB 56, § 38.

30-3107 Repealed. Laws 2001, LB 56, § 38.

30-3108 Repealed. Laws 2001, LB 56, § 38.

30-3109 Repealed. Laws 2001, LB 56, § 38.

30-3110 Repealed. Laws 2001, LB 56, § 38.

30-3111 Repealed. Laws 2001, LB 56, § 38.

30-3112 Repealed. Laws 2001, LB 56, § 38.

30-3113 Repealed. Laws 2001, LB 56, § 38.

30-3114 Repealed. Laws 2001, LB 56, § 38.

30-3115 Repealed. Laws 2001, LB 56, § 38.

PART 1

DEFINITIONS AND FIDUCIARY DUTIES

30-3116 Act, how cited.

Sections 30-3116 to 30-3149 shall be known and may be cited as the Uniform Principal and Income Act.

Source: Laws 2001, LB 56, § 1; Laws 2005, LB 533, § 33.

30-3117 Definitions.

For purposes of the Uniform Principal and Income Act:

(1) Accounting period means a calendar year unless another twelve-month period is selected by a fiduciary. The term includes a portion of a calendar year or other twelve-month period that begins when an income interest begins or ends when an income interest ends.

(2) Beneficiary includes, in the case of a decedent's estate, an heir, legatee, and devisee and, in the case of a trust, an income beneficiary and a remainder beneficiary.

(3) Fiduciary means a personal representative or a trustee. The term includes an executor, administrator, successor personal representative, special administrator, and a person performing substantially the same function.

(4) Income means money or property that a fiduciary receives as current return from a principal asset. The term includes a portion of receipts from a sale, exchange, or liquidation of a principal asset, to the extent provided in sections 30-3127 to 30-3141.

(5) Income beneficiary means a person to whom net income of a trust is or may be payable.

(6) Income interest means the right of an income beneficiary to receive all or part of net income, whether the terms of the trust require it to be distributed or authorize it to be distributed in the trustee's discretion.

(7) Mandatory income interest means the right of an income beneficiary to receive net income that the terms of the trust require the fiduciary to distribute.

(8) Net income means the total receipts allocated to income during an accounting period minus the disbursements made from income during the period, plus or minus transfers under the act to or from income during the period.

(9) Person means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government; governmental subdivision, agency, or instrumentality; public corporation, or any other legal or commercial entity.

(10) Principal means property held in trust for distribution to a remainder beneficiary when the trust terminates.

(11) Qualified beneficiary has the same meaning as in section 30-3803.

(12) Remainder beneficiary means a person entitled to receive principal when an income interest ends.

(13) Terms of a trust means the manifestation of the intent of a settlor or decedent with respect to the trust, expressed in a manner that admits of its proof in a judicial proceeding, whether by written or spoken words or by conduct.

(14) Total return trust means a trust that is converted to a total return trust pursuant to section 30-3119.01 or a trust the terms of which manifest the settlor's intent that the trustee will administer the trust in accordance with subsection (4) of section 30-3119.01.

(15) Trustee includes an original, additional, or successor trustee, whether or not appointed or confirmed by a court.

Source: Laws 2001, LB 56, § 2; Laws 2005, LB 533, § 34.

30-3118 Fiduciary duties; general principles.

(a) In allocating receipts and disbursements to or between principal and income, and with respect to any matter within the scope of sections 30-3122 to 30-3126, a fiduciary:

(1) shall administer a trust or estate in accordance with the terms of the trust or the will, even if there is a different provision in the Uniform Principal and Income Act;

(2) may administer a trust or estate by the exercise of a discretionary power of administration given to the fiduciary by the terms of the trust or the will, even if the exercise of the power produces a result different from a result required or permitted by the act, and no inference that the fiduciary has abused its discretion arises solely from the fact that the fiduciary has exercised an express power given to the fiduciary by the terms of the trust or the will;

(3) shall administer a trust or estate in accordance with the act if the terms of the trust or the will do not contain a different provision or do not give the fiduciary a discretionary power of administration; and

(4) shall add a receipt or charge a disbursement to principal to the extent that the terms of the trust and the act do not provide a rule for allocating the receipt or disbursement to or between principal and income.

(b) In exercising the power to adjust under subsection (a) of section 30-3119 or a discretionary power of administration regarding a matter within the scope of the act, whether granted by the terms of a trust, a will, or the act, a fiduciary shall administer a trust or estate impartially, based on what is fair and reasonable to all of the beneficiaries, except to the extent that the terms of the trust or the will clearly manifest an intention that the fiduciary shall or may favor one or more of the beneficiaries. A determination in accordance with the act is presumed to be fair and reasonable to all of the beneficiaries.

Source: Laws 2001, LB 56, § 3.

30-3119 Trustee's power to adjust.

(a) A trustee may adjust between principal and income to the extent the trustee considers necessary if the trustee invests and manages trust assets as a prudent investor, the terms of the trust describe the amount that may or must be distributed to a beneficiary by referring to the trust's income, and the trustee determines, after applying the rules in subsection (a) of section 30-3118 and considering any power the trustee may have under the trust to invade principal or accumulate interest, that the trustee is unable to comply with subsection (b) of section 30-3118.

(b) In deciding whether and to what extent to exercise the power to make adjustments under subsection (a) of this section, a trustee may consider, but is not limited to, any of the following:

(1) the nature, purpose, and expected duration of the trust;

(2) the intent of the settlor including the settlor's probable intent, which is the settlor's dominant plan and purpose as they appear from the entirety of the trust when read and considered in light of the present facts and circumstances;

(3) the identity and circumstances of the beneficiaries;

(4) the needs for liquidity, regularity of income, and preservation and appreciation of capital;

(5) the assets held in the trust; the extent to which they consist of financial assets, interests in closely held enterprises, tangible and intangible personal property, or real property; the extent to which an asset is used by a beneficiary; and whether an asset was purchased by the trustee or received from the settlor;

(6) the net amount allocated to income under the other sections of the Uniform Principal and Income Act and the increase or decrease in the value of

the principal assets, which the trustee may estimate as to assets for which market values are not readily available;

(7) whether and to what extent the terms of the trust give the trustee the power to invade principal or accumulate income or prohibit the trustee from invading principal or accumulating income, and the extent to which the trustee has exercised a power from time to time to invade principal or accumulate income;

(8) the actual and anticipated effect of economic conditions on principal and income and effects of inflation and deflation; and

(9) the anticipated tax consequences of an adjustment.

(c) A trustee may not make an adjustment:

(1) that diminishes the income interest in a trust that requires all of the income to be paid at least annually to a spouse and for which an estate tax or gift tax marital deduction would be allowed, in whole or in part, if the trustee did not have the power to make the adjustment;

(2) that reduces the actuarial value of the income interest in a trust to which a person transfers property with the intent to qualify for a gift tax exclusion;

(3) that changes the amount payable to a beneficiary as a fixed annuity or a fixed fraction of the value of the trust assets;

(4) from any amount that is permanently set aside for charitable purposes under a will or the terms of a trust unless both income and principal are so set aside;

(5) if possessing or exercising the power to make an adjustment causes an individual to be treated as the owner of all or part of the trust for income tax purposes, and the individual would not be treated as the owner if the trustee did not possess the power to make an adjustment;

(6) if possessing or exercising the power to make an adjustment causes all or part of the trust assets to be included for estate tax purposes in the estate of an individual who has the power to remove a trustee or appoint a trustee, or both, and the assets would not be included in the estate of the individual if the trustee did not possess the power to make an adjustment; or

(7) if the trustee is a beneficiary of the trust.

(d) If subdivision (c)(5), (6), or (7) of this section applies (i) to a trustee and there is more than one trustee, a cotrustee to whom the provision does not apply may make the adjustment unless the exercise of the power by the remaining trustee or trustees is not permitted by the terms of the trust or (ii) to the trustee and there is not more than one trustee, or to all trustees, any trustee or beneficiary may petition the court pursuant to section 30-3812 for appointment of a cotrustee to whom the provision does not apply who may make the adjustment unless the exercise of the power by the appointed trustee is not permitted by the terms of the trust.

(e) A trustee may release the entire power conferred by subsection (a) of this section or may release only the power to adjust from income to principal or the power to adjust from principal to income if the trustee is uncertain about whether possessing or exercising the power will cause a result described in subdivisions (c)(1) through (6) of this section or if the trustee determines that possessing or exercising the power will or may deprive the trust of a tax benefit or impose a tax burden not described in subsection (c) of this section. The

release may be permanent or for a specified period, including a period measured by the life of an individual.

(f) Terms of a trust that limit the power of a trustee to make an adjustment between principal and income do not affect the application of this section unless it is clear from the terms of the trust that the terms are intended to deny the trustee the power of adjustment conferred by subsection (a) of this section.

(g) Nothing in the Uniform Principal and Income Act shall give rise to liability for any exercise or failure to exercise a discretionary power under this section unless such exercise or failure to exercise constitutes an abuse of the trustee's discretion.

Source: Laws 2001, LB 56, § 4; Laws 2003, LB 130, § 133.

30-3119.01 Conversion to total return trust.

(1) Unless expressly prohibited by a trust, a trustee may release the power to adjust described in section 30-3119 and convert a trust to a total return trust as described in this section if all of the following apply:

(a) The trustee determines that the conversion will enable the trustee to better carry out the intent of the settlor and the purpose of the trust;

(b) The trustee sends written notice of the trustee's decision to convert the trust to a total return trust specifying a prospective effective date for the conversion which shall not be sooner than sixty days after the notice is sent and which shall include a copy of this section of law and shall specifically recite the time period within which a timely objection may be made. Such notice shall be sent to the qualified beneficiaries determined as of the date the notice is sent and assuming nonexercise of all powers of appointment;

(c) There are one or more legally competent beneficiaries who are currently eligible to receive income from the trust and one or more legally competent beneficiaries who would receive a distribution of principal if the trust were to terminate immediately before the notice is given; and

(d) No beneficiary has objected in writing to the conversion to a total return trust and delivered such objection to the trustee within sixty days after the notice was sent.

(2) Conversion to a total return trust or reconversion to an income trust may be made by agreement between the trustee and all qualified beneficiaries of the trust. The trustee and all qualified beneficiaries of the trust may also agree to modify the distribution percentage, except that the trustee and the qualified beneficiaries may not agree to a distribution percentage of less than three percent or greater than five percent. The agreement may include any other actions a court could properly order pursuant to subsection (7) of this section.

(3)(a) The trustee may, for any reason, elect to petition the court to order conversion to a total return trust including, without limitation, the reason that conversion under subsection (1) of this section is unavailable because:

(i) A beneficiary timely objects to the conversion to a total return trust;

(ii) There are no legally competent beneficiaries who are currently eligible to receive income from the trust; or

(iii) There are no legally competent beneficiaries who would receive a distribution of principal if the trust were to terminate immediately.

(b) A beneficiary may request the trustee to convert to a total return trust or adjust the distribution percentage pursuant to this subsection. If the trustee declines or fails to act within six months after receiving a written request from a beneficiary to do so, the beneficiary may petition the court to order the conversion or adjustment.

(c) The trustee may petition the court prospectively to reconvert from a total return trust or to adjust the distribution percentage if the trustee determines that the reconversion or adjustment will enable the trustee to better carry out the purposes of the trust. A beneficiary may request the trustee to petition the court prospectively to reconvert from a total return trust or adjust the distribution percentage. If the trustee declines or fails to act within six months after receiving a written request from a beneficiary to do so, the beneficiary may petition the court to order the reconversion or adjustment.

(d)(i) In a judicial proceeding instituted under this subsection, the trustee may present opinions and reasons concerning:

(A) The trustee's support for or opposition to a conversion to a total return trust, a reconversion from a total return trust, or an adjustment of the distribution percentage of a total return trust, including whether the trustee believes conversion, reconversion, or adjustment of the distribution percentage would enable the trustee to better carry out the purposes of the trust; and

(B) Any other matter relevant to the proposed conversion, reconversion, or adjustment of the distribution percentage.

(ii) A trustee's actions undertaken in accordance with this subsection shall not be deemed improper or inconsistent with the trustee's duty of impartiality unless the court finds from all the evidence that the trustee acted in bad faith.

(e) The court shall order conversion to a total return trust, reconversion prospectively from a total return trust, or adjustment of the distribution percentage of a total return trust if the court determines that the conversion, reconversion, or adjustment of the distribution percentage will enable the trustee to better carry out the purposes of the trust.

(f) If a conversion to a total return trust is made pursuant to a court order, the trustee may reconvert the trust to an income trust only:

(i) Pursuant to a subsequent court order; or

(ii) By filing with the court an agreement made pursuant to subsection (2) of this section to reconvert to an income trust.

(g) Upon a reconversion the power to adjust, as described in section 30-3119 and as it existed before the conversion, shall be revived.

(h) An action may be taken under this subsection no more frequently than every two years, unless a court for good cause orders otherwise.

(4)(a) During the time that a trust is a total return trust, the trustee shall administer the trust in accordance with the provisions of this subsection as follows, unless otherwise expressly provided by the terms of the trust:

(i) The trustee shall invest the trust assets seeking a total return without regard to whether the return is from income or appreciation of principal;

(ii) The trustee shall make income distributions in accordance with the trust subject to the provisions of this section;

(iii) The distribution percentage for any trust converted to a total return trust by a trustee in accordance with subsection (1) of this section shall be four

percent, unless a different percentage has been determined in an agreement made pursuant to subsection (2) of this section or ordered by the court pursuant to subsection (3) of this section; and

(iv)(A) The trustee shall pay to a beneficiary in the case of an underpayment within a reasonable time and shall recover from a beneficiary in the case of an overpayment either by repayment by the beneficiary or by withholding from future distributions to the beneficiary:

(I) An amount equal to the difference between the amount properly payable and the amount actually paid; and

(II) Interest compounded annually at a rate per annum equal to the distribution percentage in the year or years during which the underpayment or overpayment occurs.

(B) For purposes of subdivision (4)(a)(iv) of this section, accrual of interest may not commence until the beginning of the trust year following the year in which the underpayment or overpayment occurs.

(b) For purposes of this subsection:

(i) Distribution amount means an annual amount equal to the distribution percentage multiplied by the average net fair market value of the trust's assets. The average net fair market value of the trust's assets shall be the net fair market value of the trust's assets averaged over the lesser of:

(A) The three preceding years; or

(B) The period during which the trust has been in existence; and

(ii) Income, as that term appears in the governing instrument, means the distribution amount.

(5) The trustee may determine any of the following matters in administering a total return trust as the trustee deems necessary or helpful for the proper functioning of the trust:

(a) The effective date of a conversion to a total return trust pursuant to subsection (1) of this section;

(b) The manner of prorating the distribution amount for a short year in which a beneficiary's interest commences or ceases, or, if the trust is a total return trust for only part of the year or the trustee may elect to treat the trust year as two separate years, the first of which ends at the close of the day on which the conversion or reconversion occurs, and the second of which ends at the close of the trust year;

(c) Whether distributions are made in cash or in kind;

(d) The manner of adjusting valuations and calculations of the distribution amount to account for other payments from, or contributions to, the trust;

(e) Whether to value the trust's assets annually or more frequently;

(f) Which valuation dates to use and how many valuation dates to use;

(g) Valuation decisions concerning any asset for which there is no readily available market value, including:

(i) How frequently to value such an asset;

(ii) Whether and how often to engage a professional appraiser to value such an asset; and

(iii) Whether to exclude the value of such an asset from the net fair market value of the trust's assets for purposes of determining the distribution amount.

For purposes of this section, any such asset so excluded shall be referred to as an excluded asset and the trustee shall distribute any net income received from the excluded asset as provided for in the governing instrument, subject to the following principles:

(A) The trustee shall treat each asset for which there is no readily available market value as an excluded asset unless the trustee determines that there are compelling reasons not to do so and the trustee considers all relevant factors including the best interests of the beneficiaries;

(B) If tangible personal property or real property is possessed or occupied by a beneficiary, the trustee may not limit or restrict any right of the beneficiary to use the property in accordance with the governing instrument regardless of whether the trustee treats the property as an excluded asset; and

(C) By way of example and not by way of limitation, assets for which there is a readily available market value include cash and cash equivalents; stocks, bonds, and other securities and instruments for which there is an established market on a stock exchange, in an over-the-counter market, or otherwise; and any other property that can reasonably be expected to be sold within one week of the decision to sell without extraordinary efforts by the seller. By way of example and not by way of limitation, assets for which there is no readily available market value include stocks, bonds, and other securities and instruments for which there is no established market on a stock exchange, in an over-the-counter market, or otherwise; real property; tangible personal property; and artwork and other collectibles; and

(h) Any other administrative matter that the trustee determines is necessary or helpful for the proper functioning of the total return trust.

(6)(a) Expenses, taxes, and other charges that would otherwise be deducted from income if the trust was not a total return trust may not be deducted from the distribution amount.

(b) Unless otherwise provided by the governing instrument, the distribution amount each year shall be deemed to be paid from the following sources for that year in the following order:

(i) Net income determined as if the trust was not a total return trust;

(ii) Other ordinary income as determined for federal income tax purposes;

(iii) Net realized short-term capital gains as determined for federal income tax purposes;

(iv) Net realized long-term capital gains as determined for federal income tax purposes;

(v) Trust principal comprising assets for which there is a readily available market value; and

(vi) Other trust principal.

(7)(a) The court may order any of the following actions in a proceeding brought by a trustee or a beneficiary pursuant to subdivision (a), (b), or (c) of subsection (3) of this section:

(i) Select a distribution percentage other than four percent, except that the court may not order a distribution percentage of less than three percent or greater than five percent;

(ii) Average the valuation of the trust's net assets over a period other than three years;

(iii) Reconvert prospectively from a total return trust or adjust the distribution percentage of a total return trust;

(iv) Direct the distribution of net income, determined as if the trust were not a total return trust, in excess of the distribution amount as to any or all trust assets if the distribution is necessary to preserve a tax benefit; or

(v) Change or direct any administrative procedure as the court determines is necessary or helpful for the proper functioning of the total return trust.

(b) Nothing in this subsection shall be construed to limit the equitable jurisdiction of the court to grant other relief as the court deems proper.

(8)(a) The distribution amount may not be less than the net income of the trust, determined without regard to the provisions of this section, either:

(i) For a trust for which an estate tax or a gift tax marital deduction was claimed or may be claimed, in whole or in part, but only during the lifetime of the spouse for whom the trust was created; or

(ii) For a trust that was exempt, in whole or in part, from generation-skipping transfer tax on September 4, 2005, by reason of any effective date or transition rule.

(b) Conversion to a total return trust shall not affect any provision in the governing instrument:

(i) That directs or authorizes the trustee to distribute principal;

(ii) That directs or authorizes the trustee to distribute a fixed annuity or a fixed fraction of the value of trust assets;

(iii) That authorizes a beneficiary to withdraw a portion or all of the principal; or

(iv) That in any manner diminishes an amount permanently set aside for charitable purposes under the governing instrument unless both income and principal are set aside.

(9) If a particular trustee is also a beneficiary of the trust and conversion or failure to convert would enhance or diminish the beneficial interest of that trustee or, if possession or exercise of the conversion power by a particular trustee alone would cause any individual to be treated as owner of a part of the trust for federal income tax purposes or cause a part of the trust to be included in the gross estate of any individual for federal estate tax purposes, then that particular trustee may not participate as a trustee in the exercise of the conversion power, except that:

(a) The trustee may petition the court under subdivision (a) of subsection (3) of this section to order conversion in accordance with this section; and

(b) A cotrustee or cotrustees to whom this subsection does not apply may convert the trust to a total return trust in accordance with subsection (1) or (2) of this section.

(10) A trustee may irrevocably release the power granted by this section if the trustee reasonably believes the release is in the best interests of the trust and its beneficiaries. The release may be personal to the releasing trustee or it may apply generally to some or all subsequent trustees. The release may be for any specified period, including a period measured by the life of an individual.

(11)(a) A trustee who reasonably and in good faith takes any action or omits to take any action under this section is not liable to any person interested in the trust. A discretionary act or omission by a trustee under this section shall be

presumed to be reasonable and undertaken in good faith unless the act or omission is determined by a court to have been an abuse of discretion.

(b) If a trustee reasonably and in good faith takes or omits to take any action under this section and a person interested in the trust opposes the act or omission, the person's exclusive remedy shall be to seek an order of the court directing the trustee to:

(i) Convert the trust to a total return trust;

(ii) Reconvert from a total return trust;

(iii) Change the distribution percentage; or

(iv) Order any administrative procedures the court determines are necessary or helpful for the proper functioning of the trust.

(c) A claim for relief under this subsection that is not barred by adjudication, consent, or limitation is nevertheless barred as to any beneficiary who has received a statement fully disclosing the matter unless a proceeding to assert the claim is commenced within six months after receipt of the statement. A beneficiary is deemed to have received a statement if it is received by the beneficiary or the beneficiary's representative in a manner described in section 30-2222 or 30-3121.

(12) A trustee has no duty to inform a beneficiary about the availability and provisions of this section. A trustee has no duty to review the trust to determine whether any action should be taken under this section unless the trustee is requested in writing by a qualified beneficiary to do so.

(13)(a) This section applies to trusts in existence on September 4, 2005, and to trusts created on or after such date.

(b) This section shall be construed to apply to the administration of a trust that is administered in Nebraska under Nebraska law or that is governed by Nebraska law with respect to the meaning and effect of its terms unless:

(i) The trust is a trust described in the Internal Revenue Code of 1986, as amended, 26 U.S.C. section 170(f)(2)(B), 664(d), 1361(d), 2702(a)(3), or 2702(b);

(ii) Conversion of a trust to a total return trust is clearly contrary to the manifestation of the settlor's intent as expressed in the trust instrument or as may be established by other evidence that would be admissible in a judicial proceeding; or

(iii) The terms of a trust in existence on September 4, 2005, incorporate provisions that operate as a total return trust. The trustee or a beneficiary of such a trust may proceed under section 30-3121 to adopt provisions in this section that do not contradict provisions in the governing instrument.

Source: Laws 2005, LB 533, § 35.

30-3120 Judicial control of discretionary powers.

(a) A court shall not change a fiduciary's decision to exercise or not to exercise a discretionary power conferred by the Uniform Principal and Income Act unless it determines that the decision was an abuse of the fiduciary's discretion. A court shall not determine that a fiduciary abused its discretion merely because the court would have exercised the discretion in a different manner or would not have exercised the discretion.

(b) The decisions to which subsection (a) of this section applies include:

(1) A determination under subsection (a) of section 30-3119 of whether and to what extent an amount should be transferred from principal to income or from income to principal.

(2) A determination of the factors that are relevant to the trust and its beneficiaries, the extent to which they are relevant, and the weight, if any, to be given to the relevant factors, in deciding whether and to what extent to exercise the power conferred by subsection (a) of section 30-3119.

(c) If a court determines that a fiduciary has abused its discretion, the remedy is to restore the income and remainder beneficiaries to the positions they would have occupied if the fiduciary had not abused its discretion, according to the following rules:

(1) To the extent that the abuse of discretion has resulted in no distribution to a beneficiary or a distribution that is too small, the court shall require the fiduciary to distribute from the trust to the beneficiary an amount that the court determines will restore the beneficiary, in whole or in part, to his or her appropriate position.

(2) To the extent that the abuse of discretion has resulted in a distribution to a beneficiary that is too large, the court shall restore the beneficiaries, the trust, or both, in whole or in part, to their appropriate positions by requiring the fiduciary to withhold an amount from one or more future distributions to the beneficiary who received the distribution that was too large or requiring that beneficiary to return some or all of the distribution to the trust.

(3) To the extent that the court is unable, after applying subdivisions (1) and (2) of this subsection, to restore the beneficiaries, the trust, or both, to the positions they would have occupied if the fiduciary had not abused its discretion, the court may require the fiduciary to pay an appropriate amount from its own funds to one or more of the beneficiaries or the trust or both.

(d) Upon a petition by the fiduciary, the court having jurisdiction over the trust or estate shall determine whether a proposed exercise or nonexercise by the fiduciary of a discretionary power conferred by the act will result in an abuse of the fiduciary's discretion. If the petition describes the proposed exercise or nonexercise of the power and contains sufficient information to inform the beneficiaries of the reasons for the proposal, the facts upon which the fiduciary relies, and an explanation of how the income and remainder beneficiaries will be affected by the proposed exercise or nonexercise of the power, a beneficiary who challenges the proposed exercise or nonexercise has the burden of establishing that it will result in an abuse of discretion.

Source: Laws 2001, LB 56, § 5.

30-3121 Proposed action; notice; objections.

(a) A trustee may give a notice of proposed action regarding a matter governed by the Uniform Principal and Income Act as provided in this section. For purposes of this section, a proposed action includes a course of action and a decision not to take action.

(b) The trustee shall mail notice of the proposed action to all adult beneficiaries who are receiving, or are entitled to receive, income under the trust or to receive a distribution of principal if the trust were terminated at the time the notice is given.

(c) Notice of proposed action need not be given to any person who consents in writing to the proposed action. The consent may be executed at any time before or after the proposed action is taken.

(d) The notice of proposed action shall state that it is given pursuant to this section and shall state all of the following:

(1) the name and mailing address of the trustee;

(2) the name and telephone number of a person who may be contacted for additional information;

(3) a description of the action proposed to be taken and an explanation of the reasons for the action;

(4) the time within which objections to the proposed action may be made, which shall be at least thirty days from the mailing of the notice of proposed action; and

(5) the date on or after which the proposed action may be taken or is effective.

(e) A beneficiary may object to the proposed action by mailing a written objection to the trustee at the address stated in the notice of proposed action within the time period specified in the notice of proposed action.

(f) A trustee is not liable to a beneficiary for an action regarding a matter governed by the act if the trustee does not receive a written objection to the proposed action from the beneficiary within the applicable period and the other requirements of this section are satisfied. If no beneficiary entitled to notice objects under this section, the provisions of section 30-3120 shall not apply and the trustee is not liable to any current or future beneficiary with respect to the proposed action.

(g) If the trustee receives a written objection within the applicable period, either the trustee or a beneficiary may petition the court to have the proposed action taken as proposed, taken with modifications, or denied. In the proceeding, a beneficiary objecting to the proposed action has the burden of proving that the trustee's proposed action should not be taken. A beneficiary who has not objected is not estopped from opposing the proposed action in the proceeding. If the trustee decides not to take the proposed action, the trustee shall notify the beneficiaries of the decision not to take the action and the reasons for the decision, and the trustee's decision not to take the proposed action does not itself give rise to liability to any current or future beneficiary. A beneficiary may petition the court to have the action taken and has the burden of proving that it should be taken.

Source: Laws 2001, LB 56, § 6.

PART 2

DECEDENT'S ESTATE OR TERMINATING INCOME INTEREST

30-3122 Determination and distribution of net income.

After a decedent dies, in the case of an estate, or after an income interest in a trust ends, the following rules apply:

(1) A fiduciary of an estate or of a terminating income interest shall determine the amount of net income and net principal receipts received from property specifically given to a beneficiary under the rules in sections 30-3124

to 30-3147 which apply to trustees and the rules in subdivision (5) of this section. The fiduciary shall distribute the net income and net principal receipts to the beneficiary who is to receive the specific property.

(2) A fiduciary shall determine the remaining net income of a decedent's estate or a terminating income interest under the rules in sections 30-3124 to 30-3147 which apply to trustees and by:

(A) including in net income all income from property used to discharge liabilities;

(B) paying from income or principal, in the fiduciary's discretion, fees of attorneys, accountants, and fiduciaries; court costs and other expenses of administration; and interest on death taxes, but the fiduciary may pay those expenses from income of property passing to a trust for which the fiduciary claims an estate tax marital or charitable deduction only to the extent that the payment of those expenses from income will not cause the reduction or loss of the deduction; and

(C) paying from principal all other disbursements made or incurred in connection with the settlement of a decedent's estate or the winding up of a terminating income interest, including debts, funeral expenses, disposition of remains, family allowances, and death taxes and related penalties that are apportioned to the estate or terminating income interest by the will, the terms of the trust, or applicable law.

(3) A fiduciary shall distribute to a beneficiary who receives a pecuniary amount outright the interest or any other amount provided by the will, the terms of the trust, or applicable law from net income determined under subdivision (2) of this section or from principal to the extent that net income is insufficient. If a beneficiary is to receive a pecuniary amount outright from a trust after an income interest ends and no interest or other amount is provided for by the terms of the trust or applicable law, the fiduciary shall distribute the interest or other amount to which the beneficiary would be entitled under applicable law if the pecuniary amount were required to be paid under a will.

(4) A fiduciary shall distribute the net income remaining after distributions required by subdivision (3) of this section in the manner described in section 30-3123 to all other beneficiaries, including a beneficiary who receives a pecuniary amount in trust, even if the beneficiary holds an unqualified power to withdraw assets from the trust or other presently exercisable general power of appointment over the trust.

(5) A fiduciary may not reduce principal or income receipts from property described in subdivision (1) of this section because of a payment described in section 30-3142 or 30-3143 to the extent that the will, the terms of the trust, or applicable law requires the fiduciary to make the payment from assets other than the property or to the extent that the fiduciary recovers or expects to recover the payment from a third party. The net income and principal receipts from the property are determined by including all of the amounts the fiduciary receives or pays with respect to the property, whether those amounts accrued or became due before, on, or after the date of a decedent's death or an income interest's terminating event, and by making a reasonable provision for amounts that the fiduciary believes the estate or terminating income interest may become obligated to pay after the property is distributed.

Source: Laws 2001, LB 56, § 7.

30-3123 Distribution to residuary and remainder beneficiaries.

(a) Each beneficiary described in subdivision (4) of section 30-3122 is entitled to receive a portion of the net income equal to the beneficiary's fractional interest in undistributed principal assets, using values as of the distribution date. If a fiduciary makes more than one distribution of assets to beneficiaries to whom this section applies, each beneficiary, including one who does not receive part of the distribution, is entitled, as of each distribution date, to the net income the fiduciary has received after the date of death or terminating event or earlier distribution date but has not distributed as of the current distribution date.

(b) In determining a beneficiary's share of net income, the following rules apply:

(1) The beneficiary is entitled to receive a portion of the net income equal to the beneficiary's fractional interest in the undistributed principal assets immediately before the distribution date, including assets that later may be sold to meet principal obligations.

(2) The beneficiary's fractional interest in the undistributed principal assets must be calculated without regard to property specifically given to a beneficiary and property required to pay pecuniary amounts not in trust.

(3) The beneficiary's fractional interest in the undistributed principal assets must be calculated on the basis of the aggregate value of those assets as of the distribution date without reducing the value by any unpaid principal obligation.

(4) The distribution date for purposes of this section may be the date as of which the fiduciary calculates the value of the assets if that date is reasonably near the date on which assets are actually distributed.

(c) If a fiduciary does not distribute all of the collected but undistributed net income to each person as of a distribution date, the fiduciary shall maintain appropriate records showing the interest of each beneficiary in that net income.

(d) A fiduciary may apply the rules in this section, to the extent that the fiduciary considers it appropriate, to net gain or loss realized after the date of death or terminating event or earlier distribution date from the disposition of a principal asset if this section applies to the income from the asset.

Source: Laws 2001, LB 56, § 8.

PART 3

APPORTIONMENT AT BEGINNING AND END OF INCOME INTEREST

30-3124 When right to income begins and ends.

(a) An income beneficiary is entitled to net income from the date on which the income interest begins. An income interest begins on the date specified in the terms of the trust or, if no date is specified, on the date an asset becomes subject to a trust or successive income interest.

(b) An asset becomes subject to a trust:

(1) on the date it is transferred to the trust in the case of an asset that is transferred to a trust during the transferor's life;

(2) on the date of a testator's death in the case of an asset that becomes subject to a trust by reason of a will, even if there is an intervening period of administration of the testator's estate; or

(3) on the date of an individual's death in the case of an asset that is transferred to a fiduciary by a third party because of the individual's death.

(c) An asset becomes subject to a successive income interest on the day after the preceding income interest ends, as determined under subsection (d) of this section, even if there is an intervening period of administration to wind up the preceding income interest.

(d) An income interest ends on the day before an income beneficiary dies or another terminating event occurs, or on the last day of a period during which there is no beneficiary to whom a trustee may distribute income.

Source: Laws 2001, LB 56, § 9.

30-3125 Apportionment of receipts and disbursements when decedent dies or income interest begins.

(a) A trustee shall allocate an income receipt or disbursement other than one to which subdivision (1) of section 30-3122 applies to principal if its due date occurs before a decedent dies in the case of an estate or before an income interest begins in the case of a trust or successive income interest.

(b) A trustee shall allocate an income receipt or disbursement to income if its due date occurs on or after the date on which a decedent dies or an income interest begins and it is a periodic due date. An income receipt or disbursement must be treated as accruing from day to day if its due date is not periodic or it has no due date. The portion of the receipt or disbursement accruing before the date on which a decedent dies or an income interest begins must be allocated to principal and the balance must be allocated to income.

(c) An item of income or an obligation is due on the date the payer is required to make a payment. If a payment date is not stated, there is no due date for the purposes of the Uniform Principal and Income Act. Distributions to shareholders or other owners from an entity to which section 30-3127 applies are deemed to be due on the date fixed by the entity for determining who is entitled to receive the distribution or, if no date is fixed, on the declaration date for the distribution. A due date is periodic for receipts or disbursements that must be paid at regular intervals under a lease or an obligation to pay interest or if an entity customarily makes distributions at regular intervals.

Source: Laws 2001, LB 56, § 10.

30-3126 Apportionment when income interest ends.

(a) In this section, undistributed income means net income received before the date on which an income interest ends. The term does not include an item of income or expense that is due or accrued or net income that has been added or is required to be added to principal under the terms of the trust.

(b) When a mandatory income interest ends, the trustee shall pay to a mandatory income beneficiary who survives that date, or the estate of a deceased mandatory income beneficiary whose death causes the interest to end, the beneficiary's share of the undistributed income that is not disposed of under the terms of the trust unless the beneficiary has an unqualified power to revoke more than five percent of the trust immediately before the income interest ends. In the latter case, the undistributed income from the portion of the trust that may be revoked must be added to principal.

(c) When a trustee's obligation to pay a fixed annuity or a fixed fraction of the value of the trust's assets ends, the trustee shall prorate the final payment if and to the extent required by applicable law to accomplish a purpose of the trust or its settlor relating to income, gift, estate, or other tax requirements.

Source: Laws 2001, LB 56, § 11.

PART 4

ALLOCATION OF RECEIPTS DURING ADMINISTRATION OF TRUST

SUBPART 1

RECEIPTS FROM ENTITIES

30-3127 Character of receipts.

(a) In this section, entity means a corporation, partnership, limited liability company, regulated investment company, real estate investment trust, common trust fund, or any other organization in which a trustee has an interest other than a trust or estate to which section 30-3128 applies, a business or activity to which section 30-3129 applies, or an asset-backed security to which section 30-3141 applies.

(b) Except as otherwise provided in this section, a trustee shall allocate to income money received from an entity.

(c) A trustee shall allocate the following receipts from an entity to principal:

(1) property other than money;

(2) money received in one distribution or a series of related distributions in exchange for part or all of a trust's interest in the entity;

(3) money received in total or partial liquidation of the entity; and

(4) money received from an entity that is a regulated investment company or a real estate investment trust if the money distributed is a capital gain dividend for federal income tax purposes.

(d) Money is received in partial liquidation:

(1) to the extent that the entity, at or near the time of a distribution, indicates that it is a distribution in partial liquidation; or

(2) if the total amount of money and property received in a distribution or series of related distributions is greater than twenty percent of the entity's gross assets, as shown by the entity's year-end financial statements immediately preceding the initial receipt.

(e) Money is not received in partial liquidation, nor may it be taken into account under subdivision (d)(2) of this section, to the extent that it does not exceed the amount of income tax that a trustee or beneficiary must pay on taxable income of the entity that distributes the money.

(f) A trustee may rely upon a statement made by an entity about the source or character of a distribution if the statement is made at or near the time of distribution by the entity's board of directors or other person or group of persons authorized to exercise powers to pay money or transfer property comparable to those of a corporation's board of directors.

Source: Laws 2001, LB 56, § 12.

30-3128 Distribution from trust or estate.

A trustee shall allocate to income an amount received as a distribution of income from a trust or an estate in which the trust has an interest other than a purchased interest, and shall allocate to principal an amount received as a distribution of principal from such a trust or estate. If a trustee purchases an interest in a trust that is an investment entity, or a decedent or donor transfers an interest in such a trust to a trustee, section 30-3127 or 30-3141 applies to a receipt from the trust.

Source: Laws 2001, LB 56, § 13.

30-3129 Business and other activities conducted by trustee.

(a) If a trustee who conducts a business or other activity determines that it is in the best interest of all the beneficiaries to account separately for the business or activity instead of accounting for it as part of the trust's general accounting records, the trustee may maintain separate accounting records for its transactions, whether or not its assets are segregated from other trust assets.

(b) A trustee who accounts separately for a business or other activity may determine the extent to which its net cash receipts must be retained for working capital, the acquisition or replacement of fixed assets, and other reasonably foreseeable needs of the business or activity, and the extent to which the remaining net cash receipts are accounted for as principal or income in the trust's general accounting records. If a trustee sells assets of the business or other activity, other than in the ordinary course of the business or activity, the trustee shall account for the net amount received as principal in the trust's general accounting records to the extent the trustee determines that the amount received is no longer required in the conduct of the business.

(c) Activities for which a trustee may maintain separate accounting records include:

(1) retail, manufacturing, service, and other traditional business activities;

(2) farming;

(3) raising and selling livestock and other animals;

(4) management of rental properties;

(5) extraction of minerals and other natural resources;

(6) timber operations; and

(7) activities to which section 30-3140 applies.

Source: Laws 2001, LB 56, § 14.

SUBPART 2

RECEIPTS NOT NORMALLY APPORTIONED

30-3130 Principal receipts.

A trustee shall allocate to principal:

(1) to the extent not allocated to income under the Uniform Principal and Income Act, assets received from a transferor during the transferor's lifetime, a decedent's estate, a trust with a terminating income interest, or a payer under a contract naming the trust or its trustee as beneficiary;

(2) money or other property received from the sale, exchange, liquidation, or change in form of a principal asset, including realized profit, subject to sections 30-3127 to 30-3141;

(3) amounts recovered from third parties to reimburse the trust because of disbursements described in subdivision (a)(7) of section 30-3143 or for other reasons to the extent not based on the loss of income;

(4) proceeds of property taken by eminent domain, but a separate award made for the loss of income with respect to an accounting period during which a current income beneficiary had a mandatory income interest is income;

(5) net income received in an accounting period during which there is no beneficiary to whom a trustee may or must distribute income; and

(6) other receipts as provided in sections 30-3134 to 30-3141.

Source: Laws 2001, LB 56, § 15.

30-3131 Rental property.

To the extent that a trustee accounts for receipts from rental property pursuant to this section, the trustee shall allocate to income an amount received as rent of real or personal property, including an amount received for cancellation or renewal of a lease. An amount received as a refundable deposit, including a security deposit or a deposit that is to be applied as rent for future periods, must be added to principal and held subject to the terms of the lease and is not available for distribution to a beneficiary until the trustee's contractual obligations have been satisfied with respect to that amount.

Source: Laws 2001, LB 56, § 16.

30-3132 Obligation to pay money.

(a) An amount received as interest, whether determined at a fixed, variable, or floating rate, on an obligation to pay money to the trustee, including an amount received as consideration for prepaying principal, must be allocated to income without any provision for amortization of premium.

(b) A trustee shall allocate to principal an amount received from the sale, redemption, or other disposition of an obligation to pay money to the trustee more than one year after it is purchased or acquired by the trustee, including an obligation whose purchase price or value when it is acquired is less than its value at maturity. If the obligation matures within one year after it is purchased or acquired by the trustee, an amount received in excess of its purchase price or its value when acquired by the trust must be allocated to income.

(c) This section does not apply to an obligation to which section 30-3135, 30-3136, 30-3137, 30-3138, 30-3140, or 30-3141 applies.

Source: Laws 2001, LB 56, § 17.

30-3133 Insurance policies and similar contracts.

(a) Except as otherwise provided in subsection (b) of this section, a trustee shall allocate to principal the proceeds of a life insurance policy or other contract in which the trust or its trustee is named as beneficiary, including a contract that insures the trust or its trustee against loss for damage to, destruction of, or loss of title to a trust asset. The trustee shall allocate dividends on an insurance policy to income if the premiums on the policy are paid from income, and to principal if the premiums are paid from principal.

(b) A trustee shall allocate to income proceeds of a contract that insures the trustee against loss of occupancy or other use by an income beneficiary, loss of income, or, subject to section 30-3129, loss of profits from a business.

(c) This section does not apply to a contract to which section 30-3135 applies.

Source: Laws 2001, LB 56, § 18.

SUBPART 3

RECEIPTS NORMALLY APPORTIONED

30-3134 Insubstantial allocations not required.

If a trustee determines that an allocation between principal and income required by section 30-3135, 30-3136, 30-3137, 30-3138, or 30-3141 is insubstantial, the trustee may allocate the entire amount to principal unless one of the circumstances described in subsection (c) of section 30-3119 applies to the allocation. This power may be exercised by a cotrustee in the circumstances described in subsection (d) of section 30-3119 and may be released for the reasons and in the manner described in subsection (e) of section 30-3119. An allocation is presumed to be insubstantial if:

(1) the amount of the allocation would increase or decrease net income in an accounting period, as determined before the allocation, by less than ten percent; or

(2) the value of the asset producing the receipt for which the allocation would be made is less than ten percent of the total value of the trust's assets at the beginning of the accounting period.

Source: Laws 2001, LB 56, § 19.

30-3135 Deferred compensation, annuities, and similar payments.

(a) In this section, payment means a payment that a trustee may receive over a fixed number of years or during the life of one or more individuals because of services rendered or property transferred to the payer in exchange for future payments. The term includes a payment made in money or property from the payer's general assets or from a separate fund created by the payer, including a private or commercial annuity, an individual retirement account, and a pension, profit-sharing, stock-bonus, or stock-ownership plan.

(b) To the extent that a payment is characterized as interest or a dividend or a payment made in lieu of interest or a dividend, a trustee shall allocate it to income. The trustee shall allocate to principal the balance of the payment and any other payment received in the same accounting period that is not characterized as interest, a dividend, or an equivalent payment.

(c) If no part of a payment is characterized as interest, a dividend, or an equivalent payment, and all or part of the payment is required to be made, a trustee shall allocate to income ten percent of the part that is required to be made during the accounting period and the balance to principal. If no part of a payment is required to be made or the payment received is the entire amount to which the trustee is entitled, the trustee shall allocate the entire payment to principal. For purposes of this subsection, a payment is not required to be made to the extent that it is made because the trustee exercises a right of withdrawal.

(d) If, to obtain an estate tax marital deduction for a trust, a trustee must allocate more of a payment to income than provided for by this section, the trustee shall allocate to income the additional amount necessary to obtain the marital deduction.

(e) This section does not apply to payments to which section 30-3136 applies.

Source: Laws 2001, LB 56, § 20.

30-3136 Liquidating asset.

(a) In this section, liquidating asset means an asset whose value will diminish or terminate because the asset is expected to produce receipts for a period of limited duration. The term includes a leasehold, patent, copyright, royalty right, and right to receive payments during a period of more than one year under an arrangement that does not provide for the payment of interest on the unpaid balance. The term does not include a payment subject to section 30-3135, resources subject to section 30-3137, timber subject to section 30-3138, an activity subject to section 30-3140, an asset subject to section 30-3141, or any asset for which the trustee establishes a reserve for depreciation under section 30-3144.

(b) A trustee shall allocate to income ten percent of the receipts from a liquidating asset and the balance to principal.

Source: Laws 2001, LB 56, § 21.

30-3137 Minerals, water, and other natural resources.

(a) To the extent that a trustee accounts for receipts from an interest in minerals or other natural resources pursuant to this section, the trustee shall allocate them as follows:

(1) If received as nominal delay rental or nominal annual rent on a lease, a receipt must be allocated to income.

(2) If received from a production payment, a receipt must be allocated to income if and to the extent that the agreement creating the production payment provides a factor for interest or its equivalent. The balance must be allocated to principal.

(3) If an amount received as a royalty, shut-in-well payment, take-or-pay payment, bonus, or delay rental is more than nominal, ninety percent must be allocated to principal and the balance to income.

(4) If an amount is received from a working interest or any other interest not provided for in subdivision (1), (2), or (3) of this subsection, ninety percent of the net amount received must be allocated to principal and the balance to income.

(b) An amount received on account of an interest in water that is renewable must be allocated to income. If the water is not renewable, ninety percent of the amount must be allocated to principal and the balance to income.

(c) The Uniform Principal and Income Act applies whether or not a decedent or donor was extracting minerals, water, or other natural resources before the interest became subject to the trust.

(d) If a trust owns an interest in minerals, water, or other natural resources on September 1, 2001, the trustee may allocate receipts from the interest as provided in the act or in the manner used by the trustee before September 1,

2001. If the trust acquires an interest in minerals, water, or other natural resources after September 1, 2001, the trustee shall allocate receipts from the interest as provided in the act.

Source: Laws 2001, LB 56, § 22.

30-3138 Timber.

(a) To the extent that a trustee accounts for receipts from the sale of timber and related products pursuant to this section, the trustee shall allocate the net receipts:

(1) to income to the extent that the amount of timber removed from the land does not exceed the rate of growth of the timber during the accounting periods in which a beneficiary has a mandatory income interest;

(2) to principal to the extent that the amount of timber removed from the land exceeds the rate of growth of the timber or the net receipts are from the sale of standing timber;

(3) to or between income and principal if the net receipts are from the lease of timberland or from a contract to cut timber from land owned by a trust, by determining the amount of timber removed from the land under the lease or contract and applying the rules in subdivisions (1) and (2) of this subsection; or

(4) to principal to the extent that advance payments, bonuses, and other payments are not allocated pursuant to subdivision (1), (2), or (3) of this subsection.

(b) In determining net receipts to be allocated pursuant to subsection (a) of this section, a trustee shall deduct and transfer to principal a reasonable amount for depletion.

(c) The Uniform Principal and Income Act applies whether or not a decedent or transferor was harvesting timber from the property before it became subject to the trust.

(d) If a trust owns an interest in timberland on September 1, 2001, the trustee may allocate net receipts from the sale of timber and related products as provided in the act or in the manner used by the trustee before September 1, 2001. If the trust acquires an interest in timberland after September 1, 2001, the trustee shall allocate net receipts from the sale of timber and related products as provided in the act.

Source: Laws 2001, LB 56, § 23.

30-3139 Property not productive of income.

(a) If a marital deduction is allowed for all or part of a trust whose assets consist substantially of property that does not provide the spouse with sufficient income from or use of the trust assets, and if the amounts that the trustee transfers from principal to income under section 30-3119 and distributes to the spouse from principal pursuant to the terms of the trust are insufficient to provide the spouse with the beneficial enjoyment required to obtain the marital deduction, the spouse may require the trustee to make property productive of income, convert property within a reasonable time, or exercise the power conferred by subsection (a) of section 30-3119. The trustee may decide which action or combination of actions to take.

(b) In cases not governed by subsection (a) of this section, proceeds from the sale or other disposition of an asset are principal without regard to the amount of income the asset produces during any accounting period.

Source: Laws 2001, LB 56, § 24.

30-3140 Derivatives and options.

(a) In this section, derivative means a contract or financial instrument or a combination of contracts and financial instruments which gives a trust the right or obligation to participate in some or all changes in the price of a tangible or intangible asset or group of assets, or changes in a rate, an index of prices or rates, or other market indicator for an asset or a group of assets.

(b) To the extent that a trustee does not account under section 30-3129 for transactions in derivatives, the trustee shall allocate to principal receipts from and disbursements made in connection with those transactions.

(c) If a trustee grants an option to buy property from the trust, whether or not the trust owns the property when the option is granted, grants an option that permits another person to sell property to the trust, or acquires an option to buy property for the trust or an option to sell an asset owned by the trust, and the trustee or other owner of the asset is required to deliver the asset if the option is exercised, an amount received for granting the option must be allocated to principal. An amount paid to acquire the option must be paid from principal. A gain or loss realized upon the exercise of an option, including an option granted to a settlor of the trust for services rendered, must be allocated to principal.

Source: Laws 2001, LB 56, § 25.

30-3141 Asset-backed securities.

(a) In this section, asset-backed security means an asset whose value is based upon the right it gives the owner to receive distributions from the proceeds of financial assets that provide collateral for the security. The term includes an asset that gives the owner the right to receive from the collateral financial assets only the interest or other current return or only the proceeds other than interest or current return. The term does not include an asset to which section 30-3127 or 30-3135 applies.

(b) If a trust receives a payment from interest or other current return and from other proceeds of the collateral financial assets, the trustee shall allocate to income the portion of the payment which the payer identifies as being from interest or other current return and shall allocate the balance of the payment to principal.

(c) If a trust receives one or more payments in exchange for the trust's entire interest in an asset-backed security in one accounting period, the trustee shall allocate the payments to principal. If a payment is one of a series of payments that will result in the liquidation of the trust's interest in the security over more than one accounting period, the trustee shall allocate ten percent of the payment to income and the balance to principal.

Source: Laws 2001, LB 56, § 26.

PART 5

ALLOCATION OF DISBURSEMENTS DURING ADMINISTRATION OF TRUST

30-3142 Disbursements from income.

A trustee shall make the following disbursements from income to the extent that they are not disbursements to which subdivision (2)(B) or (C) of section 30-3122 applies:

(1) one-half of the regular compensation of the trustee and of any person providing investment advisory or custodial services to the trustee;

(2) one-half of all expenses for accountings, judicial proceedings, or other matters that involve both the income and remainder interests;

(3) all of the other ordinary expenses incurred in connection with the administration, management, or preservation of trust property and the distribution of income, including interest, ordinary repairs, regularly recurring taxes assessed against principal, and expenses of a proceeding or other matter that concerns primarily the income interest; and

(4) recurring premiums on insurance covering the loss of a principal asset or the loss of income from or use of the asset.

Source: Laws 2001, LB 56, § 27.

30-3143 Disbursements from principal.

(a) A trustee shall make the following disbursements from principal:

(1) the remaining one-half of the disbursements described in subdivisions (1) and (2) of section 30-3142;

(2) all of the trustee's compensation calculated on principal as a fee for acceptance, distribution, or termination, and disbursements made to prepare property for sale;

(3) payments on the principal of a trust debt;

(4) expenses of a proceeding that concerns primarily principal, including a proceeding to construe the trust or to protect the trust or its property;

(5) premiums paid on a policy of insurance not described in subdivision (4) of section 30-3142 of which the trust is the owner and beneficiary;

(6) estate, inheritance, and other transfer taxes, including penalties, apportioned to the trust; and

(7) disbursements related to environmental matters, including reclamation, assessing environmental conditions, remedying and removing environmental contamination, monitoring remedial activities and the release of substances, preventing future releases of substances, collecting amounts from persons liable or potentially liable for the costs of those activities, penalties imposed under environmental laws or regulations and other payments made to comply with those laws or regulations, statutory or common-law claims by third parties, and defending claims based on environmental matters.

(b) If a principal asset is encumbered with an obligation that requires income from that asset to be paid directly to the creditor, the trustee shall transfer from

principal to income an amount equal to the income paid to the creditor in reduction of the principal balance of the obligation.

Source: Laws 2001, LB 56, § 28.

30-3144 Transfers from income to principal for depreciation.

(a) In this section, depreciation means a reduction in value due to wear, tear, decay, corrosion, or gradual obsolescence of a fixed asset having a useful life of more than one year.

(b) A trustee may transfer to principal a reasonable amount of the net cash receipts from a principal asset that is subject to depreciation, but may not transfer any amount for depreciation:

(1) of that portion of real property used or available for use by a beneficiary as a residence or of tangible personal property held or made available for the personal use or enjoyment of a beneficiary;

(2) during the administration of a decedent's estate; or

(3) under this section if the trustee is accounting under section 30-3129 for the business or activity in which the asset is used.

(c) An amount transferred to principal need not be held as a separate fund.

Source: Laws 2001, LB 56, § 29.

30-3145 Transfers from income to reimburse principal.

(a) If a trustee makes or expects to make a principal disbursement described in this section, the trustee may transfer an appropriate amount from income to principal in one or more accounting periods to reimburse principal or to provide a reserve for future principal disbursements.

(b) Principal disbursements to which subsection (a) of this section applies include the following, but only to the extent that the trustee has not been and does not expect to be reimbursed by a third party:

(1) an amount chargeable to income but paid from principal because it is unusually large, including extraordinary repairs;

(2) a capital improvement to a principal asset, whether in the form of changes to an existing asset or the construction of a new asset, including special assessments;

(3) disbursements made to prepare property for rental, including tenant allowances, leasehold improvements, and broker's commissions;

(4) periodic payments on an obligation secured by a principal asset to the extent that the amount transferred from income to principal for depreciation is less than the periodic payments; and

(5) disbursements described in subdivision (a)(7) of section 30-3143.

(c) If the asset whose ownership gives rise to the disbursements becomes subject to a successive income interest after an income interest ends, a trustee may continue to transfer amounts from income to principal as provided in subsection (a) of this section.

Source: Laws 2001, LB 56, § 30.

30-3146 Income taxes.

(a) A tax required to be paid by a trustee based on receipts allocated to income must be paid from income.

(b) A tax required to be paid by a trustee based on receipts allocated to principal must be paid from principal, even if the tax is called an income tax by the taxing authority.

(c) A tax required to be paid by a trustee on the trust's share of an entity's taxable income must be paid proportionately:

(1) from income to the extent that receipts from the entity are allocated to income; and

(2) from principal to the extent that:

(A) receipts from the entity are allocated to principal; and

(B) the trust's share of the entity's taxable income exceeds the total receipts described in subdivisions (1) and (2)(A) of this subsection.

(d) For purposes of this section, receipts allocated to principal or income must be reduced by the amount distributed to a beneficiary from principal or income for which the trust receives a deduction in calculating the tax.

Source: Laws 2001, LB 56, § 31.

30-3147 Adjustments between principal and income because of taxes.

(a) A fiduciary may make adjustments between principal and income to offset the shifting of economic interests or tax benefits between income beneficiaries and remainder beneficiaries which arise from:

(1) elections and decisions, other than those described in subsection (b) of this section, that the fiduciary makes from time to time regarding tax matters;

(2) an income tax or any other tax that is imposed upon the fiduciary or a beneficiary as a result of a transaction involving or a distribution from the estate or trust; or

(3) the ownership by an estate or trust of an interest in an entity whose taxable income, whether or not distributed, is includable in the taxable income of the estate, trust, or a beneficiary.

(b) If the amount of an estate tax marital deduction or charitable contribution deduction is reduced because a fiduciary deducts an amount paid from principal for income tax purposes instead of deducting it for estate tax purposes, and as a result estate taxes paid from principal are increased and income taxes paid by an estate, trust, or beneficiary are decreased, each estate, trust, or beneficiary that benefits from the decrease in income tax shall reimburse the principal from which the increase in estate tax is paid. The total reimbursement must equal the increase in the estate tax to the extent that the principal used to pay the increase would have qualified for a marital deduction or charitable contribution deduction but for the payment. The proportionate share of the reimbursement for each estate, trust, or beneficiary whose income taxes are reduced must be the same as its proportionate share of the total decrease in income tax. An estate or trust shall reimburse principal from income.

Source: Laws 2001, LB 56, § 32.

PART 6

MISCELLANEOUS PROVISIONS

30-3148 Uniformity of application and construction.

In applying and construing the Uniform Principal and Income 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 2001, LB 56, § 33.

30-3149 Application of act to existing trusts and estates.

The Uniform Principal and Income Act applies to every trust or decedent's estate existing on September 1, 2001, except as otherwise expressly provided in the will or terms of the trust or in the act.

Source: Laws 2001, LB 56, § 34.

ARTICLE 32

FIDUCIARIES

Section
30-3201. Investment of funds; prudent investor rule.
30-3202. Sections; applicability.
30-3203. Section; applicability.
30-3204. Securities received by fiduciary; investments authorized.
30-3205. Fiduciary; interests in investment company or trust; investments authorized; bank or trust company; investments authorized.
30-3206. Repealed. Laws 2008, LB 851, § 32.
30-3207. Bank or trust company; common trust funds authorized; investments; conditions.
30-3208. Bank or trust company; powers.
30-3209. Corporate trustee; retirement or pension funds of governmental employees; investments authorized.
30-3210. Real estate mortgage; purchase of stock in federal corporation; court may authorize.
30-3211. Registration of securities; name; conditions; liability of fiduciary.
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30-3213. Real estate investment trust, defined.
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30-3215. Private foundations and split-interest trusts; prohibited acts.
30-3216. Private foundations and split-interest trusts; governing instrument; amendments permitted.
30-3217. Private foundations and split-interest trusts; applicability of sections.
30-3218. Private foundations and split-interest trusts; sections; how interpreted.
30-3219. Electric and communication facilities; easement; license and agreement for construction, operation, and maintenance; fiduciaries; execution.
30-3220. Electric and communication facilities; easement; license and agreement for construction, operation, and maintenance; fiduciaries; execution; procedure.

30-3201 Investment of funds; prudent investor rule.

Except as may be otherwise provided in section 8-318, or otherwise provided by law or by the instrument creating the fiduciary relationship involved, each and every trustee, guardian, conservator, executor, or administrator, whether appointed by the courts of this state, or acting under authority other than a

court appointment, having funds for investment shall comply with the prudent investor rule set forth in sections 30-3883 to 30-3889.

Source: Laws 1933, c. 64, § 1, p. 299; Laws 1935, c. 68, § 1, p. 245; Laws 1937, c. 60, § 1, p. 237; C.S.Supp.,1941, § 27-601; Laws 1943, c. 66, § 1, p. 242; R.S.1943, § 24-601; Laws 1945, c. 56, § 1, p. 243; Laws 1947, c. 79, § 1, p. 248; Laws 1953, c. 67, § 2, p. 213; Laws 1955, c. 82, § 1, p. 238; Laws 1959, c. 263, § 9, p. 931; Laws 1963, c. 134, § 1, p. 505; Laws 1965, c. 113, § 1, p. 438; Laws 1975, LB 481, § 8; R.S.1943, (1985), § 24-601; Laws 1997, LB 54, § 18; Laws 2003, LB 130, § 134.

Inherent jurisdiction of district court over trusts conferred by the Constitution is not affected by this section. John A. Creighton Home v. Waltman, 140 Neb. 3, 299 N.W. 261 (1941).

30-3202 Sections; applicability.

Sections 30-3201 and 30-3207 shall apply to fiduciary relationships now in existence or hereafter established.

Source: Laws 1953, c. 67, § 3, p. 218; R.S.1943, (1985), § 24-601.02.

30-3203 Section; applicability.

Section 30-3201 shall apply to fiduciary relationships whether now in existence or established after November 18, 1965.

Source: Laws 1965, c. 113, § 2, p. 438; R.S.1943, (1985), § 24-601.03.

30-3204 Securities received by fiduciary; investments authorized.

Trust funds received by administrators, executors, trustees or guardians may be kept invested in the securities received by them unless it shall be otherwise ordered by the court of appointment or unless the instrument under which such trust was created shall direct that a change of investments shall be made, and they shall not be liable for any loss that may occur through the depreciation of such securities. The provisions of this section and section 30-3201 shall in no manner affect the right of fiduciaries to continue the investments existing before August 9, 1933, that do not conform to the standards contained in said sections, but any investments so held that do conform, or subsequently acquired under the provisions of said sections may be continued notwithstanding changes in conditions of the security or the obligor that would render such securities ineligible for further investments.

Source: Laws 1933, c. 64, § 2, p. 300; C.S.Supp.,1941, § 27-602; R.S. 1943, § 24-602; R.S.1943, (1985), § 24-602.

This section is not applicable where the will directs that securities of deceased be converted into cash. Bates v. Scottsbluff Nat. Bank, 190 Neb. 456, 209 N.W.2d 165 (1973).

30-3205 Fiduciary; interests in investment company or trust; investments authorized; bank or trust company; investments authorized.

(1) A fiduciary holding funds for investment may invest such funds in securities of, or other interests in, any open-end or closed-end management-type investment company or investment trust registered pursuant to the federal Investment Company Act of 1940, as amended, if a court order, will, agreement, or other instrument creating or defining the investment powers of the

fiduciary directs, requires, authorizes, or permits the investment of such funds in any of the following: (a) Such investments as the fiduciary may, in his or her discretion, select; (b) investments generally, other than those in which fiduciaries are by law authorized to invest trust funds; and (c) United States Government obligations if the portfolio of such investment company or investment trust is limited to United States Government obligations and to repurchase agreements fully collateralized by such obligations and if such investment company or investment trust takes delivery of the collateral, either directly or through an authorized custodian.

(2) A bank or trust company acting as a fiduciary, agent, or otherwise may, in the exercise of its investment discretion or at the direction of another person authorized to direct investment of funds held by the bank or trust company as a fiduciary, invest and reinvest interests in the securities of an open-end or closed-end management-type investment company or investment trust registered pursuant to the federal Investment Company Act of 1940, as amended, or may retain, sell, or exchange such interests so long as the portfolio of the investment company or investment trust as an entity consists substantially of investments not prohibited by the instrument governing the fiduciary relationship. The fact that the bank or trust company or an affiliate of the bank or trust company provides services to the investment company or investment trust, such as that of an investment advisor, custodian, transfer agent, registrar, sponsor, distributor, manager, or otherwise, and is receiving reasonable compensation for the services shall not preclude the bank or trust company from investing, reinvesting, retaining, or exchanging any interest held by the trust estate in the securities of any open-end or closed-end management-type investment company or investment trust registered pursuant to the federal Investment Company Act of 1940, as amended.

Source: Laws 1987, LB 576, § 1; R.S.Supp.,1988, § 24-638; Laws 1993, LB 91, § 1; Laws 2000, LB 932, § 28; Laws 2003, LB 130, § 135.

30-3206 Repealed. Laws 2008, LB 851, § 32.

30-3207 Bank or trust company; common trust funds authorized; investments; conditions.

Any bank or trust company qualified to act as fiduciary in this state may establish common trust funds for the purpose of furnishing investments to itself as fiduciary, or to itself and others, as cofiduciaries, and may, as such fiduciary or cofiduciary, invest funds which it lawfully holds for investment in interests in such common trust funds, if such investment is not prohibited by the instrument, judgment, decree, or order creating such fiduciary relationship and if, in the case of cofiduciaries, the bank or trust company procures the consent of its cofiduciaries to such investment.

Source: Laws 1953, c. 67, § 1, p. 212; R.S.1943, (1985), § 24-601.01.

30-3208 Bank or trust company; powers.

(1) Notwithstanding the provisions of sections 30-3201 and 30-3207, any bank or trust company qualified to act as fiduciary in this state may:

(a) Establish and maintain common trust funds for the collective investment of funds held in any fiduciary capacity by it or by another bank or trust

company which is owned or controlled by a corporation which owns or controls such bank or trust company; and

(b) As a fiduciary or cofiduciary, invest funds which it holds for investment in common trust funds established and maintained by another bank or trust company which is owned or controlled by a corporation which owns or controls such bank or trust company if such investment is not prohibited by the instrument, judgment, decree, or order creating such fiduciary relationship.

(2) To the extent not inconsistent with this section, sections 30-3201 to 30-3203 and 30-3207 shall apply to the establishment and maintenance of, and investment in common trust funds under this section.

(3) This section shall apply to fiduciary relationships now in existence or hereafter created.

Source: Laws 1982, LB 951, § 1; R.S.1943, (1985), § 24-601.05.

30-3209 Corporate trustee; retirement or pension funds of governmental employees; investments authorized.

(1) Corporate trustees authorized by Nebraska law to exercise fiduciary powers and holding retirement or pension funds for the benefit of employees or former employees of cities, villages, school districts, public power districts, or other governmental or political subdivisions may invest and reinvest such funds in such securities and investments as are authorized for trustees, guardians, conservators, personal representatives, or administrators under the laws of Nebraska. Retirement or pension funds of such cities, villages, districts, or subdivisions may be invested in annuities issued by life insurance companies authorized to do business in Nebraska. Except as provided in subsection (2) of this section, any other retirement or pension funds of cities, including cities operating under home rule charters, villages, school districts except as provided in section 79-9,107, public power districts, and all other governmental or political subdivisions may be invested and reinvested, as the governing body of such city, village, school district, public power district, or other governmental or political subdivision may determine, in the following classes of securities and investments: (a) Bonds, notes, or other obligations of the United States or those guaranteed by or for which the credit of the United States is pledged for the payment of the principal and interest or dividends thereof; (b) bonds or other evidences of indebtedness of the State of Nebraska and full faith and credit obligations of or obligations unconditionally guaranteed as to principal and interest by any other state of the United States; (c) bonds, notes, or obligations of any municipal or political subdivision of the State of Nebraska which are general obligations of the issuer thereof and revenue bonds or debentures of any city, county, or utility district of this state when the earnings available for debt service have, for a five-year period immediately preceding the date of purchase, averaged not less than one and one-half times such debt service requirements; (d) 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; (e) certificates of deposit of banks which are members of the Federal Deposit Insurance Corporation or capital stock financial institutions, and if the amount deposited exceeds the amount of insurance available thereon, then the excess shall be secured in the same manner as for the deposit of public funds; (f) accounts with building and loan associations, qualifying mutual

financial institutions, or federal savings and loan associations in the State of Nebraska to the extent that such accounts are insured by the Federal Deposit Insurance Corporation; (g) bonds or other interest-bearing obligations of any corporation organized under the laws of the United States or any state thereof if (i) at the time the purchase is made, they are given, by at least one statistical organization whose publication is in general use, one of the three highest ratings given by such organization and (ii) not more than five percent of the fund shall be invested in the obligations of any one issuer; (h) direct short-term obligations, generally classified as commercial paper, of any corporation organized or existing under the laws of the United States or any state thereof with a net worth of ten million dollars or more; and (i) preferred or common stock of any corporation organized under the laws of the United States or of any state thereof with a net worth of ten million dollars or more if (i) not more than fifty percent of the total investments at the time such investment is made is in this class and not more than five percent is invested in each of the first five years and (ii) not more than five percent thereof is invested in the securities of any one corporation. Notwithstanding the percentage limits stated in this subsection, the cash proceeds of the sale of such preferred or common stock may be reinvested in any securities authorized under this subdivision. No city, village, school district, public power district, or other governmental subdivision or the governing body thereof shall be authorized to sell any securities short, buy on margin, or buy, sell, or engage in puts and calls. 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) Notwithstanding the limitations prescribed in subsection (1) of this section, trustees holding retirement or pension funds for the benefit of employees or former employees of any city of the metropolitan class, metropolitan utilities district, or county in which a city of the metropolitan class is located shall invest such funds in investments of the nature which individuals of prudence, discretion, and intelligence acquire or retain in dealing with the property of another. Such investments shall not be made for speculation but for investment, considering the probable safety of their capital as well as the probable income to be derived. The trustees shall not buy on margin, buy call options, or buy put options. The trustees may lend any security if cash, United States Government obligations, or United States Government agency obligations with a market value equal to or exceeding the market value of the security lent are received as collateral. If shares of stock are purchased under this subsection, all proxies may be voted by the trustees. The asset allocation restrictions set forth in subsection (1) of this section shall not be applicable to the funds of pension or retirement systems administered by or on behalf of a city of the metropolitan class, metropolitan utilities district, or county in which a city of the metropolitan class is located.

Source: Laws 1967, c. 257, § 1, p. 678; Laws 1984, LB 752, § 1; Laws 1989, LB 33, § 25; R.S.Supp.,1989, § 24-601.04; Laws 1992, LB 757, § 21; Laws 1996, LB 900, § 1036; Laws 1998, LB 1321, § 78; Laws 2001, LB 362, § 29; Laws 2001, LB 408, § 12.

30-3210 Real estate mortgage; purchase of stock in federal corporation; court may authorize.

When any court of competent jurisdiction shall issue a license to any trustee, executor, administrator or guardian to execute a real estate mortgage, such

court may authorize the trustee, executor, administrator or guardian to purchase stock in any association or corporation created or which may be created by authority of the United States and as an instrumentality of the United States when such purchase of stock is necessary or required as an incident to obtaining such loan; *Provided*, the amount of stock which may be purchased shall be limited to the amount of stock required for the proposed loan.

Source: Laws 1935, c. 68, § 2, p. 246; C.S.Supp.,1941, § 27-604; R.S. 1943, § 24-603; R.S.1943, (1985), § 24-603.

30-3211 Registration of securities; name; conditions; liability of fiduciary.

Any person or any corporation holding any stock, bond, note, debenture, or any other security or property, the title to which may be registered, hereinafter referred to as a security, as executor, administrator, trustee, guardian, conservator or in any other fiduciary capacity, may cause the same to be registered in his or its own name or in the name of a nominee without any words indicating the fiduciary capacity in which such security is held; *Provided*, (1) the accounts and records of such person or corporation at all times clearly show that such security was held by such person or corporation in such fiduciary capacity; (2) said security is kept separate and apart from the property held by such person or corporation in his or its own right or in any other fiduciary capacity, or such security may be evidenced by book entry; (3) such fiduciary at all times has possession of such security and, if registered in the name of a nominee, before or promptly after such registration, secures from the nominee all such instruments as may be necessary to transfer the same without any further act of such nominee; and (4) the fiduciary shall be liable individually and in his or its own right for any loss resulting to the fiduciary estate because said security was so registered instead of being registered in his or its name as such fiduciary.

Source: Laws 1947, c. 80, § 1, p. 253; Laws 1978, LB 763, § 2; R.S. 1943, (1985), § 24-604.

Passage of nominee statute in 1947 was such a change of circumstances as to require bond of testamentary trustee even though will provided that no bond be required. In re Estate of Grainger, 151 Neb. 555, 38 N.W.2d 435 (1949).

30-3212 Registration of securities; name of nominee.

A corporation acting as one of two or more fiduciaries, with the consent of its cofiduciary or cofiduciaries, who are hereby authorized to give such consent, may register a security held by said fiduciaries in the name of its nominee, subject in all respects to the requirements, provisions and liabilities set forth in section 30-3211.

Source: Laws 1947, c. 80, § 2, p. 254; R.S.1943, (1985), § 24-605.

30-3213 Real estate investment trust, defined.

For the purpose of this section and section 30-3214 real estate investment trust shall mean an unincorporated trust or an unincorporated association:

(1) Which is managed by one or more trustees;

(2) The beneficial ownership of which is evidenced by the transferable shares, or by transferable certificates of beneficial interest;

(3) Which does not hold any property primarily for sale to customers in the ordinary course of its trade or business; and

(4) The beneficial ownership of which is held by one hundred or more persons.

Source: Laws 1961, c. 108, § 1, p. 345; R.S.1943, (1985), § 24-632.

30-3214 Real estate investment trust; articles of agreement or trust; filing.

A real estate investment trust shall file its articles of agreement or of trust or any modifications thereof with the Secretary of State and with the county clerk of the county in this state in which the trust has its principal place of doing business by complying with the same procedures as set forth in sections 21-2015, 21-2017 to 21-2023, and 21-20,116 to 21-20,127. Such filing shall include a copy of the articles of agreement or of trust and shall name a resident agent in the State of Nebraska and the principal place of doing business in this state.

Source: Laws 1961, c. 108, § 2, p. 345; Laws 1965, c. 114, § 1, p. 439; R.S.1943, (1985), § 24-633; Laws 1995, LB 109, § 213.

30-3215 Private foundations and split-interest trusts; prohibited acts.

Notwithstanding any provision to the contrary in the governing instrument or under any other law of this state and except as otherwise provided by court decree entered after April 30, 1971, a trust, whenever created, which is a private foundation or a split-interest trust as defined in sections 509 and 4947, respectively, of the Internal Revenue Code, during the period it is a private foundation or split-interest trust as so defined:

(1) Shall not engage in any act of self-dealing as defined in section 4941(d) of such code;

(2) Shall distribute the trust income for each taxable year at such time and in such manner as not to subject the trust to the tax on undistributed income imposed by section 4942 of such code;

(3) Shall not retain any excess business holdings as defined in section 4943(c) of such code;

(4) Shall not make any investment in such manner as to subject the trust to tax under section 4944 of such code; and

(5) Shall not make any taxable expenditure as defined in section 4945(d) of such code.

Except as otherwise provided by court decree entered after April 30, 1971, the prohibitions and requirements imposed upon such a trust by subdivisions (1) through (5) of this section shall be deemed to be included within the governing instrument of every private foundation or split-interest trust, as defined in this section.

Source: Laws 1971, LB 793, § 1; R.S.1943, (1985), § 24-634; Laws 1995, LB 574, § 40.

30-3216 Private foundations and split-interest trusts; governing instrument; amendments permitted.

The trustee of a trust, whenever created, which is a private foundation or a split-interest trust as defined in sections 509 and 4947, respectively, of the Internal Revenue Code may, notwithstanding any provision to the contrary in the governing instrument or under any other law of this state and except as

otherwise provided by court decree entered after April 30, 1971, amend the terms of the governing instrument to the extent necessary to bring the trust into conformity with the requirements for:

(1) Termination of private foundation status in the manner described in section 507 of such code, and exemption of the trust from the taxes imposed by sections 4941 to 4945, inclusive, thereof; or

(2) Exclusion of the trust from private foundation status under section 509(a)(3) of such code; and to this end may release any power contained in the governing instrument, may reduce or limit the charitable organizations or classes of charitable organizations in whose favor a power to select may be exercised, and may appoint new or additional trustees. If the trust is for the benefit of one or more named charitable organizations, the trustee shall first obtain the consent of those organizations before making any amendment under this subdivision.

Source: Laws 1971, LB 793, § 2; R.S.1943, (1985), § 24-635; Laws 1995, LB 574, § 41.

30-3217 Private foundations and split-interest trusts; applicability of sections.

A trustee of a trust which is a private foundation or a split-interest trust as defined in section 30-3215, may elect that sections 30-3215 to 30-3218 shall not apply to such trust and its trustee or trustees by so notifying the Attorney General in writing within six months following April 30, 1971, or when such trust becomes subject to sections 30-3215 to 30-3218, whichever last occurs. Section 30-3215 shall not apply to any trust with respect to which notice has been given, unless the trust is amended to comply with the terms of section 30-3215.

Source: Laws 1971, LB 793, § 3; R.S.1943, (1985), § 24-636.

30-3218 Private foundations and split-interest trusts; sections; how interpreted.

Sections 30-3215 to 30-3218 shall be interpreted to effectuate the intent of the State of Nebraska to preserve, foster and encourage gifts to or for the benefit of charitable organizations and to preserve to such organizations their right to exemption from federal income taxes.

Source: Laws 1971, LB 793, § 4; R.S.1943, (1985), § 24-637.

30-3219 Electric and communication facilities; easement; license and agreement for construction, operation, and maintenance; fiduciaries; execution.

Administrators and executors of the estates of deceased persons, trustees of trust estates, the guardians of estates of minors and incompetent persons, and conservators may execute easements, licenses, and other contracts with public power districts, electric membership associations, cooperative corporations, individuals, partnerships, limited liability companies, or corporations for the construction, operation, and maintenance of electric generation, transmission, or distribution facilities or facilities for the transmission or distribution of communications upon such terms and conditions as the administrators, executors, trustees, guardians, or conservators of such persons deem reasonable and

equitable, and for the best interests of the estates of deceased persons, minors, incompetents, and beneficiaries of a trust.

Source: Laws 1961, c. 462, § 1, p. 1406; Laws 1993, LB 121, § 552; R.S.1943, (1999), § 86-337; Laws 2002, LB 1105, § 434.

Cross References

Oil and gas pipeline easements, powers, see section 57-401.

30-3220 Electric and communication facilities; easement; license and agreement for construction, operation, and maintenance; fiduciaries; execution; procedure.

Easements and contracts authorized in section 30-3219 shall be entered into by administrators, executors, trustees, guardians, and conservators only upon compliance with and upon securing the approval of the county court of the county where the real estate is located in the manner provided in section 57-402, pertaining to oil and gas pipeline easements.

Source: Laws 1961, c. 462, § 2, p. 1406; Laws 1972, LB 1032, § 283; R.S.1943, (1999), § 86-338; Laws 2002, LB 1105, § 435.

ARTICLE 33

UNIFORM ACT FOR SIMPLIFICATION OF FIDUCIARY SECURITY TRANSFERS

Section

30-3301. Repealed. Laws 1995, LB 97, § 74.
30-3302. Repealed. Laws 1995, LB 97, § 74.
30-3303. Repealed. Laws 1995, LB 97, § 74.
30-3304. Repealed. Laws 1995, LB 97, § 74.
30-3305. Repealed. Laws 1995, LB 97, § 74.
30-3306. Repealed. Laws 1995, LB 97, § 74.
30-3307. Repealed. Laws 1995, LB 97, § 74.
30-3308. Repealed. Laws 1995, LB 97, § 74.
30-3309. Repealed. Laws 1995, LB 97, § 74.
30-3310. Repealed. Laws 1995, LB 97, § 74.
30-3311. Repealed. Laws 1995, LB 97, § 74.

30-3301 Repealed. Laws 1995, LB 97, § 74.

30-3302 Repealed. Laws 1995, LB 97, § 74.

30-3303 Repealed. Laws 1995, LB 97, § 74.

30-3304 Repealed. Laws 1995, LB 97, § 74.

30-3305 Repealed. Laws 1995, LB 97, § 74.

30-3306 Repealed. Laws 1995, LB 97, § 74.

30-3307 Repealed. Laws 1995, LB 97, § 74.

30-3308 Repealed. Laws 1995, LB 97, § 74.

30-3309 Repealed. Laws 1995, LB 97, § 74.

30-3310 Repealed. Laws 1995, LB 97, § 74.

30-3311 Repealed. Laws 1995, LB 97, § 74.

ARTICLE 34

HEALTH CARE POWER OF ATTORNEY

Section
30-3401. Legislative intent.
30-3402. Terms, defined.
30-3403. Power of attorney for health care; designation; competency; presumption.
30-3404. Power of attorney; contents.
30-3405. Witness; disqualification; declaration.
30-3406. Attorney in fact; disqualification.
30-3407. Attorney in fact; withdrawal.
30-3408. Power of attorney; form; validity.
30-3409. Power of attorney; medical record.
30-3410. Power of attorney; duration.
30-3411. Authority of attorney in fact; commencement.
30-3412. Incapacity of principal; determination.
30-3413. Incapacity of principal; notice.
30-3414. Incapacity of principal; attorney in fact; duties.
30-3415. Incapacity of principal; dispute; hearing.
30-3416. Incapacity of principal; determination; effect.
30-3417. Attorney in fact; powers and duties; exceptions; responsibility for costs; rights; objection of principal; health care provider; acceptance of decisions.
30-3418. Attorney in fact; consult with medical personnel; authority; limitations.
30-3419. Attending physician; duties.
30-3420. Power of attorney; health care decision; revocation; limitations; effect.
30-3421. Filing of petition; when.
30-3422. Filing of petition; by whom.
30-3423. Attorney in fact; attending physician; health care provider; immunity.
30-3424. Right to make health care decisions; sections; effect.
30-3425. Health care providers; assumption of validity.
30-3426. Execution of power of attorney; effect on right to routine care.
30-3427. Health care provider; exercise independent medical judgment.
30-3428. Health care provider; refusal to honor health care decision; duties.
30-3429. Power of attorney; prohibited acts.
30-3430. Presumptions not created.
30-3431. Attempted suicide; how construed.
30-3432. Violations; penalties.

30-3401 Legislative intent.

(1) It is the intent of the Legislature to establish a decisionmaking process which allows a competent adult to designate another person to make health care and medical treatment decisions if the adult becomes incapable of making such decisions.

(2) The Legislature does not intend to encourage or discourage any particular health care or treatment decision or to create any new right or alter any existing right of competent adults to make such decisions, but the Legislature does intend through sections 30-3401 to 30-3432 to allow an adult to exercise rights he or she already possesses by means of delegation of decisionmaking authority to a designated attorney in fact.

(3) Sections 30-3401 to 30-3432 shall not confer any new rights regarding the provision or rejection of any specific medical treatment and shall not alter any existing laws concerning homicide, suicide, or assisted suicide. Nothing in sections 30-3401 to 30-3432 shall be construed to condone, authorize, or approve homicide, suicide, or assisted suicide.

Source: Laws 1992, LB 696, § 1.

30-3402 Terms, defined.

For purposes of sections 30-3401 to 30-3432:

(1) Adult shall mean any person who is nineteen years of age or older or who is or has been married;

(2) Attending physician shall mean the physician, selected by or assigned to a principal, who has primary responsibility for the care and treatment of such principal;

(3) Attorney in fact shall mean an adult properly designated and authorized under sections 30-3401 to 30-3432 to make health care decisions for a principal pursuant to a power of attorney for health care and shall include a successor attorney in fact;

(4) Health care shall mean any treatment, procedure, or intervention to diagnose, cure, care for, or treat the effects of disease, injury, and degenerative conditions;

(5) Health care decision shall include consent, refusal of consent, or withdrawal of consent to health care. Health care decision shall not include (a) the withdrawal or withholding of routine care necessary to maintain patient comfort, (b) the withdrawal or withholding of the usual and typical provision of nutrition and hydration, or (c) the withdrawal or withholding of life-sustaining procedures or of artificially administered nutrition or hydration, except as provided by sections 30-3401 to 30-3432;

(6) Health care provider shall mean an individual or facility licensed, certified, or otherwise authorized or permitted by law to administer health care in the ordinary course of business or professional practice and shall include all facilities defined in the Health Care Facility Licensure Act;

(7) Incapable shall mean the inability to understand and appreciate the nature and consequences of health care decisions, including the benefits of, risks of, and alternatives to any proposed health care or the inability to communicate in any manner an informed health care decision;

(8) Life-sustaining procedure shall mean any medical procedure, treatment, or intervention that (a) uses mechanical or other artificial means to sustain, restore, or supplant a spontaneous vital function and (b) when applied to a person suffering from a terminal condition or who is in a persistent vegetative state, serves only to prolong the dying process. Life-sustaining procedure shall not include routine care necessary to maintain patient comfort or the usual and typical provision of nutrition and hydration;

(9) Persistent vegetative state shall mean a medical condition that, to a reasonable degree of medical certainty as determined in accordance with currently accepted medical standards, is characterized by a total and irreversible loss of consciousness and capacity for cognitive interaction with the environment and no reasonable hope of improvement;

(10) Power of attorney for health care shall mean a power of attorney executed in accordance with sections 30-3401 to 30-3432 which authorizes a designated attorney in fact to make health care decisions for the principal when the principal is incapable;

(11) Principal shall mean an adult who, when competent, confers upon another adult a power of attorney for health care;

(12) Reasonably available shall mean that a person can be contacted with reasonable efforts by an attending physician or another person acting on behalf of the attending physician;

(13) Terminal condition shall mean an incurable and irreversible medical condition caused by injury, disease, or physical illness which, to a reasonable degree of medical certainty, will result in death regardless of the continued application of medical treatment including life-sustaining procedures; and

(14) Usual and typical provision of nutrition and hydration shall mean delivery of food and fluids orally, including by cup, eating utensil, bottle, or drinking straw.

Source: Laws 1992, LB 696, § 2; Laws 2000, LB 819, § 66.

Cross References

Health Care Facility Licensure Act, see section 71-401.

30-3403 Power of attorney for health care; designation; competency; presumption.

(1) A principal may confer a power of attorney for health care thereby designating another competent adult as attorney in fact for health care decisions in accordance with sections 30-3401 to 30-3432. A principal may also designate another competent adult as a successor attorney in fact to serve in place of the original attorney in fact when the original attorney in fact is not reasonably available or is unable or unwilling to serve as an attorney in fact. If, after the authority of a successor attorney in fact has commenced, the original attorney in fact becomes available, able, and willing to serve as attorney in fact, the authority of the successor attorney in fact shall cease and the authority of the original designee shall commence.

(2) There shall be a rebuttable presumption that every adult is competent for purposes of executing a power of attorney for health care unless such adult has been adjudged incompetent or unless a guardian has been appointed for such adult.

Source: Laws 1992, LB 696, § 3.

30-3404 Power of attorney; contents.

The power of attorney for health care shall (1) be in writing, (2) identify the principal, the attorney in fact, and the successor attorney in fact, if any, (3) specifically authorize the attorney in fact to make health care decisions on behalf of the principal in the event the principal is incapable, (4) show the date of its execution, and (5) be witnessed and signed by at least two adults, each of whom witnesses either the signing and dating of the power of attorney for health care by the principal or the principal's acknowledgment of the signature and date, or be signed and acknowledged by the principal before a notary public who shall not be the attorney in fact or successor attorney in fact.

Source: Laws 1992, LB 696, § 4; Laws 1993, LB 782, § 20.

30-3405 Witness; disqualification; declaration.

(1) The following shall not qualify to witness a power of attorney for health care: The principal's spouse, parent, child, grandchild, sibling, presumptive heir, known devisee at the time of the witnessing, attending physician, or attorney in fact; or an employee of a life or health insurance provider for the

principal. No more than one witness may be an administrator or employee of a health care provider who is caring for or treating the principal.

(2) Each witness shall make the written declaration in substantially the form prescribed in section 30-3408.

Source: Laws 1992, LB 696, § 5.

30-3406 Attorney in fact; disqualification.

None of the following may serve as an attorney in fact:

(1) The attending physician;

(2) An employee of the attending physician who is unrelated to the principal by blood, marriage, or adoption;

(3) A person unrelated to the principal by blood, marriage, or adoption who is an owner, operator, or employee of a health care provider in or of which the principal is a patient or resident; and

(4) A person unrelated to the principal by blood, marriage, or adoption if, at the time of the proposed designation, he or she is presently serving as an attorney in fact for ten or more principals.

Source: Laws 1992, LB 696, § 6.

30-3407 Attorney in fact; withdrawal.

At any time when the principal is not incapable, the attorney in fact may withdraw by giving notice to the principal. At any time when the principal is incapable, the attorney in fact may withdraw by giving notice to the health care provider who shall cause the withdrawal to be made a part of the principal's medical records.

Source: Laws 1992, LB 696, § 7; Laws 1993, LB 782, § 21.

30-3408 Power of attorney; form; validity.

(1) A power of attorney for health care executed on or after September 9, 1993, shall be in a form which complies with sections 30-3401 to 30-3432 and may be in the form provided in this subsection.

POWER OF ATTORNEY FOR HEALTH CARE

I appoint ...., whose address is ...., and whose telephone number is ...., as my attorney in fact for health care. I appoint ...., whose address is ...., and whose telephone number is ...., as my successor attorney in fact for health care. I authorize my attorney in fact appointed by this document to make health care decisions for me when I am determined to be incapable of making my own health care decisions. I have read the warning which accompanies this document and understand the consequences of executing a power of attorney for health care.

I direct that my attorney in fact comply with the following instructions or limitations: ....

I direct that my attorney in fact comply with the following instructions on life-sustaining treatment: (optional) ....

I direct that my attorney in fact comply with the following instructions on artificially administered nutrition and hydration: (optional) ....

I HAVE READ THIS POWER OF ATTORNEY FOR HEALTH CARE. I UNDERSTAND THAT IT ALLOWS ANOTHER PERSON TO MAKE LIFE AND DEATH DECISIONS FOR ME IF I AM INCAPABLE OF MAKING SUCH DECISIONS. I ALSO UNDERSTAND THAT I CAN REVOKE THIS POWER OF ATTORNEY FOR HEALTH CARE AT ANY TIME BY NOTIFYING MY ATTORNEY IN FACT, MY PHYSICIAN, OR THE FACILITY IN WHICH I AM A PATIENT OR RESIDENT. I ALSO UNDERSTAND THAT I CAN REQUIRE IN THIS POWER OF ATTORNEY FOR HEALTH CARE THAT THE FACT OF MY INCAPACITY IN THE FUTURE BE CONFIRMED BY A SECOND PHYSICIAN.

. . . .
(Signature of person making designation/date)

DECLARATION OF WITNESSES

We declare that the principal is personally known to us, that the principal signed or acknowledged his or her signature on this power of attorney for health care in our presence, that the principal appears to be of sound mind and not under duress or undue influence, and that neither of us nor the principal's attending physician is the person appointed as attorney in fact by this document.

Witnessed By:

. . . . (Signature of Witness/Date)	. . . . (Printed Name of Witness)
. . . . (Signature of Witness/Date)	. . . . (Printed Name of Witness)

OR

State of Nebraska,)
) ss.
County of ....)

On this .... day of .... 20...., before me, ..., a notary public in and for .... County, personally came ...., personally to me known to be the identical person whose name is affixed to the above power of attorney for health care as principal, and I declare that he or she appears in sound mind and not under duress or undue influence, that he or she acknowledges the execution of the same to be his or her voluntary act and deed, and that I am not the attorney in fact or successor attorney in fact designated by this power of attorney for health care.

Witness my hand and notarial seal at .... in such county the day and year last above written.

. . . .
Seal Signature of Notary Public

(2) A power of attorney for health care may be included in a durable power of attorney drafted under the Uniform Durable Power of Attorney Act or in any other form if the power of attorney for health care included in such durable power of attorney or any other form fully complies with the terms of section 30-3404.

(3) A power of attorney for health care executed prior to January 1, 1993, shall be effective if it fully complies with the terms of section 30-3404.

(4) A power of attorney for health care which is executed in another state and is valid under the laws of that state shall be valid according to its terms.

Source: Laws 1992, LB 696, § 8; Laws 1993, LB 782, § 22; Laws 2004, LB 813, § 11.

Cross References

Uniform Durable Power of Attorney Act, see section 30-2664.

30-3409 Power of attorney; medical record.

The power of attorney for health care, when its existence becomes known, shall be made a part of the principal's medical record with any health care provider in or of which the principal is a patient or resides.

Source: Laws 1992, LB 696, § 9; Laws 1993, LB 782, § 23.

30-3410 Power of attorney; duration.

A power of attorney for health care shall continue in effect until the principal's death, until revoked pursuant to section 30-3420, or until the attorney in fact and any successor attorney in fact withdraws pursuant to section 30-3407.

Source: Laws 1992, LB 696, § 10.

30-3411 Authority of attorney in fact; commencement.

The authority of the attorney in fact shall commence upon a determination pursuant to section 30-3412 that the principal is incapable of making health care decisions.

Source: Laws 1992, LB 696, § 11.

30-3412 Incapacity of principal; determination.

(1) A determination that a principal is incapable of making health care decisions shall be made in writing by the attending physician and any physician consulted with respect to the determination that the principal is incapable of making health care decisions, and they shall document the cause and nature of the principal's incapacity. The determination shall be included in the principal's medical record with the attending physician and, when applicable, with the consulting physician and the health care facility in or of which the principal is a patient or resides.

(2) A physician who has been designated a principal's attorney in fact shall not make the determination that the principal is incapable of making health care decisions.

Source: Laws 1992, LB 696, § 12; Laws 1993, LB 782, § 24.

30-3413 Incapacity of principal; notice.

Notice of a determination that a principal is incapable of making health care decisions shall be given by the attending physician (1) to the principal when there is any indication of the principal's ability to comprehend such notice, (2) to the attorney in fact, and (3) to the health care provider.

Source: Laws 1992, LB 696, § 13; Laws 1993, LB 782, § 25.

30-3414 Incapacity of principal; attorney in fact; duties.

Promptly upon being notified that a determination that the principal is incapable of making health care decisions has or is about to be made, the attorney in fact, if other than the principal's most proximate next of kin and if the principal has not directed otherwise, shall notify the most proximate next of kin and the court-appointed guardian of the principal, if any. The order of notification shall be: (1) The spouse; (2) an adult child; (3) either parent; (4) an adult brother or sister; and (5) the next closest kin.

Source: Laws 1992, LB 696, § 14.

30-3415 Incapacity of principal; dispute; hearing.

If a dispute arises as to whether the principal is incapable, a petition may be filed with the county court in the county in which the principal resides or is located requesting the court's determination as to whether the principal is incapable of making health care decisions. If such a petition is filed, the court shall appoint a guardian ad litem to represent the principal. The court shall conduct a hearing on the petition within seven days after the court's receipt of the petition. Within seven days after the hearing, the court shall issue its determination. If the court determines that the principal is incapable, the authority, rights, and responsibilities of the principal's attorney in fact shall become effective. If the court determines that the principal is not incapable, the authority, rights, and responsibilities of the attorney in fact shall not become effective.

Source: Laws 1992, LB 696, § 15.

30-3416 Incapacity of principal; determination; effect.

A determination that a principal is incapable of making health care decisions shall not be construed as a finding that the principal is incapable for any other purpose.

Source: Laws 1992, LB 696, § 16.

30-3417 Attorney in fact; powers and duties; exceptions; responsibility for costs; rights; objection of principal; health care provider; acceptance of decisions.

(1) When the authority conferred by a power of attorney for health care has commenced, the attorney in fact, subject to any instructions and limitations set forth in the power of attorney for health care or elsewhere, shall make health care decisions on the principal's behalf, except that the attorney in fact shall not have authority (a) to consent to any act or omission to which the principal could not consent under law, (b) to make any decision when the principal is known to be pregnant that will result in the death of the principal's unborn child and it is probable that the unborn child will develop to the point of live birth with continued application of health care, or (c) to make decisions regarding withholding or withdrawing a life-sustaining procedure or withholding or withdrawing artificially administered nutrition and hydration except as provided under section 30-3418.

(2) The attorney in fact shall have priority over any person other than the principal to act for the principal in all health care decisions, except that the attorney in fact shall not have the authority to make any health care decision

unless and until the principal has been determined to be incapable of making health care decisions pursuant to section 30-3412.

(3) The attorney in fact shall not be personally responsible for the cost of health care provided to the principal.

(4) Except to the extent that the right is limited by the power of attorney for health care, an attorney in fact shall have the same right as the principal to receive information regarding the proposed health care, to receive and review medical and clinical records, and to consent to the disclosures of such records, except that the right to access such records shall not be a waiver of any evidentiary privilege.

(5) Notwithstanding a determination pursuant to section 30-3412 that the principal is incapable of making health care decisions, when a principal objects to the determination or to a health care decision made by an attorney in fact, the principal's objection or decision shall prevail unless the principal is determined by a county court to be incapable of making health care decisions.

(6) No health care provider shall be required to accept health care decisions from an attorney in fact until such health care provider has received a signed original or a photostatic copy of a signed original power of attorney for health care.

Source: Laws 1992, LB 696, § 17.

30-3418 Attorney in fact; consult with medical personnel; authority; limitations.

(1) In exercising authority under the power of attorney for health care, an attorney in fact shall have a duty to consult with medical personnel, including the attending physician, and thereupon to make health care decisions (a) in accordance with the principal's wishes as expressed in the power of attorney for health care or as otherwise made known to the attorney in fact or (b) if the principal's wishes are not reasonably known and cannot with reasonable diligence be ascertained, in accordance with the principal's best interests, with due regard for the principal's religious and moral beliefs if known.

(2) Notwithstanding subdivision (1)(b) of this section, the attorney in fact shall not have the authority to consent to the withholding or withdrawing of a life-sustaining procedure or artificially administered nutrition or hydration unless (a) the principal is suffering from a terminal condition or is in a persistent vegetative state and (b) the power of attorney for health care explicitly grants such authority to the attorney in fact or the intent of the principal to have life-sustaining procedures or artificially administered nutrition or hydration withheld or withdrawn under such circumstances is established by clear and convincing evidence.

(3) In exercising any decision, the attorney in fact shall have no authority to withhold or withdraw consent to routine care necessary to maintain patient comfort or the usual and typical provision of nutrition and hydration.

Source: Laws 1992, LB 696, § 18.

30-3419 Attending physician; duties.

(1) Before acting upon a health care decision made by an attorney in fact, other than those decisions made at or about the time of the initial determination, the attending physician shall confirm that the principal continues to be

incapable. The confirmation shall be stated in writing and shall be included in the principal's medical records. The notice requirements set forth in sections 30-3413 and 30-3414 shall not apply to the confirmation required by this subsection.

(2) If the attending physician determines that the principal is no longer incapable, the authority of the attorney in fact shall cease unless otherwise directed by the principal, but it shall recommence if the principal subsequently becomes incapable as determined pursuant to section 30-3412.

Source: Laws 1992, LB 696, § 19.

30-3420 Power of attorney; health care decision; revocation; limitations; effect.

(1) A power of attorney for health care or a health care decision made by an attorney in fact may be revoked at any time by a principal who is competent and in any manner by which the principal is able to communicate his or her intent to revoke. Revocation shall be effective upon communication to the attending physician, the health care provider who shall promptly inform the attending physician of the revocation, or the attorney in fact who shall promptly inform the attending physician of the revocation.

(2) The creation by the principal of written wishes or instructions about health care or limitations upon the attorney in fact's authority shall not revoke a power of attorney for health care unless such wishes, instructions, or limitations expressly provide otherwise.

(3) Upon learning of the revocation of the power of attorney for health care, the attending physician shall cause the revocation to be made a part of the principal's medical records.

(4) Unless the power of attorney for health care provides otherwise, execution of a valid power of attorney for health care shall revoke any previously executed power of attorney for health care.

(5) Unless the power of attorney for health care provides otherwise, a power of attorney for health care shall supersede:

(a) Any conflicting preexisting directive;

(b) Any guardianship proceedings under the Nebraska Probate Code to the extent the proceedings involve the right to make health care decisions for the protected person; and

(c) Any conservatorship proceedings under the Nebraska Probate Code to the extent the proceedings involve the right to make health care decisions for the protected person.

(6) A decree of divorce or legal separation entered into pursuant to sections 42-347 to 42-380 may specify whether the choice of the principal's spouse as attorney in fact under a power of attorney for health care shall be revoked or remain effective. If the decree does not specify whether the choice of the spouse as the principal's attorney in fact for health care is revoked or remains effective, the choice of the principal's spouse as attorney in fact for health care shall be deemed revoked upon entry of the decree.

(7) The revocation of a power of attorney for health care shall not revoke or terminate the authority as to the attorney in fact or other person who acts in good faith under the power of attorney for health care and without actual

knowledge of the revocation. An action taken without knowledge of the revocation, unless the action is otherwise invalid or unenforceable, shall bind the principal and his or her heirs, devisees, and personal representatives.

Source: Laws 1992, LB 696, § 20.

Cross References

Nebraska Probate Code, see section 30-2201.

30-3421 Filing of petition; when.

(1) A petition may be filed for any one or more of the following purposes:

(a) To determine whether the power of attorney for health care is in effect or has been revoked or terminated;

(b) To determine whether the acts or proposed acts of the attorney in fact are consistent with the wishes of the principal as expressed in the power of attorney for health care or otherwise established by clear and convincing evidence or, when the wishes of the principal are unknown, whether the acts or proposed acts of the attorney in fact are clearly contrary to the best interests of the principal;

(c) To declare that the power of attorney for health care is revoked upon a determination that the attorney in fact made or proposed to make a health care decision for the principal that authorized an illegal act or omission; or

(d) To declare that the power of attorney for health care is revoked upon a determination by the court of both of the following: (i) That the attorney in fact has violated, failed to perform, or is unable to perform the duty to act in a manner consistent with the wishes of the principal or, when the desires of the principal are unknown, to act in a manner that is in the best interests of the principal; and (ii) that at the time of the determination by the court, the principal lacks the capacity to revoke the power of attorney for health care.

(2) A petition under this section shall be filed with the county court of the county in which the principal resides or is located.

Source: Laws 1992, LB 696, § 21.

30-3422 Filing of petition; by whom.

A petition under section 30-3415 or 30-3421 may be filed by any of the following:

(1) The principal;

(2) The attorney in fact;

(3) The spouse, parent, sibling, or adult child of the principal;

(4) A close adult friend of the principal;

(5) The guardian of the principal;

(6) The attending physician or other health care provider; or

(7) Any other interested party.

Source: Laws 1992, LB 696, § 22; Laws 1993, LB 782, § 26.

30-3423 Attorney in fact; attending physician; health care provider; immunity.

(1) An attorney in fact shall not be guilty of any criminal offense, subject to any civil liability, or in violation of any professional oath or code of ethics or conduct for any action taken in good faith pursuant to a power of attorney for health care.

(2) No attending physician or health care provider acting or declining to act in reliance upon the decision made by a person whom the attending physician or health care provider in good faith believes is the attorney in fact for health care shall be subject to criminal prosecution, civil liability, or professional disciplinary action. Nothing in sections 30-3401 to 30-3432, however, shall limit the liability of an attending physician or health care provider for a negligent act or omission in connection with the medical diagnosis, treatment, or care of the principal.

Source: Laws 1992, LB 696, § 23; Laws 1993, LB 782, § 27.

30-3424 Right to make health care decisions; sections; effect.

Subject to subsection (5) of section 30-3417 and subsection (7) of section 30-3420, in the absence of an effective designation of power of attorney for health care nothing in sections 30-3401 to 30-3432 shall affect any right a person may otherwise have to make health care decisions on behalf of another.

Source: Laws 1992, LB 696, § 24; Laws 1993, LB 782, § 28.

30-3425 Health care providers; assumption of validity.

Health care providers shall be entitled to assume the validity of a power of attorney for health care executed in this state until given actual notice to the contrary.

Source: Laws 1992, LB 696, § 32.

30-3426 Execution of power of attorney; effect on right to routine care.

By executing a power of attorney for health care, a principal shall not waive his or her right to routine hygiene, nursing, and comfort care and the usual and typical provision of nutrition and hydration.

Source: Laws 1992, LB 696, § 25.

30-3427 Health care provider; exercise independent medical judgment.

In following the decision of an attorney in fact, a health care provider shall exercise the same independent medical judgment that the health care provider would exercise in following the decision of the principal if the principal were not incapable.

Source: Laws 1992, LB 696, § 26.

30-3428 Health care provider; refusal to honor health care decision; duties.

(1) Nothing in sections 30-3401 to 30-3432 shall obligate a health care provider organization to honor a health care decision by an attorney in fact that the health care provider organization would not honor if the decision had been made by the principal because the decision is contrary to a formally adopted policy of the health care provider organization that is expressly based on religious beliefs or sincerely held ethical or moral convictions central to the operating principles of the health care provider organization. The health care

provider organization may refuse to honor the decision whether made by the principal or by the attorney in fact if the health care provider organization has informed the principal or the attorney in fact of such policy, if reasonably possible. If the attorney in fact is unable or unwilling to arrange a transfer to another health care facility, the health care provider organization may intervene to facilitate such a transfer.

(2) Nothing in sections 30-3401 to 30-3432 shall obligate an individual as a health care provider to honor or cooperate with a health care decision by an attorney in fact that the individual would not honor or cooperate with if the decision had been made by the principal because the decision is contrary to the individual's religious beliefs or sincerely held moral or ethical convictions. The individual health care provider shall promptly inform the attorney in fact and the health care provider organization of his or her refusal to honor or cooperate with the decision of the attorney in fact. In such event, the health care provider organization shall promptly assist in the transfer of responsibility for the principal to another individual health care provider who is willing to honor the decision of the attorney in fact.

Source: Laws 1992, LB 696, § 27.

30-3429 Power of attorney; prohibited acts.

(1) No person shall be required to execute or to refrain from executing a power of attorney for health care as a criterion for insurance or as a condition for receiving health care.

(2) No person authorized to engage in the business of insurance in this state, medical care corporation, health care corporation, health maintenance organization, other health care plan, or legal entity that is self-insured and provides benefits to its employees or members shall do any of the following because of the execution or implementation of a power of attorney for health care or because of the failure or refusal to execute or implement a power of attorney for health care: (a) Refuse to provide or continue coverage to any person; (b) limit or increase the amount of coverage available to any person; (c) charge a person a different rate; (d) consider the terms of an existing policy of life or health insurance to have been breached or modified; or (e) invoke a suicide or intentional death exemption or exclusion in a policy covering the person.

(3) Nothing in sections 30-3401 to 30-3432 shall be intended to impair or supersede any federal statute.

(4) Except as provided in subsections (2) and (3) of section 30-3408 and subsection (4) of section 30-3420, nothing in sections 30-3401 to 30-3432 shall impair or supersede any durable power of attorney in effect prior to January 1, 1993.

Source: Laws 1992, LB 696, § 28; Laws 1993, LB 782, § 29.

30-3430 Presumptions not created.

The fact that a person has not appointed an attorney in fact or has not provided the attorney in fact with specific health care instructions shall create no presumptions regarding the person's wishes about health care.

Source: Laws 1992, LB 696, § 29.

30-3431 Attempted suicide; how construed.

For purposes of making health care decisions, an attempted suicide by the principal shall not be construed as any indication of the principal's wishes with regard to health care.

Source: Laws 1992, LB 696, § 31.

30-3432 Violations; penalties.

(1) It shall be a Class II felony for a person to willfully sign or alter without authority or to otherwise alter, forge, conceal, or destroy a power of attorney for health care or to willfully conceal or destroy a revocation with the intent and effect of causing a withholding or withdrawing of life-sustaining procedures or artificially administered nutrition or hydration which hastens the death of the principal.

(2) It shall be a Class I misdemeanor for a person without the authorization of the principal to willfully alter, forge, conceal, or destroy a power of attorney for health care or a revocation of a power of attorney for health care.

(3) A physician or other health care provider who willfully prevents the transfer of a principal in accordance with section 30-3428 with the intention of avoiding the provisions of sections 30-3401 to 30-3432 shall be guilty of a Class I misdemeanor.

Source: Laws 1992, LB 696, § 30; Laws 1993, LB 782, § 30.

ARTICLE 35

NEBRASKA UNIFORM CUSTODIAL TRUST ACT

Section

30-3501. Act, how cited.
30-3502. Terms, defined.
30-3503. Custodial trust; general provisions.
30-3504. Custodial trustee for future payment or transfer.
30-3505. Form and effect of receipt and acceptance by custodial trustee; jurisdiction.
30-3506. Transfer to custodial trustee by fiduciary or obligor; facility of payment.
30-3507. Multiple beneficiaries; separate custodial trusts; survivorship.
30-3508. General duties of custodial trustee.
30-3509. General powers of custodial trustee.
30-3510. Use of custodial trust property.
30-3511. Determination of incapacity; effect.
30-3512. Exemption of third person from liability.
30-3513. Liability to third person.
30-3514. Declination, resignation, incapacity, death, or removal of custodial trustee; designation of successor custodial trustee.
30-3515. Expenses, compensation, and bond of custodial trustee.
30-3516. Reporting and accounting by custodial trustee; determination of liability of custodial trustee.
30-3517. Limitations of action against custodial trustee.
30-3518. Distribution on termination.
30-3519. Methods and forms for creating custodial trusts.
30-3520. Applicability of act.
30-3521. Custodial trust; aggregate value; limitation.
30-3522. Act; application and construction.

30-3501 Act, how cited.

Sections 30-3501 to 30-3522 shall be known and may be cited as the Nebraska Uniform Custodial Trust Act.

Source: Laws 1997, LB 51, § 1.

30-3502 Terms, defined.

For purposes of the Nebraska Uniform Custodial Trust Act:

(1) Adult means an individual who is at least nineteen years of age;

(2) Beneficiary means an individual for whom property has been transferred to or held under a declaration of trust by a custodial trustee for the individual's use and benefit under the act;

(3) Conservator means a person appointed or qualified by a court to manage the estate of an individual or a person legally authorized to perform substantially the same functions;

(4) Court means a county court of this state;

(5) Custodial trust property means an interest in property transferred to or held under a declaration of trust by a custodial trustee under the act and the income from and proceeds of that interest;

(6) Custodial trustee means a person designated as trustee of a custodial trust under the act or a substitute or successor to the person designated;

(7) Guardian means a person appointed or qualified by a court as a guardian of an individual, including a limited guardian, but not a person who is only a guardian ad litem;

(8) Incapacitated means lacking the ability to manage property and business affairs effectively by reason of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, confinement, detention by a foreign power, disappearance, minority, or other disabling cause;

(9) Legal representative means a personal representative or conservator;

(10) Member of the beneficiary's family means a beneficiary's spouse, descendant, stepchild, parent, stepparent, grandparent, brother, sister, uncle, or aunt, whether of whole or half blood or by adoption;

(11) Person means an individual, corporation, limited liability company, or other legal entity;

(12) Personal representative means an executor, administrator, or special administrator of a decedent's estate, a person legally authorized to perform substantially the same functions, or a successor to any of them;

(13) State means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico;

(14) Transferor means a person who creates a custodial trust by transfer or declaration; and

(15) Trust company means a financial institution, corporation, or other legal entity, authorized to act as a corporate trustee in the State of Nebraska.

Source: Laws 1997, LB 51, § 2.

30-3503 Custodial trust; general provisions.

(a) A person may create a custodial trust of property by a written transfer of the property to another person, evidenced by registration or by other instrument of transfer, executed in any lawful manner, naming as beneficiary, an individual who may be the transferor, in which the transferee is designated, in substance, as the custodial trustee under the Nebraska Uniform Custodial Trust Act.

(b) A person may create a custodial trust of property by a written declaration, evidenced by registration of the property or by other instrument of declaration, executed in any lawful manner, describing the property and naming as beneficiary an individual other than the declarant, in which the declarant as titleholder is designated, in substance, as custodial trustee under the act. A registration or other declaration of trust in which the declarant is designated as custodial trustee for the sole benefit of the declarant is not a custodial trust under the act.

(c) Title to custodial trust property is in the custodial trustee and the beneficial interest is in the beneficiary.

(d) Except as provided in subsection (e) of this section, a transferor may not terminate a custodial trust.

(e) The beneficiary, if not incapacitated, or the conservator of an incapacitated beneficiary, may terminate a custodial trust by delivering to the custodial trustee a writing signed by the beneficiary or conservator declaring the termination. If not previously terminated, the custodial trust terminates on the death of the beneficiary.

(f) Any person may augment existing custodial trust property by the addition of other property pursuant to the act.

(g) The transferor may designate, or authorize the designation of, a successor custodial trustee in the trust instrument.

(h) The act does not displace or restrict other means of creating trusts. A trust whose terms do not conform to the act may be enforceable according to its terms under other law.

Source: Laws 1997, LB 51, § 3; Laws 1999, LB 62, § 1.

30-3504 Custodial trustee for future payment or transfer.

(a) A person having the right to designate the recipient of property payable or transferable upon a future event may create a custodial trust upon the occurrence of the future event by designating in writing the recipient, followed in substance by ''as custodial trustee for .... (name of beneficiary) under the Nebraska Uniform Custodial Trust Act''.

(b) Persons may be designated as substitute or successor custodial trustees to whom the property must be paid or transferred in the order named if the first designated custodial trustee is unable or unwilling to serve.

(c) A designation under this section may be made in a will, a trust, a deed, a multiple-party account, an insurance policy, an instrument exercising a power of appointment, or a writing designating a beneficiary of contractual rights. Otherwise, to be effective, the designation must be registered with or delivered to the fiduciary, payor, issuer, or obligor of the future right.

Source: Laws 1997, LB 51, § 4.

30-3505 Form and effect of receipt and acceptance by custodial trustee; jurisdiction.

(a) Obligations of a custodial trustee, including the obligation to follow directions of the beneficiary, arise under the Nebraska Uniform Custodial Trust Act upon the custodial trustee's written acceptance of the custodial trust property.

(b) The custodial trustee's acceptance may be evidenced by a writing stating in substance:

CUSTODIAL TRUSTEE'S RECEIPT AND ACCEPTANCE

I, ... (name of custodial trustee), acknowledge receipt of the custodial trust property described below or in the attached instrument and accept the custodial trust as custodial trustee for .... (name of beneficiary) under the Nebraska Uniform Custodial Trust Act. I undertake to administer and distribute the custodial trust property pursuant to the Nebraska Uniform Custodial Trust Act. My obligations as custodial trustee are subject to the directions of the beneficiary unless the beneficiary is designated as, is, or becomes incapacitated. The custodial trust property consists of ....

Dated: . . . .

. . . .

(Signature of Custodial Trustee)

(c) Upon accepting custodial trust property, a person designated as custodial trustee under the act is subject to personal jurisdiction of the court with respect to any matter relating to the custodial trust.

Source: Laws 1997, LB 51, § 5.

30-3506 Transfer to custodial trustee by fiduciary or obligor; facility of payment.

(a) Unless otherwise directed by an instrument designating a custodial trustee pursuant to section 30-3504, a person, including a fiduciary other than a custodial trustee, who holds property of or owes a debt to an incapacitated individual not having a conservator may make a transfer to an adult member of the beneficiary's family or to a trust company as custodial trustee for the use and benefit of the incapacitated individual. If the value of the property or the debt exceeds ten thousand dollars, the transfer is not effective unless authorized by the court.

(b) A written acknowledgment of delivery, signed by a custodial trustee, is a sufficient receipt and discharge for property transferred to the custodial trustee pursuant to this section.

Source: Laws 1997, LB 51, § 6.

30-3507 Multiple beneficiaries; separate custodial trusts; survivorship.

(a) Beneficial interests in a custodial trust created for multiple beneficiaries are deemed to be separate custodial trusts of equal undivided interests for each beneficiary. Except in a transfer or declaration for use and benefit of husband and wife, for whom survivorship is presumed, a right of survivorship does not exist unless the instrument creating the custodial trust specifically provides for survivorship.

(b) Custodial trust property held under the Nebraska Uniform Custodial Trust Act by the same custodial trustee for the use and benefit of the same beneficiary may be administered as a single custodial trust.

(c) A custodial trustee of custodial trust property held for more than one beneficiary shall separately account to each beneficiary pursuant to sections 30-3508 and 30-3516 for the administration of the custodial trust.

Source: Laws 1997, LB 51, § 7.

30-3508 General duties of custodial trustee.

(a) If appropriate, a custodial trustee shall register or record the instrument vesting title to custodial trust property.

(b) If the beneficiary is not incapacitated, a custodial trustee shall follow the directions of the beneficiary in the management, control, investment, or retention of the custodial trust property. In the absence of effective contrary direction by the beneficiary while not incapacitated, the custodial trustee shall comply with the prudent investor rule set forth in sections 30-3883 to 30-3889 and is not limited by any other law restricting investments by fiduciaries. However, a custodial trustee, in the custodial trustee's discretion, may retain any custodial trust property received from the transferor.

(c) Subject to subsection (b) of this section, a custodial trustee shall take control of and collect, hold, manage, invest, and reinvest custodial trust property.

(d) A custodial trustee at all times shall keep custodial trust property of which the custodial trustee has control, separate from all other property in a manner sufficient to identify it clearly as custodial trust property of the beneficiary. Custodial trust property, the title to which is subject to recordation, is so identified if an appropriate instrument so identifying the property is recorded, and custodial trust property subject to registration is so identified if it is registered, or held in an account in the name of the custodial trustee, designated in substance: ''as custodial trustee for .... (name of beneficiary) under the Nebraska Uniform Custodial Trust Act''.

(e) A custodial trustee shall keep records of all transactions with respect to custodial trust property, including information necessary for the preparation of tax returns, and shall make the records and information available at reasonable times to the beneficiary or legal representative of the beneficiary.

Source: Laws 1997, LB 51, § 8; Laws 1999, LB 62, § 2; Laws 2003, LB 130, § 136.

30-3509 General powers of custodial trustee.

(a) A custodial trustee, acting in a fiduciary capacity, has all the rights and powers over custodial trust property which an unmarried adult owner has over individually owned property, but a custodial trustee may exercise those rights and powers in a fiduciary capacity only.

(b) This section does not relieve a custodial trustee from liability for a violation of section 30-3508.

Source: Laws 1997, LB 51, § 9.

30-3510 Use of custodial trust property.

(a) A custodial trustee shall pay to the beneficiary or expend for the beneficiary's use and benefit so much or all of the custodial trust property as the beneficiary, while not incapacitated, may direct in writing from time to time.

(b) If the beneficiary is incapacitated, the custodial trustee shall expend so much or all of the custodial trust property as the custodial trustee considers advisable for the use and benefit of the beneficiary and individuals who were supported by the beneficiary when the beneficiary became incapacitated or who are legally entitled to support by the beneficiary. Expenditures may be made in the manner, when, and to the extent that the custodial trustee determines

suitable and proper, without court order and without regard to other support, income, or property of the beneficiary.

(c) A custodial trustee may establish checking, savings, or other similar accounts of reasonable amounts under which either the custodial trustee or the beneficiary may withdraw funds from, or draw checks against, the accounts. Funds withdrawn from, or checks written against, the account by the beneficiary are distributions of custodial trust property by the custodial trustee to the beneficiary.

Source: Laws 1997, LB 51, § 10.

30-3511 Determination of incapacity; effect.

(a) The custodial trustee shall administer the custodial trust as for an incapacitated beneficiary if (i) the custodial trust was created under section 30-3506, (ii) the transferor has so directed in the instrument creating the custodial trust, or (iii) the custodial trustee has determined that the beneficiary is incapacitated.

(b) A custodial trustee may determine that the beneficiary is incapacitated in reliance upon (i) previous direction or authority given by the beneficiary while not incapacitated, including direction or authority pursuant to a durable power of attorney, (ii) the certificate of the beneficiary's physician, or (iii) other persuasive evidence.

(c) If a custodial trustee for an incapacitated beneficiary reasonably concludes that the beneficiary's incapacity has ceased, or that circumstances concerning the beneficiary's ability to manage property and business affairs have changed since the creation of a custodial trust directing administration as for an incapacitated beneficiary, the custodial trustee may administer the trust as for a beneficiary who is not incapacitated.

(d) On petition of the beneficiary, the custodial trustee, or other person interested in the custodial trust property or the welfare of the beneficiary, the court shall determine whether the beneficiary is incapacitated. A determination of incapacity does not require appointment of a guardian or conservator unless, in the discretion of the court, such appointment is otherwise warranted.

(e) Absent determination of incapacity of the beneficiary under subsection (b) or (d) of this section, a custodial trustee who has reason to believe that the beneficiary is incapacitated shall administer the custodial trust in accordance with the provisions of the Nebraska Uniform Custodial Trust Act applicable to an incapacitated beneficiary.

(f) Incapacity of a beneficiary does not terminate (i) the custodial trust, (ii) any designation of a successor custodial trustee, (iii) rights or powers of the custodial trustee, or (iv) any immunities of third persons acting on instructions of the custodial trustee.

(g) A custodial trustee shall not be liable for any determinations authorized by this section regarding the capacity or incapacity of the beneficiary made in good faith.

Source: Laws 1997, LB 51, § 11.

30-3512 Exemption of third person from liability.

A third person in good faith and without a court order may act on instructions of, or otherwise deal with, a person purporting to make a transfer as, or

purporting to act in the capacity of, a custodial trustee. In the absence of knowledge to the contrary, the third person is not responsible for determining:

(1) The validity of the purported custodial trustee's designation;

(2) The propriety of, or the authority under the Nebraska Uniform Custodial Trust Act for, any action of the purported custodial trustee;

(3) The validity or propriety of an instrument executed or instruction given pursuant to the act either by the person purporting to make a transfer or declaration or by the purported custodial trustee; or

(4) The propriety of the application of property vested in the purported custodial trustee.

Source: Laws 1997, LB 51, § 12.

30-3513 Liability to third person.

(a) A claim based on a contract entered into by a custodial trustee acting in a fiduciary capacity, an obligation arising from the ownership or control of custodial trust property, or a tort committed in the course of administering the custodial trust, may be asserted by a third person against the custodial trust property by proceeding against the custodial trustee in a fiduciary capacity, whether or not the custodial trustee or the beneficiary is personally liable.

(b) A custodial trustee is not personally liable to a third person:

(1) On a contract properly entered into in a fiduciary capacity unless the custodial trustee fails to reveal that capacity or to identify the custodial trust in the contract; or

(2) For an obligation arising from control of custodial trust property or for a tort committed in the course of the administration of the custodial trust unless the custodial trustee is personally at fault.

(c) A beneficiary is not personally liable to a third person for an obligation arising from beneficial ownership of custodial trust property or for a tort committed in the course of administration of the custodial trust unless the beneficiary is personally in possession of the custodial trust property giving rise to the liability or is personally at fault.

(d) Subsections (b) and (c) of this section do not preclude actions or proceedings to establish liability of the custodial trustee or beneficiary as owner or possessor of the custodial trust property to the extent the person is protected as the insured by liability insurance.

Source: Laws 1997, LB 51, § 13.

30-3514 Declination, resignation, incapacity, death, or removal of custodial trustee; designation of successor custodial trustee.

(a) Before accepting the custodial trust property, a person designated as custodial trustee may decline to serve by notifying the person who made the designation, the transferor, or the transferor's legal representative. If an event giving rise to a transfer has not occurred, the substitute custodial trustee designated under section 30-3504 becomes the custodial trustee, or, if a substitute custodial trustee has not been designated, the person who made the designation may designate a substitute custodial trustee pursuant to section 30-3504. In other cases, the transferor or the transferor's legal representative may designate a substitute custodial trustee.

(b) A custodial trustee who has accepted the custodial trust property may resign by (i) delivering written notice to a successor custodial trustee, if any, the beneficiary and, if the beneficiary is incapacitated, to the beneficiary's conservator, if any, and (ii) transferring or registering, or recording an appropriate instrument relating to, the custodial trust property, in the name of, and delivering the records to, the successor custodial trustee identified under subsection (c) of this section.

(c) If a custodial trustee or successor custodial trustee is ineligible, resigns, dies, or becomes incapacitated, the successor designated under subsection (g) of section 30-3503 or section 30-3504 becomes custodial trustee. If there is no effective provision for a successor, the beneficiary, if not incapacitated, may designate a successor custodial trustee. If the beneficiary is incapacitated, or fails to act within ninety days after the ineligibility, resignation, death, or incapacity of the custodial trustee, the beneficiary's conservator becomes successor custodial trustee. If the beneficiary does not have a conservator or the conservator fails to act, the resigning custodial trustee may designate a successor custodial trustee.

(d) If a successor custodial trustee is not designated pursuant to subsection (c) of this section, the transferor, the legal representative of the transferor or of the custodial trustee, an adult member of the beneficiary's family, the guardian of the beneficiary, a person interested in the custodial trust property, or a person interested in the welfare of the beneficiary may petition the court to designate a successor custodial trustee.

(e) A custodial trustee who declines to serve or resigns, or the legal representative of a deceased or incapacitated custodial trustee, as soon as practicable, shall put the custodial trust property and records in the possession and control of the successor custodial trustee. The successor custodial trustee shall enforce the obligation to deliver custodial trust property and records and becomes responsible for each item as received.

(f) A beneficiary, the beneficiary's conservator, an adult member of the beneficiary's family, a guardian of the person of the beneficiary, a person interested in the custodial trust property, or a person interested in the welfare of the beneficiary may petition the court to remove the custodial trustee for cause and designate a successor custodial trustee, to require the custodial trustee to furnish a bond or other security for the faithful performance of fiduciary duties, or for other appropriate relief.

Source: Laws 1997, LB 51, § 14.

30-3515 Expenses, compensation, and bond of custodial trustee.

Except as otherwise provided in the instrument creating the custodial trust, in an agreement with the beneficiary, or by court order, a custodial trustee:

(1) Is entitled to reimbursement from custodial trust property for reasonable expenses incurred in the performance of fiduciary services;

(2) Has a noncumulative election, to be made no later than three months after the end of each calendar year, to charge a reasonable compensation for fiduciary services performed during that year; and

(3) Need not furnish a bond or other security for the faithful performance of fiduciary duties.

Source: Laws 1997, LB 51, § 15.

30-3516 Reporting and accounting by custodial trustee; determination of liability of custodial trustee.

(a) Upon the acceptance of custodial trust property, the custodial trustee shall provide a written statement that the custodial trust property is held pursuant to the Nebraska Uniform Custodial Trust Act and describing the custodial trust property. The custodial trustee shall thereafter provide a written statement of the administration of the custodial trust property (i) once each year, (ii) upon request at reasonable times by the beneficiary or the beneficiary's legal representative, (iii) upon resignation or removal of the custodial trustee, and (iv) upon termination of the custodial trust. The statements must be provided to the beneficiary or to the beneficiary's legal representative, if any. Upon termination of the beneficiary's interest, the custodial trustee shall furnish a current statement to the person to whom the custodial trust property is to be delivered.

(b) A beneficiary, the beneficiary's legal representative, an adult member of the beneficiary's family, a person interested in the custodial trust property, or a person interested in the welfare of the beneficiary may petition the court for an accounting by the custodial trustee or the custodial trustee's legal representative.

(c) A successor custodial trustee may petition the court for an accounting by a predecessor custodial trustee or the personal representative of a predecessor custodial trustee.

(d) In an action or proceeding under the Nebraska Uniform Custodial Trust Act or in any other proceeding, the court may require or permit the custodial trustee or the custodial trustee's legal representative to account. The custodial trustee or the custodial trustee's legal representative may petition the court for approval of final accounts.

(e) If a custodial trustee is removed, the court shall require an accounting and order delivery of the custodial trust property and records to the successor custodial trustee and the execution of all instruments required for transfer of the custodial trust property.

(f) On petition of the custodial trustee or any person who could petition for an accounting, the court, after notice to interested persons, may issue instructions to the custodial trustee or review the propriety of the acts of a custodial trustee or the reasonableness of compensation determined by the custodial trustee for the services of the custodial trustee or others.

Source: Laws 1997, LB 51, § 16.

30-3517 Limitations of action against custodial trustee.

(a) Except as provided in subsections (b) and (c) of this section, unless previously barred by adjudication, consent, or limitation, a claim for relief against a custodial trustee for accounting or breach of duty is barred as to a beneficiary, a person to whom custodial trust property is to be paid or delivered, or the legal representative of an incapacitated or deceased beneficiary or payee:

(1) Who has received a final account or statement fully disclosing the matter unless an action or proceeding to assert the claim is commenced within six months after receipt of the final account or statement; or

(2) Who has not received a final account or statement fully disclosing the matter unless an action or proceeding to assert the claim is commenced within four years after the termination of the custodial trust.

(b) Except as provided in subsection (c) of this section, a claim for relief to recover from a custodial trustee for fraud, misrepresentation, or concealment related to the final settlement of the custodial trust or concealment of the existence of the custodial trust is barred unless an action or proceeding to assert the claim is commenced within five years after the termination of the custodial trust.

(c) A claim for relief is not barred by this section if the claimant:

(1) Is a minor, until the earlier of two years after the claimant becomes an adult or dies;

(2) Is an incapacitated adult, until the earliest of two years after (i) the appointment of a conservator, (ii) the removal of the incapacity, or (iii) the death of the claimant; or

(3) Was an adult, now deceased, who was not incapacitated at the time of his or her death, until two years after the claimant's death.

(d) For purposes of this section, a beneficiary or other person is deemed to have received an account or statement if, being an adult, it is received by him or her personally or if, being a minor or incapacitated person, it is received by his or her representative as described in subdivision (3) of section 30-2222.

Source: Laws 1997, LB 51, § 17.

30-3518 Distribution on termination.

(a) Upon termination of a custodial trust, the custodial trustee shall transfer the unexpended custodial trust property:

(1) To the beneficiary, if not incapacitated or deceased;

(2) To the holder of the beneficiary's power of attorney;

(3) To the conservator or other recipient designated by the court for an incapacitated beneficiary; or

(4) Upon the beneficiary's death, in the following order:

(i) As last directed in a writing signed by the deceased beneficiary while not incapacitated and received by the custodial trustee during the life of the deceased beneficiary;

(ii) To the survivor of multiple beneficiaries if survivorship is provided for pursuant to section 30-3507;

(iii) As designated in the instrument creating the custodial trust; or

(iv) To the estate of the deceased beneficiary.

(b) If, when the custodial trust would otherwise terminate, the distributee is incapacitated, the custodial trust continues for the use and benefit of the distributee as beneficiary until the incapacity is removed or the custodial trust is otherwise terminated.

(c) Death of a beneficiary does not terminate the power of the custodial trustee to discharge obligations of the custodial trustee or beneficiary incurred before the termination of the custodial trust.

Source: Laws 1997, LB 51, § 18; Laws 1999, LB 62, § 3.

30-3519 Methods and forms for creating custodial trusts.

(a) If a transaction, including a declaration with respect to or a transfer of specific property, otherwise satisfies applicable law, the criteria of section 30-3503 are satisfied by:

(1) The execution and either delivery to the custodial trustee or recording of an instrument in substantially the following form:

TRANSFER UNDER THE NEBRASKA UNIFORM CUSTODIAL TRUST ACT

I, ... (name of transferor or name and representative capacity if a fiduciary), transfer to .... (name of trustee other than transferor), as custodial trustee for .... (name of beneficiary) as beneficiary and .... as distributee on termination of the trust in absence of direction by the beneficiary under the Nebraska Uniform Custodial Trust Act, the following: (Insert a description of the custodial trust property legally sufficient to identify and transfer each item of property).

Dated: . . . .

. . . .

(Signature); or

(2) The execution and the recording or giving notice of its execution to the beneficiary of an instrument in substantially the following form:

DECLARATION OF TRUST UNDER THE NEBRASKA
UNIFORM CUSTODIAL TRUST ACT

I, ... (name of owner of property), declare that henceforth I hold as custodial trustee for .... (name of beneficiary other than transferor) as beneficiary and .... as distributee on termination of the trust in absence of direction by the beneficiary under the Nebraska Uniform Custodial Trust Act, the following: (Insert a description of the custodial trust property legally sufficient to identify and transfer each item of property).

Dated: . . . .

. . . .

(Signature)

(b) Customary methods of transferring or evidencing ownership of property may be used to create a custodial trust, including any of the following:

(1) Registration of a security in the name of a trust company, an adult other than the transferor, or the transferor if the beneficiary is other than the transferor, designated in substance: ''as custodial trustee for .... (name of beneficiary) under the Nebraska Uniform Custodial Trust Act'';

(2) Delivery of a certificated security, or a document necessary for the transfer of an uncertificated security, together with any necessary endorsement, to an adult other than the transferor or to a trust company as custodial trustee, accompanied by an instrument in substantially the form prescribed in subdivision (a)(1) of this section;

(3) Payment of money or transfer of a security held in the name of a broker or a financial institution or its nominee to a broker or financial institution for credit to an account in the name of a trust company, an adult other than the transferor, or the transferor if the beneficiary is other than the transferor, designated in substance: ''as custodial trustee for .... (name of beneficiary) under the Nebraska Uniform Custodial Trust Act'';

(4) Registration of ownership of a life or endowment insurance policy or annuity contract with the issuer in the name of a trust company, an adult other than the transferor, or the transferor if the beneficiary is other than the transferor, designated in substance: ''as custodial trustee for .... (name of beneficiary) under the Nebraska Uniform Custodial Trust Act'';

(5) Delivery of a written assignment to an adult other than the transferor or to a trust company whose name in the assignment is designated in substance by the words: ''as custodial trustee for .... (name of beneficiary) under the Nebraska Uniform Custodial Trust Act'';

(6) Irrevocable exercise of a power of appointment, pursuant to its terms, in favor of a trust company, an adult other than the donee of the power, or the donee who holds the power if the beneficiary is other than the donee, whose name in the appointment is designated in substance: ''as custodial trustee for .... (name of beneficiary) under the Nebraska Uniform Custodial Trust Act'';

(7) Delivery of a written notification or assignment of a right to future payment under a contract to an obligor which transfers the right under the contract to a trust company, an adult other than the transferor, or the transferor if the beneficiary is other than the transferor, whose name in the notification or assignment is designated in substance: ''as custodial trustee for .... (name of beneficiary) under the Nebraska Uniform Custodial Trust Act'';

(8) Execution, delivery, and recordation of a conveyance of an interest in real property in the name of a trust company, an adult other than the transferor, or the transferor if the beneficiary is other than the transferor, designated in substance: ''as custodial trustee for .... (name of beneficiary) under the Nebraska Uniform Custodial Trust Act'';

(9) Issuance of a certificate of title by an agency of a state or of the United States which evidences title to tangible personal property:

(i) Issued in the name of a trust company, an adult other than the transferor, or the transferor if the beneficiary is other than the transferor, designated in substance: ''as custodial trustee for .... (name of beneficiary) under the Nebraska Uniform Custodial Trust Act''; or

(ii) Delivered to a trust company or an adult other than the transferor or endorsed by the transferor to that person, designated in substance: ''as custodial trustee for .... (name of beneficiary) under the Nebraska Uniform Custodial Trust Act''; or

(10) Execution and delivery of an instrument of gift to a trust company or an adult other than the transferor, designated in substance: ''as custodial trustee for .... (name of beneficiary) under the Nebraska Uniform Custodial Trust Act''.

Source: Laws 1997, LB 51, § 19; Laws 1999, LB 62, § 4.

30-3520 Applicability of act.

(a) The Nebraska Uniform Custodial Trust Act applies to a transfer or declaration creating a custodial trust that refers to the act if, at the time of the transfer or declaration, the transferor, beneficiary, or custodial trustee is a resident of or has its principal place of business in this state or custodial trust property is located in this state. The custodial trust remains subject to the act

despite a later change in residence or principal place of business of the transferor, beneficiary, or custodial trustee, or removal of the custodial trust property from this state.

(b) A transfer made pursuant to an act of another state substantially similar to the Nebraska Uniform Custodial Trust Act is governed by the law of that state and may be enforced in this state.

Source: Laws 1997, LB 51, § 20.

30-3521 Custodial trust; aggregate value; limitation.

Transfers or declarations of property to a custodial trust under the Nebraska Uniform Custodial Trust Act shall not exceed, in the aggregate, one hundred thousand dollars in net value, exclusive of the value of the transferor's or declarant's personal residence. This limitation does not apply to any income received by the custodial trust and any appreciation in the value of the property held in the custodial trust. A good faith violation of this section does not invalidate the custodial trust.

Source: Laws 1997, LB 51, § 21.

30-3522 Act; application and construction.

The Nebraska Uniform Custodial Trust Act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of the act among states enacting it.

Source: Laws 1997, LB 51, § 22.

ARTICLE 36

UNIFORM TESTAMENTARY ADDITIONS TO TRUSTS ACT (1991)

Section
30-3601. Act, how cited.
30-3602. Testamentary additions to trusts.
30-3603. Act; applicability.
30-3604. Act; how construed.

30-3601 Act, how cited.

Sections 30-3601 to 30-3604 shall be known and may be cited as the Uniform Testamentary Additions to Trusts Act (1991).

Source: Laws 1999, LB 18, § 1.

30-3602 Testamentary additions to trusts.

(a) A will may validly devise or bequeath property to the trustee of a trust established or to be established (i) during the testator's lifetime by the testator, by the testator and some other person, or by some other person including a funded or unfunded life insurance trust, although the trustor has reserved any or all rights of ownership of the insurance contracts, or (ii) at the testator's death by the testator's devise to the trustee, if the trust is identified in the testator's will and its terms are set forth in a written instrument, other than a will, executed before, concurrently with, or after the execution of the testator's will or in another individual's will if that other individual has predeceased the testator, regardless of the existence, size, or character of the corpus of the trust. The devise or bequest is not invalid because the trust is amendable or revoca-

ble, or because the trust was amended after the execution of the will or the testator's death.

(b) Unless the testator's will provides otherwise, property devised or bequeathed to a trust described in subsection (a) is not held under a testamentary trust of the testator but it becomes a part of the trust to which it is devised or bequeathed, and must be administered and disposed of in accordance with the provisions of the governing instrument setting forth the terms of the trust, including any amendments thereto made before or after the testator's death.

(c) Unless the testator's will provides otherwise, a revocation or termination of the trust before the testator's death causes the devise or bequest to lapse.

Source: Laws 1974, LB 354, § 58, UPC § 2-511; R.S.1943, (1995), § 30-2336; Laws 1999, LB 18, § 2.

30-3603 Act; applicability.

The Uniform Testamentary Additions to Trusts Act (1991) applies to a will of a testator who dies on or after August 28, 1999.

Source: Laws 1999, LB 18, § 3.

30-3604 Act; how construed.

The Uniform Testamentary Additions to Trusts Act (1991) shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of the act among states enacting it.

Source: Laws 1999, LB 18, § 4.

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30-3702. Transferred to section 30-38,103.
30-3703. Transferred to section 30-38,104.
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30-3705. Transferred to section 30-38,106.
30-3706. Transferred to section 30-38,107.

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30-3702 Transferred to section 30-38,103.

30-3703 Transferred to section 30-38,104.

30-3704 Transferred to section 30-38,105.

30-3705 Transferred to section 30-38,106.

30-3706 Transferred to section 30-38,107.

ARTICLE 38
NEBRASKA UNIFORM TRUST CODE

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PART 1

GENERAL PROVISIONS AND DEFINITIONS

30-3801 (UTC 101) Code, how cited.

(UTC 101) Sections 30-3801 to 30-38,110 shall be known and may be cited as the Nebraska Uniform Trust Code.

Source: Laws 2003, LB 130, § 1.

30-3802 (UTC 102) Scope.

(UTC 102) The Nebraska Uniform Trust Code applies to express trusts, charitable or noncharitable, and trusts created pursuant to a statute, judgment, or decree that requires the trust to be administered in the manner of an express trust.

Source: Laws 2003, LB 130, § 2.

30-3803 (UTC 103) Definitions.

(UTC 103) In the Nebraska Uniform Trust Code:

(1) ''Action'', with respect to an act of a trustee, includes a failure to act.

(2) ''Ascertainable standard'' means a standard relating to an individual's health, education, support, or maintenance within the meaning of section 2041(b)(1)(A) or 2514(c)(1) of the Internal Revenue Code of 1986, as defined in section 49-801.01.

(3) ''Beneficiary'' means a person that:

(A) has a present or future beneficial interest in a trust, vested or contingent; or

(B) in a capacity other than that of trustee, holds a power of appointment over trust property.

(4) ''Charitable trust'' means a trust, or portion of a trust, created for a charitable purpose described in subsection (a) of section 30-3831.

(5) ''Conservator'' means a person appointed by the court to administer the estate of a minor or adult individual.

(6) ''Environmental law'' means a federal, state, or local law, rule, regulation, or ordinance relating to protection of the environment.

(7) ''Guardian'' means a person who has qualified as a guardian of a minor or incapacitated person pursuant to testamentary or court appointment, but excludes one who is merely a guardian ad litem.

(8) ''Interests of the beneficiaries'' means the beneficial interests provided in the terms of the trust.

(9) ''Jurisdiction'', with respect to a geographic area, includes a state or country.

(10) ''Person'' means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government; governmental subdivision, agency, or instrumentality; public corporation, or any other legal or commercial entity.

(11) ''Power of withdrawal'' means a presently exercisable general power of appointment other than a power: (A) which is exercisable by a trustee and limited by an ascertainable standard; or (B) which is exercisable by another person only upon consent of the trustee or a person holding an adverse interest.

(12) ''Property'' means anything that may be the subject of ownership, whether real or personal, legal or equitable, or any interest therein.

(13) ''Qualified beneficiary'' means a beneficiary who, on the date the beneficiary's qualification is determined:

(A) is a distributee or permissible distributee of trust income or principal;

(B) would be a distributee or permissible distributee of trust income or principal if the interests of the distributees described in subdivision (A) of this subdivision terminated on that date without causing the trust to terminate; or

(C) would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date.

(14) ''Regulated financial-service institution'' means a state-chartered or federally chartered financial institution in which the monetary deposits are insured by the Federal Deposit Insurance Corporation.

(15) ''Revocable'', as applied to a trust, means revocable by the settlor without the consent of the trustee or a person holding an adverse interest.

(16) ''Settlor'' means a person, including a testator, who creates, or contributes property to, a trust. If more than one person creates or contributes property to a trust, each person is a settlor of the portion of the trust property attributable to that person's contribution except to the extent another person has the power to revoke or withdraw that portion.

(17) ''Spendthrift provision'' means a term of a trust which restrains both voluntary and involuntary transfer of a beneficiary's interest.

(18) ''State'' includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession subject to the legislative authority of the United States.

(19) ''Terms of a trust'' means the manifestation of the settlor's intent regarding a trust's provisions as expressed in the trust instrument or as may be established by other evidence that would be admissible in a judicial proceeding.

(20) ''Trust instrument'' means an instrument executed by the settlor that contains terms of the trust, including any amendments thereto.

(21) ''Trustee'' includes an original, additional, and successor trustee, and a cotrustee.

Source: Laws 2003, LB 130, § 3; Laws 2005, LB 533, § 36.

30-3804 (UTC 104) Knowledge.

(UTC 104) (a) Subject to subsection (b) of this section, a person has knowledge of a fact if the person:

(1) has actual knowledge of it;

(2) has received a notice or notification of it; or

(3) from all the facts and circumstances known to the person at the time in question, has reason to know it.

(b) An organization that conducts activities through employees has notice or knowledge of a fact involving a trust only from the time the information was received by an employee having responsibility to act for the trust, or would have been brought to the employee's attention if the organization had exercised reasonable diligence. An organization exercises reasonable diligence if it maintains reasonable routines for communicating significant information to the employee having responsibility to act for the trust and there is reasonable compliance with the routines. Reasonable diligence does not require an employee of the organization to communicate information unless the communication is part of the individual's regular duties or the individual knows a matter involving the trust would be materially affected by the information.

Source: Laws 2003, LB 130, § 4.

30-3805 (UTC 105) Default and mandatory rules.

(UTC 105) (a) Except as otherwise provided in the terms of the trust, the Nebraska Uniform Trust Code governs the duties and powers of a trustee, relations among trustees, and the rights and interests of a beneficiary.

(b) The terms of a trust prevail over any provision of the code except:

(1) the requirements for creating a trust;

(2) the duty of a trustee to act in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries;

(3) the requirement that a trust and its terms be for the benefit of its beneficiaries, and that the trust have a purpose that is lawful, not contrary to public policy, and possible to achieve;

(4) the power of the court to modify or terminate a trust under sections 30-3836 to 30-3842;

(5) the effect of a spendthrift provision and the rights of certain creditors and assignees to reach a trust as provided in sections 30-3846 to 30-3852;

(6) the power of the court under section 30-3858 to require, dispense with, or modify or terminate a bond;

(7) the power of the court under subsection (b) of section 30-3864 to adjust a trustee's compensation specified in the terms of the trust;

(8) the duty under subsection (a) of section 30-3878 to keep the qualified beneficiaries of the trust reasonably informed about the administration of the trust and of the material facts necessary for them to protect their interests, and to respond to the request of a qualified beneficiary of an irrevocable trust for trustee's reports and other information reasonably related to the administration of a trust;

(9) the effect of an exculpatory term under section 30-3897;

(10) the rights under sections 30-3899 to 30-38,107 of a person other than a trustee or beneficiary;

(11) periods of limitation for commencing a judicial proceeding;

(12) the power of the court to take such action and exercise such jurisdiction as may be necessary in the interests of justice;

(13) the subject matter jurisdiction of the court and venue for commencing a proceeding as provided in sections 30-3814 and 30-3815;

(14) the power of a court under subdivision (a)(1) of section 30-3807; and

(15) the power of a court to review the action or the proposed action of the trustee for an abuse of discretion.

Source: Laws 2003, LB 130, § 5; Laws 2005, LB 533, § 37; Laws 2007, LB124, § 22.

30-3806 (UTC 106) Common law of trusts; principles of equity.

(UTC 106) The common law of trusts and principles of equity supplement the Nebraska Uniform Trust Code, except to the extent modified by the code or another statute of this state.

Source: Laws 2003, LB 130, § 6.

30-3807 (UTC 107) Governing law.

(UTC 107) (a) Except as provided in subsection (b) of this section, the meaning and effect of the terms of a trust are determined by:

(1) the law of the jurisdiction designated in the terms unless the designation of that jurisdiction's law is contrary to a strong public policy of the jurisdiction having the most significant relationship to the matter at issue; or

(2) in the absence of a controlling designation in the terms of the trust, the law of the jurisdiction having the most significant relationship to the matter at issue.

(b) The meaning and effect of the terms of a trust that pertain to title to Nebraska real estate are determined by the law of Nebraska.

Source: Laws 2003, LB 130, § 7.

30-3808 (UTC 108) Principal place of administration.

(UTC 108) (a) Without precluding other means for establishing a sufficient connection with the designated jurisdiction, terms of a trust designating the principal place of administration are valid and controlling if:

(1) a trustee's principal place of business is located in or a trustee is a resident of the designated jurisdiction; or

(2) all or part of the administration occurs in the designated jurisdiction.

(b) A trustee is under a continuing duty to administer the trust at a place appropriate to its purposes, its administration, and the interests of the beneficiaries.

(c) Without precluding the right of the court to order, approve, or disapprove a transfer, the trustee, in furtherance of the duty prescribed by subsection (b) of this section, may transfer the trust's principal place of administration to another state or to a jurisdiction outside of the United States.

(d) The trustee shall notify the qualified beneficiaries of a proposed transfer of a trust's principal place of administration not less than sixty days before initiating the transfer. The notice of proposed transfer must include:

(1) the name of the jurisdiction to which the principal place of administration is to be transferred;

(2) the address and telephone number at the new location at which the trustee can be contacted;

(3) an explanation of the reasons for the proposed transfer;

(4) the date on which the proposed transfer is anticipated to occur; and

(5) the date, not less than sixty days after the giving of the notice, by which the qualified beneficiary must notify the trustee of an objection to the proposed transfer.

(e) The authority of a trustee under this section to transfer a trust's principal place of administration terminates if a qualified beneficiary notifies the trustee of an objection to the proposed transfer on or before the date specified in the notice.

(f) In connection with a transfer of the trust's principal place of administration, the trustee may transfer some or all of the trust property to a successor trustee designated in the terms of the trust or appointed pursuant to section 30-3860.

Source: Laws 2003, LB 130, § 8.

30-3809 (UTC 109) Methods and waiver of notice.

(UTC 109) (a) Notice to a person under the Nebraska Uniform Trust Code or the sending of a document to a person under the code must be accomplished in a manner reasonably suitable under the circumstances and likely to result in receipt of the notice or document. Permissible methods of notice or for sending a document include first-class mail, personal delivery, delivery to the person's last-known place of residence or place of business, or a properly directed electronic message.

(b) Notice otherwise required under the code or a document otherwise required to be sent under the code need not be provided to a person whose identity or location is unknown to and not reasonably ascertainable by the trustee.

(c) Notice under the code or the sending of a document under the code may be waived by the person to be notified or sent the document.

(d) Notice of a judicial proceeding may be given as provided in the applicable rules of civil procedure or as in section 30-2220.

Source: Laws 2003, LB 130, § 9.

30-3810 (UTC 110) Others treated as qualified beneficiaries.

(UTC 110) (a) Whenever notice to qualified beneficiaries of a trust is required under the Nebraska Uniform Trust Code, the trustee must also give notice to any other beneficiary who has sent the trustee a request for notice.

(b) A charitable organization expressly designated to receive distributions under the terms of a charitable trust has the rights of a qualified beneficiary under the code if the charitable organization, on the date the charitable organization's qualification is being determined:

(1) is a distributee or permissible distributee of trust income or principal;

(2) would be a distributee or permissible distributee of trust income or principal upon the termination of the interests of other distributees or permissible distributees then receiving or eligible to receive distributions; or

(3) would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date.

(c) A person appointed to enforce a trust created for the care of an animal or another noncharitable purpose as provided in section 30-3834 or 30-3835 has the rights of a qualified beneficiary under the code.

(d) The Attorney General has the rights of a qualified beneficiary with respect to a charitable trust having its principal place of administration in this state.

Source: Laws 2003, LB 130, § 10; Laws 2005, LB 533, § 38.

30-3811 (UTC 111) Nonjudicial settlement agreements.

(UTC 111) (a) For purposes of this section, ''interested persons'' means persons whose consent would be required in order to achieve a binding settlement were the settlement to be approved by the court.

(b) Except as otherwise provided in subsection (c) of this section, interested persons may enter into a binding nonjudicial settlement agreement with respect to any matter involving a trust.

(c) A nonjudicial settlement agreement is valid only to the extent it does not violate a material purpose of the trust and includes terms and conditions that could be properly approved by the court under the Nebraska Uniform Trust Code or other applicable law. A spendthrift provision in the terms of the trust is presumed to constitute a material purpose of the trust.

(d) Matters that may be resolved by a nonjudicial settlement agreement include:

(1) the interpretation or construction of the terms of the trust;

(2) the approval of a trustee's report or accounting;

(3) direction to a trustee to refrain from performing a particular act or the grant to a trustee of any necessary or desirable power;

(4) the resignation or appointment of a trustee and the determination of a trustee's compensation;

(5) transfer of a trust's principal place of administration; and

(6) liability of a trustee for an action relating to the trust.

(e) Any interested person may request the court to approve a nonjudicial settlement agreement, to determine whether the representation as provided in sections 30-3822 to 30-3826 was adequate, and to determine whether the agreement contains terms and conditions the court could have properly approved.

Source: Laws 2003, LB 130, § 11; Laws 2004, LB 999, § 24.

PART 2

JUDICIAL PROCEEDINGS AND REGISTRATION WITH COURT

30-3812 (UTC 201) Role of court in administration of trust.

(UTC 201) (a) The court may intervene in the administration of a trust to the extent its jurisdiction is invoked by an interested person or as provided by law.

(b) A trust is not subject to continuing judicial supervision unless ordered by the court.

(c) A judicial proceeding involving a trust may relate to any matter involving the trust's administration, including a request for instructions and an action to declare rights.

Source: Laws 2003, LB 130, § 12.

30-3813 (UTC 202) Jurisdiction over trustee and beneficiary.

(UTC 202) (a) By accepting the trusteeship of a trust having its principal place of administration in this state or by moving the principal place of administration to this state, the trustee submits personally to the jurisdiction of the courts of this state regarding any matter involving the trust.

(b) With respect to their interests in the trust, the beneficiaries of a trust having its principal place of administration in this state are subject to the jurisdiction of the courts of this state regarding any matter involving the trust. By accepting a distribution from such a trust, the recipient submits personally to the jurisdiction of the courts of this state regarding any matter involving the trust.

(c) This section does not preclude other methods of obtaining jurisdiction over a trustee, beneficiary, or other person receiving property from the trust.

Source: Laws 2003, LB 130, § 13.

30-3814 Subject-matter jurisdiction.

(a) To the full extent permitted by the Constitution of Nebraska, the county court has jurisdiction over all subject matter relating to trusts.

(b) The county court has full power to make orders, judgments, and decrees and take all other action necessary and proper to administer justice in the matters which come before it.

(c) Each proceeding before the court is independent of any other proceeding involving the same trust.

(d) Petitions for formal orders of the court may combine various requests for relief in a single proceeding if the orders sought may be finally granted without delay. Except as required for proceedings which are particularly described by other sections of the Nebraska Uniform Trust Code, no petition is defective because it fails to embrace all matters which might then be the subject of a final order.

(e) A proceeding for appointment of a trustee is concluded by an order making or declining the appointment.

(f) For purposes of this section, ''proceeding'' includes action at law and suit in equity.

Source: Laws 2003, LB 130, § 14.

A proceeding initiated under this section and section 30-3862 to remove a trustee is a special proceeding within the meaning of section 25-1902. In re Trust of Rosenberg, 269 Neb. 310, 693 N.W.2d 500 (2005).

30-3815 (UTC 204) Venue.

(UTC 204) (a) Except as otherwise provided in subsections (b) and (c) of this section, venue for a judicial proceeding involving a trust is in the county of this state in which the trust's principal place of administration is or will be located

and, if the trust is created by will and the estate is not yet closed, in the county in which the decedent's estate is being administered.

(b) Except as provided in subsection (c) of this section, if a trust has no trustee, venue for a judicial proceeding for the appointment of a trustee is in a county of this state in which a beneficiary resides, in a county in which any trust property is located, in a county in which the trust's principal place of administration was located before a vacancy in the office of trustee occurred, and if the trust is created by will, in the county in which the decedent's estate was or is being administered.

(c) If a trust is registered in Nebraska, unless the registration has been released, the venue is in the court in which the trust is registered, even if there is no trustee.

(d)(i) Where a proceeding under the Nebraska Uniform Trust Code could be maintained in more than one place in this state, the court in which the proceeding is first commenced has the exclusive right to proceed.

(ii) If proceedings concerning the same trust are commenced in more than one court of this state, the court in which the proceeding was first commenced shall continue to hear the matter, and the other courts shall hold the matter in abeyance until the question of venue is decided, and if the ruling court determines that venue is properly in another court, it shall transfer the proceeding to the other court.

(iii) If a court finds that in the interest of justice a proceeding or a file should be located in another court of this state, the court making the finding may transfer the proceeding or file to the other court.

Source: Laws 2003, LB 130, § 15.

30-3816 Duty to register trusts.

The trustee of a trust having its principal place of administration in this state may register the trust in the county court of this state at the principal place of administration. Unless otherwise designated in the trust instrument, the principal place of administration of a trust is the trustee's usual place of business where the records pertaining to the trust are kept, or at the trustee's residence if he or she has no such place of business. In the case of cotrustees, the principal place of administration, if not otherwise designated in the trust instrument, is (1) the usual place of business of the corporate trustee if there is but one corporate cotrustee, or (2) the usual place of business or residence of the individual trustee who is a professional fiduciary if there is but one such person and no corporate cotrustee, and otherwise (3) the usual place of business or residence of any of the cotrustees as agreed upon by them. The right to register under sections 30-3816 to 30-3820 does not apply to the trustee of a trust if registration would be inconsistent with the retained jurisdiction of a foreign court from which the trustee cannot obtain release.

Source: Laws 1974, LB 354, § 296, UPC § 7-101; R.S.1943, (1995), § 30-2801; Laws 2003, LB 130, § 16.

When a person has been removed as trustee of a trust, that person no longer has standing under this section to register the trust in Nebraska. In re Trust Created by Del Castillo, 268 Neb. 671, 686 N.W.2d 900 (2004).

Where principal place of administration of testamentary trust was in Iowa, trust could not have been registered in Nebraska under this section. Raynor v. Northwestern National Bank, 211 Neb. 119, 317 N.W.2d 786 (1982).

30-3817 Registration procedures.

Registration shall be accomplished by filing a statement indicating the name and address of the trustee in which it acknowledges the trusteeship. The statement shall indicate whether the trust has been registered elsewhere. The statement shall identify the trust: (1) in the case of a testamentary trust, by the name of the testator and the date and place of domiciliary probate; (2) in the case of a written inter vivos trust, by the name of each settlor and the original trustee and the date of the trust instrument; or (3) in the case of an oral trust, by information identifying the settlor or other source of funds and describing the time and manner of the trust's creation and the terms of the trust, including the subject matter, beneficiaries, and time of performance.

Source: Laws 1974, LB 354, § 297, UPC § 7-102; R.S.1943, (1995), § 30-2802; Laws 2003, LB 130, § 17.

30-3818 Clerk of court; records.

The clerk of court shall keep a record for each trust involved in any document which may be filed with the court under sections 30-3816 to 30-3820, including petitions and applications, trust registrations, and of any orders or responses relating thereto by the court, and establish and maintain a system for indexing, filing, or recording which is sufficient to enable users of the records to obtain adequate information. Upon payment of the fees required by law, the clerk must issue certified copies of any record or paper filed or recorded.

Source: Laws 2003, LB 130, § 18.

30-3819 Effect of registration.

(a) By registering a trust, or accepting the trusteeship of a registered trust, the trustee submits personally to the jurisdiction of the court of registration in any proceeding under section 30-3812 relating to the trust that may be initiated by any interested person while the trust remains registered. Notice of any proceeding shall be delivered to the trustee or mailed to him or her by ordinary first-class mail at his or her address as listed in the registration or as thereafter reported to the court and to his or her address as then known to the petitioner.

(b) To the extent of their interests in the trust, all beneficiaries of a trust properly registered in this state are subject to the jurisdiction of the court of registration for the purposes of proceedings under section 30-3812, provided notice is given pursuant to section 30-2220.

Source: Laws 1974, LB 354, § 298, UPC § 7-103; R.S.1943, (1995), § 30-2803; Laws 2003, LB 130, § 19.

Under this section, the county court of Dakota County, Nebraska, could not acquire jurisdiction of a trust having principal place of administration in Iowa since the trust could not be registered in Nebraska under section 30-2801. Raynor v. Northwestern National Bank, 211 Neb. 119, 317 N.W.2d 786 (1982).

30-3820 Registration, qualification of foreign trustee.

A foreign corporate trustee is required to qualify as a foreign corporation doing business in this state if it maintains the principal place of administration of any trust within the state. A foreign cotrustee is not required to qualify in this state solely because its cotrustee maintains the principal place of administration in this state. Unless otherwise doing business in this state, local qualification by a foreign trustee, corporate or individual, is not required in order for the trustee to receive distribution from a local estate or to hold, invest in, manage, or acquire property located in this state, or maintain litigation if the laws of the

state of incorporation or residence of the foreign trustee grant the same authority to a trustee incorporated or resident in this state. Nothing in this section affects a determination of what other acts require qualification as doing business in this state.

Source: Laws 1974, LB 354, § 300, UPC § 7-105; R.S.1943, (1995), § 30-2805; Laws 2003, LB 130, § 20.

30-3821 Appellate review.

Appellate review under the Nebraska Uniform Trust Code shall be governed by section 30-1601.

Source: Laws 2003, LB 130, § 21.

PART 3

REPRESENTATION

30-3822 (UTC 301) Representation; basic effect.

(UTC 301) (a) Notice to a person who may represent and bind another person under sections 30-3822 to 30-3826 has the same effect as if notice were given directly to the other person.

(b) The consent of a person who may represent and bind another person under sections 30-3822 to 30-3826 is binding on the person represented unless the person represented objects to the representation before the consent would otherwise have become effective.

(c) Except as otherwise provided in sections 30-3837 and 30-3854, a person who under sections 30-3822 to 30-3826 may represent a settlor who lacks capacity may receive notice and give a binding consent on the settlor's behalf.

(d) A settlor may not represent and bind a beneficiary under sections 30-3822 to 30-3826 with respect to the termination or modification of a trust under subsection (a) of section 30-3837.

Source: Laws 2003, LB 130, § 22; Laws 2005, LB 533, § 39.

30-3823 (UTC 302) Representation by holder of general testamentary power of appointment.

(UTC 302) To the extent there is no conflict of interest between the holder of a general testamentary power of appointment and the persons represented with respect to the particular question or dispute, the holder may represent and bind persons whose interests, as permissible appointees, takers in default, or otherwise, are subject to the power.

Source: Laws 2003, LB 130, § 23.

30-3824 (UTC 303) Representation by fiduciaries and parents.

(UTC 303) To the extent there is no conflict of interest between the representative and the person represented or among those being represented with respect to a particular question or dispute:

(1) a conservator may represent and bind the estate that the conservator controls;

(2) a guardian may represent and bind the ward if a conservator of the ward's estate has not been appointed;

(3) an agent having authority to act with respect to the particular question or dispute may represent and bind the principal;

(4) a trustee may represent and bind the beneficiaries of the trust;

(5) a personal representative of a decedent's estate may represent and bind persons interested in the estate; and

(6) a parent may represent and bind the parent's minor or unborn child if a conservator or guardian for the child has not been appointed.

Source: Laws 2003, LB 130, § 24.

30-3825 (UTC 304) Representation by person having substantially identical interest.

(UTC 304) Unless otherwise represented, a minor, incapacitated, or unborn individual, or a person whose identity or location is unknown and not reasonably ascertainable, may be represented by and bound by another having a substantially identical interest with respect to the particular question or dispute, but only to the extent there is no conflict of interest between the representative and the person represented.

Source: Laws 2003, LB 130, § 25.

30-3826 (UTC 305) Appointment of representative.

(UTC 305) (a) If the court determines that an interest is not represented under sections 30-3822 to 30-3826, or that the otherwise available representation might be inadequate, the court may appoint a representative to receive notice, give consent, and otherwise represent, bind, and act on behalf of a minor, incapacitated, or unborn individual, or a person whose identity or location is unknown. A representative may be appointed to represent several persons or interests.

(b) A representative may act on behalf of the individual represented with respect to any matter arising under the Nebraska Uniform Trust Code, whether or not a judicial proceeding concerning the trust is pending.

(c) In making decisions, a representative may consider general benefit accruing to the living members of the individual's family.

Source: Laws 2003, LB 130, § 26.

PART 4

CREATION, VALIDITY, MODIFICATION, AND TERMINATION OF TRUST

30-3827 (UTC 401) Methods of creating trust.

(UTC 401) A trust may be created by:

(1) transfer of property to another person as trustee during the settlor's lifetime or by will or other disposition taking effect upon the settlor's death;

(2) except as required by a statute other than the Nebraska Uniform Trust Code, declaration by the owner of property that the owner holds identifiable property as trustee; or

(3) exercise of a power of appointment in favor of a trustee.

Source: Laws 2003, LB 130, § 27.

30-3828 (UTC 402) Requirements for creation.

(UTC 402) (a) A trust is created only if:

(1) the settlor has capacity to create a trust;

(2) the settlor indicates an intention to create the trust;

(3) the trust has a definite beneficiary or is:

(A) a charitable trust;

(B) a trust for the care of an animal, as provided in section 30-3834; or

(C) a trust for a noncharitable purpose, as provided in section 30-3835;

(4) the trustee has duties to perform; and

(5) the same person is not the sole trustee and sole beneficiary.

(b) A beneficiary is definite if the beneficiary can be ascertained now or in the future, subject to any applicable rule against perpetuities.

(c) A power in a trustee to select a beneficiary from an indefinite class is valid. If the power is not exercised within a reasonable time, the power fails and the property subject to the power passes to the persons who would have taken the property had the power not been conferred.

Source: Laws 2003, LB 130, § 28.

30-3829 (UTC 403) Trusts created in other jurisdictions.

(UTC 403) A trust not created by will is validly created if its creation complies with the law of the jurisdiction in which the trust instrument was executed, or the law of the jurisdiction in which, at the time of creation:

(1) the settlor was domiciled, had a place of abode, or was a national; or

(2) except with respect to Nebraska real estate, (A) a trustee was domiciled or had a place of business; or (B) any trust property was located.

Source: Laws 2003, LB 130, § 29.

30-3830 (UTC 404) Trust purposes.

(UTC 404) A trust may be created only to the extent its purposes are lawful, not contrary to public policy, and possible to achieve. A trust and its terms must be for the benefit of its beneficiaries.

Source: Laws 2003, LB 130, § 30.

30-3831 (UTC 405) Charitable purposes; enforcement.

(UTC 405) (a) A charitable trust may be created for the relief of poverty, the advancement of education or religion, the promotion of health, governmental or municipal purposes, or other purposes the achievement of which is beneficial to the community.

(b) If the terms of a charitable trust do not indicate a particular charitable purpose or beneficiary, the court may select one or more charitable purposes or beneficiaries. The selection must be consistent with the settlor's intention to the extent it can be ascertained.

(c) The settlor of a charitable trust, among others, may maintain a proceeding to enforce the trust.

Source: Laws 2003, LB 130, § 31.

30-3832 (UTC 406) Creation of trust induced by fraud, duress, or undue influence.

(UTC 406) A trust is void to the extent its creation was induced by fraud, duress, or undue influence.

Source: Laws 2003, LB 130, § 32.

30-3833 (UTC 407) Evidence of oral trust.

(UTC 407) Except as required by a statute other than the Nebraska Uniform Trust Code, a trust need not be evidenced by a trust instrument, but the creation of an oral trust and its terms, or an amendment or revocation of an oral trust, may be established only by clear and convincing evidence.

Source: Laws 2003, LB 130, § 33.

30-3834 (UTC 408) Trust for care of animal.

(UTC 408) (a) A trust may be created to provide for the care of an animal alive during the settlor's lifetime. The trust terminates upon the death of the animal or, if the trust was created to provide for the care of more than one animal alive during the settlor's lifetime, upon the death of the last surviving animal.

(b) A trust authorized by this section may be enforced by a person appointed in the terms of the trust or, if no person is so appointed, by a person appointed by the court. A person having an interest in the welfare of the animal may request the court to appoint a person to enforce the trust or to remove a person appointed.

(c) Property of a trust authorized by this section may be applied only to its intended use, except to the extent the court determines that the value of the trust property exceeds the amount required for the intended use. Except as otherwise provided in the terms of the trust, property not required for the intended use must be distributed to the settlor, if then living, otherwise to the settlor's successors in interest.

Source: Laws 2003, LB 130, § 34.

30-3835 (UTC 409) Noncharitable trust without ascertainable beneficiary.

(UTC 409) Except as otherwise provided in section 30-3834 or Chapter 12, article 5, or by another statute, the following rules apply:

(1) A trust may be created for a noncharitable purpose without a definite or definitely ascertainable beneficiary or for a noncharitable but otherwise valid purpose to be selected by the trustee. The trust may not be enforced for more than twenty-one years.

(2) A trust authorized by this section may be enforced by a person appointed in the terms of the trust or, if no person is so appointed, by a person appointed by the court.

(3) Property of a trust authorized by this section may be applied only to its intended use, except to the extent the court determines that the value of the trust property exceeds the amount required for the intended use. Except as otherwise provided in the terms of the trust, property not required for the

intended use must be distributed to the settlor, if then living, otherwise to the settlor's successors in interest.

Source: Laws 2003, LB 130, § 35.

30-3836 (UTC 410) Modification or termination of trust; proceeding for approval or disapproval.

(UTC 410) (a) In addition to the methods of termination prescribed by sections 30-3837 to 30-3840, a trust terminates to the extent the trust is revoked or expires pursuant to its terms, no purpose of the trust remains to be achieved, or the purposes of the trust have become unlawful, contrary to public policy, or impossible to achieve.

(b) A proceeding to approve or disapprove a proposed modification or termination under sections 30-3837 to 30-3842, or trust combination or division under section 30-3843, may be commenced by a trustee or beneficiary. The settlor of a charitable trust may maintain a proceeding to modify the trust under section 30-3839.

Source: Laws 2003, LB 130, § 36; Laws 2005, LB 533, § 40.

30-3837 (UTC 411) Modification or termination of noncharitable irrevocable trust by consent.

(UTC 411) (a) If, upon petition, the court finds that the settlor and all beneficiaries consent to the modification or termination of a noncharitable irrevocable trust, the court shall approve the modification or termination even if the modification or termination is inconsistent with a material purpose of the trust. A settlor's power to consent to a trust's modification or termination may be exercised by an agent under a power of attorney only to the extent expressly authorized by the power of attorney or the terms of the trust; by the settlor's conservator with the approval of the court supervising the conservatorship if an agent is not so authorized; or by the settlor's guardian with the approval of the court supervising the guardianship if an agent is not so authorized and a conservator has not been appointed.

(b) A noncharitable irrevocable trust may be terminated upon consent of all of the beneficiaries if the court concludes that continuance of the trust is not necessary to achieve any material purpose of the trust. A noncharitable irrevocable trust may be modified upon consent of all of the beneficiaries if the court concludes that modification is not inconsistent with a material purpose of the trust.

(c) A spendthrift provision in the terms of the trust is presumed to constitute a material purpose of the trust.

(d) Upon termination of a trust under subsection (a) or (b) of this section, the trustee shall distribute the trust property as agreed by the beneficiaries.

(e) If not all of the beneficiaries consent to a proposed modification or termination of the trust under subsection (a) or (b) of this section, the modification or termination may be approved by the court if the court is satisfied that:

(1) if all of the beneficiaries had consented, the trust could have been modified or terminated under this section; and

(2) the interests of a beneficiary who does not consent will be adequately protected.

Source: Laws 2003, LB 130, § 37; Laws 2004, LB 999, § 25; Laws 2005, LB 533, § 41.

30-3838 (UTC 412) Modification or termination because of unanticipated circumstances or inability to administer trust effectively.

(UTC 412) (a) The court may modify the administrative or dispositive terms of a trust or terminate the trust if, because of circumstances not anticipated by the settlor, modification or termination will further the purposes of the trust. To the extent practicable, the modification must be made in accordance with the settlor's probable intention.

(b) The court may modify the administrative terms of a trust if continuation of the trust on its existing terms would be impracticable or wasteful or impair the trust's administration.

(c) Upon termination of a trust under this section, the trustee shall distribute the trust property in a manner consistent with the purposes of the trust.

Source: Laws 2003, LB 130, § 38.

30-3839 (UTC 413) Cy pres.

(UTC 413) (a) Except as otherwise provided in subsection (b) of this section, if a particular charitable purpose becomes unlawful, impracticable, impossible to achieve, or wasteful:

(1) the trust does not fail, in whole or in part;

(2) the trust property does not revert to the settlor or the settlor's successors in interest; and

(3) the court may apply cy pres to modify or terminate the trust by directing that the trust property be applied or distributed, in whole or in part, in a manner consistent with the settlor's charitable purposes.

(b) A provision in the terms of a charitable trust that would result in distribution of the trust property to a noncharitable beneficiary prevails over the power of the court under subsection (a) of this section to apply cy pres to modify or terminate the trust only if, when the provision takes effect:

(1) the trust property is to revert to the settlor and the settlor is still living; or

(2) fewer than twenty-one years have elapsed since the date of the trust's creation.

Source: Laws 2003, LB 130, § 39.

30-3840 (UTC 414) Modification or termination of uneconomic trust.

(UTC 414) (a) After notice to the qualified beneficiaries, the trustee of a trust consisting of trust property having a total value less than one hundred thousand dollars may terminate the trust if the trustee concludes that the value of the trust property is insufficient to justify the cost of administration.

(b) The court may modify or terminate a trust or remove the trustee and appoint a different trustee if it determines that the value of the trust property is insufficient to justify the cost of administration.

(c) Upon termination of a trust under this section, the trustee shall distribute the trust property in a manner consistent with the purposes of the trust.

(d) This section does not apply to an easement for conservation or preservation.

Source: Laws 2003, LB 130, § 40.

30-3841 (UTC 415) Reformation to correct mistakes.

(UTC 415) The court may reform the terms of a trust, even if unambiguous, to conform the terms to the settlor's intention if it is proved by clear and convincing evidence that both the settlor's intent and the terms of the trust were affected by a mistake of fact or law, whether in expression or inducement.

Source: Laws 2003, LB 130, § 41.

30-3842 (UTC 416) Modification to achieve settlor's tax objectives.

(UTC 416) To achieve the settlor's tax objectives, the court may modify the terms of a trust in a manner that is not contrary to the settlor's probable intention. The court may provide that the modification has retroactive effect.

Source: Laws 2003, LB 130, § 42.

30-3843 (UTC 417) Combination and division of trusts.

(UTC 417) After notice to the qualified beneficiaries, a trustee may combine two or more trusts into a single trust or divide a trust into two or more separate trusts, if the result does not impair rights of any beneficiary or adversely affect achievement of the purposes of the trust.

Source: Laws 2003, LB 130, § 43.

30-3844 Reference to written statement or list.

A trust may refer to a written statement or list to dispose of items of tangible personal property not otherwise specifically disposed of by the trust, other than money, evidences of indebtedness, documents of title, and securities, and property used in trade or business. To be admissible under this section as evidence of the intended disposition, the writing must have an indication of the date of the writing or signing and, in the absence of such indication of date, be the only such writing or contain no inconsistency with any other like writing or permit determination of such date of writing or signing from the contents of such writing, from extrinsic circumstances, or from any other evidence, must either be in the handwriting of the settlor or be signed by him or her, and must describe the items and the beneficiaries or recipients with reasonable certainty. The writing may be referred to as one to be in existence at the time of the settlor's death; it may be prepared before or after the execution of the trust; it may be altered by the settlor after its preparation; and it may be a writing which has no significance apart from its effect upon the disposition made by the trust.

Source: Laws 2003, LB 130, § 44.

30-3845 Renunciation.

Renunciations under the Nebraska Uniform Trust Code shall be governed by section 30-2352.

Source: Laws 2003, LB 130, § 45.

PART 5

CREDITOR'S CLAIMS; SPENDTHRIFT AND DISCRETIONARY TRUSTS

30-3846 (UTC 501) Rights of beneficiary's creditor or assignee.

(UTC 501) To the extent a beneficiary's interest is not subject to a spendthrift provision, the court may authorize a creditor or assignee of the beneficiary to reach the beneficiary's interest by attachment of present or future distributions to or for the benefit of the beneficiary or other means. The court may limit the award to such relief as is appropriate under the circumstances.

Source: Laws 2003, LB 130, § 46; Laws 2007, LB124, § 23.

30-3847 (UTC 502) Spendthrift provision.

(UTC 502) (a) A spendthrift provision is valid only if it restrains both voluntary and involuntary transfer of a beneficiary's interest.

(b) A term of a trust providing that the interest of a beneficiary is held subject to a ''spendthrift trust'', or words of similar import, is sufficient to restrain both voluntary and involuntary transfer of the beneficiary's interest.

(c) A beneficiary may not transfer an interest in a trust in violation of a valid spendthrift provision and, except as otherwise provided in sections 30-3846 to 30-3852, a creditor or assignee of the beneficiary may not reach the interest or a distribution by the trustee before its receipt by the beneficiary.

Source: Laws 2003, LB 130, § 47.

30-3848 (UTC 503) Exceptions to spendthrift provision.

(UTC 503) (a) In this section, ''child'' includes any person for whom an order or judgment for child support has been entered in this or another state.

(b) A spendthrift provision is unenforceable against:

(1) a beneficiary's child, spouse, or former spouse who has a judgment or court order against the beneficiary for support or maintenance;

(2) a judgment creditor who has provided services for the protection of a beneficiary's interest in the trust; and

(3) a claim of this state or the United States to the extent a statute of this state or federal law so provides.

(c) A claimant against which a spendthrift provision cannot be enforced may obtain from a court an order attaching present or future distributions to or for the benefit of the beneficiary. The court may limit the award to such relief as is appropriate under the circumstances.

Source: Laws 2003, LB 130, § 48; Laws 2007, LB124, § 24.

30-3849 (UTC 504) Discretionary trusts; effect of standard.

(UTC 504) (a) In this section, ''child'' includes any person for whom an order or judgment for child support has been entered in this or another state.

(b) Except as otherwise provided in subsection (c) of this section, whether or not a trust contains a spendthrift provision, a creditor of a beneficiary may not compel a distribution that is subject to the trustee's discretion, even if:

(1) the discretion is expressed in the form of a standard of distribution; or

(2) the trustee has abused the discretion.

(c) To the extent a trustee has not complied with a standard of distribution or has abused a discretion:

(1) a distribution may be ordered by the court to satisfy a judgment or court order against the beneficiary for support or maintenance of the beneficiary's child, spouse, or former spouse; and

(2) the court shall direct the trustee to pay to the child, spouse, or former spouse such amount as is equitable under the circumstances but not more than the amount the trustee would have been required to distribute to or for the benefit of the beneficiary had the trustee complied with the standard or not abused the discretion.

(d) This section does not limit the right of a beneficiary to maintain a judicial proceeding against a trustee for an abuse of discretion or failure to comply with a standard for distribution.

(e) If the trustee's or cotrustee's discretion to make distributions for the trustee's or cotrustee's own benefit is limited by an ascertainable standard, a creditor may not reach or compel distribution of the beneficial interest except to the extent the interest would be subject to the creditor's claim were the beneficiary not acting as trustee or cotrustee.

Source: Laws 2003, LB 130, § 49; Laws 2005, LB 533, § 42; Laws 2007, LB124, § 25.

30-3850 (UTC 505) Creditor's claim against settlor.

(UTC 505) (a) Whether or not the terms of a trust contain a spendthrift provision, the following rules apply:

(1) During the lifetime of the settlor, the property of a revocable trust is subject to claims of the settlor's creditors.

(2) With respect to an irrevocable trust, a creditor or assignee of the settlor may reach the maximum amount that can be distributed to or for the settlor's benefit. If a trust has more than one settlor, the amount the creditor or assignee of a particular settlor may reach may not exceed the settlor's interest in the portion of the trust attributable to that settlor's contribution.

(3) After the death of a settlor, and subject to the settlor's right to direct the source from which liabilities will be paid, the property of a trust that was revocable at the settlor's death is subject to claims of the settlor's creditors, costs of administration of the settlor's estate, the expenses of the settlor's funeral and disposal of remains, and statutory allowances to a surviving spouse and children to the extent the settlor's probate estate is inadequate to satisfy those claims, costs, expenses, and allowances. A proceeding to assert the liability for claims against the estate and statutory allowances may not be commenced unless the personal representative has received a written demand by the surviving spouse, a creditor, a child, or a person acting for a child of the decedent. The proceeding must be commenced within one year after the death of the decedent. Sums recovered by the personal representative of the settlor's

estate must be administered as part of the decedent's estate. The liability created by this subdivision shall not apply to any assets to the extent that such assets are otherwise exempt under the laws of this state or under federal law.

(4) A beneficiary of a trust subject to subdivision (a)(3) of this section who receives one or more distributions from the trust after the death of the settlor against whom a proceeding to account is brought may join as a party to the proceeding any other beneficiary who has received a distribution from that trust or any other trust subject to subdivision (a)(3) of this section, any surviving owner or beneficiary under sections 30-2734 to 30-2745 of any other security or securities account of the decedent or proceeds thereof, or a surviving party or beneficiary of any account under sections 30-2716 to 30-2733.

(5) Unless a written notice asserting that a decedent's probate estate is insufficient to pay allowed claims and statutory allowances has been received from the decedent's personal representative before the distribution, a trustee is released from liability under this section on any assets distributed to the trust's beneficiaries.

(b) For purposes of this section:

(1) during the period the power may be exercised, the holder of a power of withdrawal is treated in the same manner as the settlor of a revocable trust to the extent of the property subject to the power; and

(2) upon the lapse, release, or waiver of the power, the holder is treated as the settlor of the trust only to the extent the value of the property affected by the lapse, release, or waiver exceeds the greater of the amount specified in section 2041(b)(2), 2503(b), or 2514(e) of the Internal Revenue Code as defined in section 49-801.01.

Source: Laws 2003, LB 130, § 50.

30-3851 (UTC 506) Mandatory distribution.

(UTC 506) (a) In this section, ''mandatory distribution'' means a distribution of income or principal which the trustee is required to make to a beneficiary under the terms of the trust, including a distribution upon termination of the trust. The term does not include a distribution subject to the exercise of the trustee's discretion even if (1) the discretion is expressed in the form of a standard of distribution or (2) the terms of the trust authorizing a distribution couple language of discretion with language of direction.

(b) Whether or not a trust contains a spendthrift provision, a creditor or assignee of a beneficiary may reach a mandatory distribution of income or principal, including a distribution upon termination of the trust, if the trustee has not made the distribution to the beneficiary within a reasonable time after the designated distribution date.

Source: Laws 2003, LB 130, § 51; Laws 2007, LB124, § 26.

30-3852 (UTC 507) Personal obligations of trustee.

(UTC 507) Trust property is not subject to personal obligations of the trustee, even if the trustee becomes insolvent or bankrupt.

Source: Laws 2003, LB 130, § 52.

PART 6

REVOCABLE TRUSTS

30-3853 (UTC 601) Capacity of settlor of revocable trust.

(UTC 601) The capacity required to create, amend, revoke, or add property to a revocable trust, or to direct the actions of the trustee of a revocable trust, is the same as that required to make a will.

Source: Laws 2003, LB 130, § 53.

30-3854 (UTC 602) Revocation or amendment of revocable trust.

(UTC 602) (a) Unless the terms of a trust expressly provide that the trust is irrevocable, the settlor may revoke or amend the trust. This subsection does not apply to a trust created under an instrument executed before January 1, 2005.

(b) If a revocable trust is created or funded by more than one settlor:

(1) to the extent the trust consists of community property, the trust may be revoked by either spouse acting alone but may be amended only by joint action of both spouses;

(2) to the extent the trust consists of property other than community property, each settlor may revoke or amend the trust with regard to the portion of the trust property attributable to that settlor's contribution; and

(3) upon the revocation or amendment of the trust by fewer than all of the settlors, the trustee shall promptly notify the other settlors of the revocation or amendment.

(c) The settlor may revoke or amend a written revocable trust:

(1) by substantial compliance with a method provided in the terms of the trust; or

(2) if the terms of the trust do not provide a method or the method provided in the terms is not expressly made exclusive, by:

(A) a later will or codicil that expressly refers to the trust or specifically devises property that would otherwise have passed according to the terms of the trust; or

(B) an instrument evidencing an intent to amend or revoke the trust signed by the settlor, or in the settlor's name by some other individual in the presence of and by the direction of the settlor. The instrument must have an indication of the date of the writing or signing and, in the absence of such indication of the date, be the only such writing or contain no inconsistency with any other like writing or permit determination of such date of writing or signing from the content of such writing, from extrinsic circumstances, or from any other evidence.

(d) Upon revocation of a revocable trust, the trustee shall deliver the trust property as the settlor directs.

(e) A settlor's powers with respect to revocation, amendment, or distribution of trust property may be exercised by an agent under a power of attorney only to the extent expressly authorized by the terms of the trust or the power.

(f) A conservator of the settlor or, if no conservator has been appointed, a guardian of the settlor may exercise a settlor's powers with respect to revoca-

tion, amendment, or distribution of trust property only with the approval of the court supervising the conservatorship or guardianship.

(g) A trustee who does not know that a trust has been revoked or amended is not liable to the settlor or settlor's successors in interest for distributions made and other actions taken in reliance on the terms of the trust.

Source: Laws 2003, LB 130, § 54; Laws 2004, LB 999, § 26.

30-3855 (UTC 603) Rights and duties.

(UTC 603) (a) While a trust is revocable, rights of the beneficiaries are subject to the control of, and the duties of the trustee are owed exclusively to, the settlor.

(b) During the period the power may be exercised, the holder of a power of withdrawal has the rights of a settlor of a revocable trust under this section to the extent of the property subject to the power.

Source: Laws 2003, LB 130, § 55; Laws 2004, LB 999, § 27; Laws 2005, LB 533, § 43.

30-3856 (UTC 604) Limitation on action contesting validity of revocable trust; distribution of trust property.

(UTC 604) (a) A person may commence a judicial proceeding to contest the validity of a trust that was revocable at the settlor's death within the earlier of:

(1) one year after the settlor's death; or

(2) one hundred twenty days after the trustee sent the person a copy of the trust instrument and a notice informing the person of the trust's existence, of the trustee's name and address, and of the time allowed for commencing a proceeding.

(b) Upon the death of the settlor of a trust that was revocable at the settlor's death, the trustee may proceed to distribute the trust property in accordance with the terms of the trust. The trustee is not subject to liability for doing so unless:

(1) the trustee knows of a pending judicial proceeding contesting the validity of the trust; or

(2) a potential contestant has notified the trustee of a possible judicial proceeding to contest the trust and a judicial proceeding is commenced within sixty days after the contestant sent the notification.

(c) A beneficiary in receipt of property from a trust that is determined to have been invalid is liable to return:

(1) the property and its income since distribution, if the beneficiary has the property; or

(2) the value of the property as of the date of disposition of the property, and its income and gain received by the beneficiary, if the beneficiary has disposed of the property.

Source: Laws 2003, LB 130, § 56.

PART 7

OFFICE OF TRUSTEE

30-3857 (UTC 701) Accepting or declining trusteeship.

(UTC 701) (a) Except as otherwise provided in subsection (c) of this section, a person designated as trustee accepts the trusteeship:

(1) by substantially complying with a method of acceptance provided in the terms of the trust;

(2) if the terms of the trust do not provide a method or the method provided in the terms is not expressly made exclusive, by accepting delivery of the trust property, exercising powers or performing duties as trustee, or otherwise indicating acceptance of the trusteeship; or

(3) by registering the trust in accordance with established statutory procedures.

(b) A person designated as trustee who has not yet accepted the trusteeship may reject the trusteeship. A designated trustee who does not accept the trusteeship within a reasonable time after knowing of the designation is deemed to have rejected the trusteeship.

(c) A person designated as trustee, without accepting the trusteeship, may:

(1) act to preserve the trust property if, within a reasonable time after acting, the person sends a rejection of the trusteeship to the settlor or, if the settlor is dead or lacks capacity, to a qualified beneficiary; and

(2) inspect or investigate trust property to determine potential liability under environmental or other law or for any other purpose.

Source: Laws 2003, LB 130, § 57.

30-3858 (UTC 702) Trustee's bond.

(UTC 702) (a) A trustee shall give bond to secure performance of the trustee's duties only if the court finds that a bond is needed to protect the interests of the beneficiaries or is required by the terms of the trust and the court has not dispensed with the requirement.

(b) The court may specify the amount of a bond, its liabilities, and whether sureties are necessary. The court may modify or terminate a bond at any time.

(c) A bank or trust company qualified to act as a trustee in this state need not give bond, even if required by the terms of the trust.

Source: Laws 2003, LB 130, § 58.

30-3859 (UTC 703) Cotrustees.

(UTC 703) (a) Cotrustees who are unable to reach a unanimous decision may act by majority decision.

(b) If a vacancy occurs in a cotrusteeship, the remaining cotrustees may act for the trust.

(c) A cotrustee must participate in the performance of a trustee's function unless the cotrustee is unavailable to perform the function because of absence, illness, disqualification under other law, or other temporary incapacity or the cotrustee has properly delegated the performance of the function to another trustee.

(d) If a cotrustee is unavailable to perform duties because of absence, illness, disqualification under other law, or other temporary incapacity, and prompt action is necessary to achieve the purposes of the trust or to avoid injury to the

trust property, the remaining cotrustee or a majority of the remaining cotrustees may act for the trust.

(e) A trustee may not delegate to a cotrustee the performance of a function the settlor reasonably expected the trustees to perform jointly. Unless a delegation was irrevocable, a trustee may revoke a delegation previously made.

(f) Except as otherwise provided in subsection (g) of this section, a trustee who does not join in an action of another trustee is not liable for the action.

(g) Each trustee shall exercise reasonable care to:

(1) prevent a cotrustee from committing a serious breach of trust; and

(2) compel a cotrustee to redress a serious breach of trust.

(h) A dissenting trustee who joins in an action at the direction of the majority of the trustees and who notified any cotrustee of the dissent at or before the time of the action is not liable for the action unless the action is a serious breach of trust.

Source: Laws 2003, LB 130, § 59.

30-3860 (UTC 704) Vacancy in trusteeship; appointment of successor.

(UTC 704) (a) A vacancy in a trusteeship occurs if:

(1) a person designated as trustee rejects the trusteeship;

(2) a person designated as trustee cannot be identified or does not exist;

(3) a trustee resigns;

(4) a trustee is disqualified or removed;

(5) a trustee dies; or

(6) a guardian or conservator is appointed for an individual serving as trustee.

(b) If one or more cotrustees remain in office, a vacancy in a trusteeship need not be filled. A vacancy in a trusteeship must be filled if the trust has no remaining trustee.

(c) A vacancy in a trusteeship of a noncharitable trust that is required to be filled must be filled in the following order of priority:

(1) by a person designated in the terms of the trust to act as successor trustee;

(2) by a person appointed by unanimous agreement of the qualified beneficiaries; or

(3) by a person appointed by the court.

(d) A vacancy in a trusteeship of a charitable trust that is required to be filled must be filled in the following order of priority:

(1) by a person designated in the terms of the trust to act as successor trustee;

(2) by a person selected by the charitable organizations expressly designated to receive distributions under the terms of the trust if the Attorney General concurs in the selection; or

(3) by a person appointed by the court.

(e) Whether or not a vacancy in a trusteeship exists or is required to be filled, the court may appoint an additional trustee or special fiduciary whenever the court considers the appointment necessary for the administration of the trust.

Source: Laws 2003, LB 130, § 60.

30-3861 (UTC 705) Resignation of trustee.

(UTC 705) (a) A trustee may resign:

(1) upon at least thirty days' notice to the qualified beneficiaries, the settlor, if living, and all cotrustees; or

(2) with the approval of the court.

(b) In approving a resignation, the court may issue orders and impose conditions reasonably necessary for the protection of the trust property.

(c) Any liability of a resigning trustee or of any sureties on the trustee's bond for acts or omissions of the trustee is not discharged or affected by the trustee's resignation.

Source: Laws 2003, LB 130, § 61.

30-3862 (UTC 706) Removal of trustee.

(UTC 706) (a) The settlor, a cotrustee, or a beneficiary may request the court to remove a trustee, or a trustee may be removed by the court on its own initiative.

(b) The court may remove a trustee if:

(1) the trustee has committed a serious breach of trust;

(2) lack of cooperation among cotrustees substantially impairs the administration of the trust;

(3) because of unfitness, unwillingness, or persistent failure of the trustee to administer the trust effectively, the court determines that removal of the trustee best serves the interests of the beneficiaries; or

(4) there has been a substantial change of circumstances or removal is requested by all of the qualified beneficiaries, the court finds that removal of the trustee best serves the interests of all of the beneficiaries and is not inconsistent with a material purpose of the trust, and a suitable cotrustee or successor trustee is available.

(c) Pending a final decision on a request to remove a trustee, or in lieu of or in addition to removing a trustee, the court may order such appropriate relief under subsection (b) of section 30-3890 as may be necessary to protect the trust property or the interests of the beneficiaries.

Source: Laws 2003, LB 130, § 62.

A proceeding initiated under section 30-3814 and this section to remove a trustee is a special proceeding within the meaning of section 25-1902. In re Trust of Rosenberg, 269 Neb. 310, 693 N.W.2d 500 (2005).

30-3863 (UTC 707) Delivery of property by former trustee.

(UTC 707) (a) Unless a cotrustee remains in office or the court otherwise orders, and until the trust property is delivered to a successor trustee or other person entitled to it, a trustee who has resigned or been removed has the duties of a trustee and the powers necessary to protect the trust property.

(b) A trustee who has resigned or been removed shall proceed expeditiously to deliver the trust property within the trustee's possession to the cotrustee, successor trustee, or other person entitled to it.

(c) Title to all trust property shall be owned by and vested in any successor trustee without any conveyance, transfer, or assignment by the prior trustee.

Source: Laws 2003, LB 130, § 63.

30-3864 (UTC 708) Compensation of trustee.

(UTC 708) (a) If the terms of a trust do not specify the trustee's compensation, a trustee is entitled to compensation that is reasonable under the circumstances.

(b) If the terms of a trust specify the trustee's compensation, the trustee is entitled to be compensated as specified, but the court may allow more or less compensation if:

(1) the duties of the trustee are substantially different from those contemplated when the trust was created; or

(2) the compensation specified by the terms of the trust would be unreasonably low or high.

Source: Laws 2003, LB 130, § 64.

30-3865 (UTC 709) Reimbursement of expenses.

(UTC 709) (a) A trustee is entitled to be reimbursed out of the trust property, with interest as appropriate, for:

(1) expenses that were properly incurred in the administration of the trust; and

(2) to the extent necessary to prevent unjust enrichment of the trust, expenses that were not properly incurred in the administration of the trust.

(b) An advance by the trustee of money for the protection of the trust gives rise to a lien against trust property to secure reimbursement with reasonable interest.

Source: Laws 2003, LB 130, § 65.

PART 8

DUTIES AND POWERS OF TRUSTEE

30-3866 (UTC 801) Duty to administer trust.

(UTC 801) Upon acceptance of a trusteeship, the trustee shall 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.

Source: Laws 2003, LB 130, § 66.

30-3867 (UTC 802) Duty of loyalty.

(UTC 802) (a) A trustee shall administer the trust solely in the interests of the beneficiaries.

(b) Subject to the rights of persons dealing with or assisting the trustee as provided in section 30-38,101, a sale, encumbrance, or other transaction involving the investment or management of trust property entered into by the trustee for the trustee's own personal account or which is otherwise affected by a conflict between the trustee's fiduciary and personal interests is voidable by a beneficiary affected by the transaction unless:

(1) the transaction was authorized by the terms of the trust;

(2) the transaction was approved by the court;

(3) the beneficiary did not commence a judicial proceeding within the time allowed by section 30-3894;

(4) the beneficiary consented to the trustee's conduct, ratified the transaction, or released the trustee in compliance with section 30-3898; or

(5) the transaction involves a contract entered into or claim acquired by the trustee before the person became or contemplated becoming trustee.

(c) A sale, encumbrance, or other transaction involving the investment or management of trust property is presumed to be affected by a conflict between personal and fiduciary interests if it is entered into by the trustee with:

(1) the trustee's spouse;

(2) the trustee's descendants, siblings, parents, or their spouses;

(3) an agent or attorney of the trustee; or

(4) a corporation or other person or enterprise in which the trustee, or a person that owns a significant interest in the trustee, has an interest that might affect the trustee's best judgment.

(d) A transaction not concerning trust property in which the trustee engages in the trustee's individual capacity involves a conflict between personal and fiduciary interests if the transaction concerns an opportunity properly belonging to the trust.

(e)(1) The following transactions shall not be presumed to be affected by a conflict between the personal and fiduciary interests of a trustee, if the transaction and any investment made pursuant to the transaction complies with the prudent investor rule set forth in sections 30-3883 to 30-3889 and is in the best interests of the beneficiaries:

(A) an investment by a trustee in securities of an investment company or investment trust to which the trustee or its affiliate provides services in a capacity other than as trustee; or

(B) the placing of securities transactions by a trustee through a securities broker that is part of the same company as the trustee, is owned by the trustee, or is affiliated with the trustee.

(2) In addition to the trustee's fees charged to the trust, the trustee, its affiliate, or its associated entity may be reasonably compensated for any transaction or provision of services described in this subsection performed by the trustee, its affiliate, or its associated entity. However, with respect to any investment in securities of an investment company or investment trust to which the trustee or its affiliate provides investment advisory or investment management services, the trustee shall, at least annually, notify the persons entitled under section 30-3878 to receive a copy of the trustee's annual report of the rate and method by which the compensation was determined.

(f) In voting shares of stock or in exercising powers of control over similar interests in other forms of enterprise, the trustee shall act in the best interests of the beneficiaries. If the trust is the sole owner of a corporation or other form of enterprise, the trustee shall elect or appoint directors or other managers who will manage the corporation or enterprise in the best interests of the beneficiaries.

(g) This section does not preclude the following transactions, if fair to the beneficiaries:

(1) an agreement between a trustee and a beneficiary relating to the appointment or compensation of the trustee;

(2) payment of reasonable compensation to the trustee;

(3) a transaction between a trust and another trust, decedent's estate, or conservatorship of which the trustee is a fiduciary or in which a beneficiary has an interest;

(4) a deposit of trust money in a regulated financial-service institution operated by the trustee; or

(5) an advance by the trustee of money for the protection of the trust.

(h) The court may appoint a special fiduciary to make a decision with respect to any proposed transaction that might violate this section if entered into by the trustee.

Source: Laws 2003, LB 130, § 67; Laws 2004, LB 999, § 28; Laws 2005, LB 533, § 44; Laws 2007, LB124, § 27.

30-3868 (UTC 803) Impartiality.

(UTC 803) If a trust has two or more beneficiaries, the trustee shall act impartially in investing, managing, and distributing the trust property, giving due regard to the beneficiaries' respective interests.

Source: Laws 2003, LB 130, § 68.

30-3869 (UTC 804) Prudent administration.

(UTC 804) A trustee shall administer the trust as a prudent person would, by considering the purposes, terms, distributional requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.

Source: Laws 2003, LB 130, § 69.

30-3870 (UTC 805) Costs of administration.

(UTC 805) In administering a trust, the trustee may incur only costs that are reasonable in relation to the trust property, the purposes of the trust, and the skills of the trustee.

Source: Laws 2003, LB 130, § 70.

30-3871 (UTC 806) Trustee's skills.

(UTC 806) A trustee who has special skills or expertise, or is named trustee in reliance upon the trustee's representation that the trustee has special skills or expertise, shall use those special skills or expertise.

Source: Laws 2003, LB 130, § 71.

30-3872 Delegation by trustee.

A trustee may delegate functions as provided in section 30-3888.

Source: Laws 2003, LB 130, § 72.

30-3873 (UTC 808) Powers to direct.

(UTC 808) (a) While a trust is revocable, the trustee may follow a written direction of the settlor that is contrary to the terms of the trust.

(b) If the terms of a trust confer upon a person other than the settlor of a revocable trust power to direct certain actions of the trustee, the trustee shall act in accordance with an exercise of the power unless the attempted exercise

is manifestly contrary to the terms of the trust or the trustee knows the attempted exercise would constitute a serious breach of a fiduciary duty that the person holding the power owes to the beneficiaries of the trust.

(c) The terms of a trust may confer upon a trustee or other person a power to direct the modification or termination of the trust.

(d) A person, other than a beneficiary, who holds a power to direct is presumptively a fiduciary who, as such, is required to act in good faith with regard to the purposes of the trust and the interests of the beneficiaries. The holder of a power to direct is liable for any loss that results from breach of a fiduciary duty.

Source: Laws 2003, LB 130, § 73.

30-3874 (UTC 809) Control and protection of trust property.

(UTC 809) A trustee shall take reasonable steps to take control of and protect the trust property.

Source: Laws 2003, LB 130, § 74.

30-3875 (UTC 810) Recordkeeping and identification of trust property.

(UTC 810) (a) A trustee shall keep adequate records of the administration of the trust.

(b) A trustee shall keep trust property separate from the trustee's own property.

(c) Except as otherwise provided in subsection (d) of this section, a trustee shall cause the trust property to be designated so that the interest of the trust, to the extent feasible, appears in records maintained by a party other than a trustee or beneficiary.

(d) If the trustee maintains records clearly indicating the respective interests, a trustee may invest as a whole the property of two or more separate trusts.

Source: Laws 2003, LB 130, § 75.

30-3876 (UTC 811) Enforcement and defense of claims.

(UTC 811) A trustee shall take reasonable steps to enforce claims of the trust and to defend claims against the trust.

Source: Laws 2003, LB 130, § 76.

30-3877 (UTC 812) Collecting trust property.

(UTC 812) A trustee shall take reasonable steps to compel a former trustee or other person to deliver trust property to the trustee, and to redress a breach of trust known to the trustee to have been committed by a former trustee.

Source: Laws 2003, LB 130, § 77.

30-3878 (UTC 813) Duty to inform and report.

(UTC 813) (a) A trustee shall keep the qualified beneficiaries of the trust reasonably informed about the administration of the trust and of the material facts necessary for them to protect their interests. Unless unreasonable under the circumstances, a trustee shall promptly respond to a beneficiary's request for information related to the administration of the trust.

(b) A trustee:

(1) upon request of a beneficiary, shall promptly furnish to the beneficiary a copy of the trust instrument;

(2) within sixty days after accepting a trusteeship, shall notify the qualified beneficiaries of the acceptance and of the trustee's name, address, and telephone number;

(3) within sixty days after the date the trustee acquires knowledge of the creation of an irrevocable trust, or the date the trustee acquires knowledge that a formerly revocable trust has become irrevocable, whether by the death of the settlor or otherwise, shall notify the qualified beneficiaries of the trust's existence, of the identity of the settlor or settlors, of the right to request a copy of the trust instrument, and of the right to a trustee's report as provided in subsection (c) of this section; and

(4) shall notify the qualified beneficiaries in advance of any change in the method or rate of the trustee's compensation.

(c) A trustee shall send to the distributees or permissible distributees of trust income or principal, and to other qualified or nonqualified beneficiaries who request it, at least annually and at the termination of the trust, a report of the trust property, liabilities, receipts, and disbursements, including the source and amount of the trustee's compensation, a listing of the trust assets and, if feasible, their respective market values. Upon a vacancy in a trusteeship, unless a cotrustee remains in office, a report must be sent to the qualified beneficiaries by the former trustee. A personal representative, conservator, or guardian may send the qualified beneficiaries a report on behalf of a deceased or incapacitated trustee.

(d) A beneficiary may waive the right to a trustee's report or other information otherwise required to be furnished under this section. A beneficiary, with respect to future reports and other information, may withdraw a waiver previously given.

(e) The duties of a trustee specified in this section are subject to the provisions of section 30-3855.

(f) Subdivisions (b)(2) and (3) of this section do not apply to a trustee who accepts a trusteeship before January 1, 2006, to an irrevocable trust created before January 1, 2006, or to a revocable trust that becomes irrevocable before January 1, 2006.

Source: Laws 2003, LB 130, § 78; Laws 2005, LB 533, § 45.

30-3879 (UTC 814) Discretionary powers; tax savings.

(UTC 814) (a) Notwithstanding the breadth of discretion granted to a trustee in the terms of the trust, including the use of such terms as ''absolute'', ''sole'', or ''uncontrolled'', the trustee shall exercise a discretionary power in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries.

(b) Subject to subsection (d) of this section, and unless the terms of the trust expressly indicate that a rule in this subsection does not apply:

(1) a person other than a settlor who is a beneficiary and trustee of a trust that confers on the trustee a power to make discretionary distributions to or for

the trustee's personal benefit may exercise the power only in accordance with an ascertainable standard; and

(2) a trustee may not exercise a power to make discretionary distributions to satisfy a legal obligation of support that the trustee personally owes another person.

(c) A power whose exercise is limited or prohibited by subsection (b) of this section may be exercised by a majority of the remaining trustees whose exercise of the power is not so limited or prohibited. If the power of all trustees is so limited or prohibited, the court may appoint a special fiduciary with authority to exercise the power.

(d) Subsection (b) of this section does not apply to:

(1) a power held by the settlor's spouse who is the trustee of a trust for which a marital deduction, as defined in section 2056(b)(5) or 2523(e) of the Internal Revenue Code as defined in section 49-801.01, was previously allowed;

(2) any trust during any period that the trust may be revoked or amended by its settlor; or

(3) a trust if contributions to the trust qualify for the annual exclusion under section 2503(c) of the Internal Revenue Code as defined in section 49-801.01.

Source: Laws 2003, LB 130, § 79; Laws 2005, LB 533, § 46.

30-3880 (UTC 815) General powers of trustee.

(UTC 815) (a) A trustee, without authorization by the court, may exercise:

(1) powers conferred by the terms of the trust; and

(2) except as limited by the terms of the trust:

(A) all powers over the trust property which an unmarried competent owner has over individually owned property;

(B) any other powers appropriate to achieve the proper investment, management, and distribution of the trust property; and

(C) any other powers conferred by the Nebraska Uniform Trust Code.

(b) The exercise of a power is subject to the fiduciary duties prescribed by sections 30-3866 to 30-3882.

Source: Laws 2003, LB 130, § 80.

30-3881 (UTC 816) Specific powers of trustee.

(UTC 816) Without limiting the authority conferred by section 30-3880, a trustee may:

(1) collect trust property and accept or reject additions to the trust property from a settlor or any other person;

(2) acquire or sell property, for cash or on credit, at public or private sale;

(3) exchange, partition, or otherwise change the character of trust property;

(4) deposit trust money in an account in a regulated financial-service institution;

(5) borrow money, including from the trustee, with or without security, and mortgage or pledge trust property for a period within or extending beyond the duration of the trust;

(6) with respect to an interest in a proprietorship, partnership, limited liability company, business trust, corporation, or other form of business or enterprise, continue the business or other enterprise and take any action that may be taken by shareholders, members, or property owners, including merging, dissolving, or otherwise changing the form of business organization or contributing additional capital;

(7) with respect to stocks or other securities, exercise the rights of an absolute owner, including the right to:

(A) vote, or give proxies to vote, with or without power of substitution, or enter into or continue a voting trust agreement;

(B) hold a security in the name of a nominee or in other form without disclosure of the trust so that title may pass by delivery;

(C) pay calls, assessments, and other sums chargeable or accruing against the securities, and sell or exercise stock subscription or conversion rights; and

(D) deposit the securities with a depositary or other regulated financial-service institution;

(8) with respect to an interest in real property, construct, or make ordinary or extraordinary repairs to, alterations to, or improvements in, buildings or other structures, demolish improvements, raze existing or erect new party walls or buildings, subdivide or develop land, dedicate land to public use or grant public or private easements, and make or vacate plats and adjust boundaries;

(9) enter into a lease for any purpose as lessor or lessee, including a lease or other arrangement for exploration and removal of natural resources, with or without the option to purchase or renew, for a period within or extending beyond the duration of the trust;

(10) grant an option involving a sale, lease, or other disposition of trust property or acquire an option for the acquisition of property, including an option exercisable beyond the duration of the trust, and exercise an option so acquired;

(11) insure the property of the trust against damage or loss and insure the trustee, the trustee's agents, and beneficiaries against liability arising from the administration of the trust;

(12) abandon or decline to administer property of no value or of insufficient value to justify its collection or continued administration;

(13) with respect to possible liability for violation of environmental law:

(A) inspect or investigate property the trustee holds or has been asked to hold, or property owned or operated by an organization in which the trustee holds or has been asked to hold an interest, for the purpose of determining the application of environmental law with respect to the property;

(B) take action to prevent, abate, or otherwise remedy any actual or potential violation of any environmental law affecting property held directly or indirectly by the trustee, whether taken before or after the assertion of a claim or the initiation of governmental enforcement;

(C) decline to accept property into trust or disclaim any power with respect to property that is or may be burdened with liability for violation of environmental law;

(D) compromise claims against the trust which may be asserted for an alleged violation of environmental law; and

(E) pay the expense of any inspection, review, abatement, or remedial action to comply with environmental law;

(14) pay or contest any claim, settle a claim by or against the trust, and release, in whole or in part, a claim belonging to the trust;

(15) pay taxes, assessments, compensation of the trustee and of employees and agents of the trust, and other expenses incurred in the administration of the trust;

(16) exercise elections with respect to federal, state, and local taxes;

(17) select a mode of payment under any employee benefit or retirement plan, annuity, or life insurance payable to the trustee, exercise rights thereunder, including exercise of the right to indemnification for expenses and against liabilities, and take appropriate action to collect the proceeds;

(18) make loans out of trust property, including loans to a beneficiary on terms and conditions the trustee considers to be fair and reasonable under the circumstances, and the trustee has a lien on future distributions for repayment of those loans;

(19) pledge trust property to guarantee loans made by others to the beneficiary;

(20) appoint a trustee to act in another jurisdiction with respect to trust property located in the other jurisdiction, confer upon the appointed trustee all of the powers and duties of the appointing trustee, require that the appointed trustee furnish security, and remove any trustee so appointed;

(21) pay an amount distributable to a beneficiary who is under a legal disability or who the trustee reasonably believes is incapacitated, by paying it directly to the beneficiary or applying it for the beneficiary's benefit, or by:

(A) paying it to the beneficiary's conservator or, if the beneficiary does not have a conservator, the beneficiary's guardian;

(B) paying it to the beneficiary's custodian under the Nebraska Uniform Transfers to Minors Act or custodial trustee under the Nebraska Uniform Custodial Trust Act, and, for that purpose, creating a custodianship or custodial trust;

(C) if the trustee does not know of a conservator, guardian, custodian, or custodial trustee, paying it to an adult relative or other person having legal or physical care or custody of the beneficiary, to be expended on the beneficiary's behalf; or

(D) managing it as a separate fund on the beneficiary's behalf, subject to the beneficiary's continuing right to withdraw the distribution;

(22) on distribution of trust property or the division or termination of a trust, make distributions in divided or undivided interests, allocate particular assets in proportionate or disproportionate shares, value the trust property for those purposes, and adjust for resulting differences in valuation;

(23) resolve a dispute concerning the interpretation of the trust or its administration by mediation, arbitration, or other procedure for alternative dispute resolution;

(24) prosecute or defend an action, claim, or judicial proceeding in any jurisdiction to protect trust property and the trustee in the performance of the trustee's duties;

(25) sign and deliver contracts and other instruments that are useful to achieve or facilitate the exercise of the trustee's powers; and

(26) on termination of the trust, exercise the powers appropriate to wind up the administration of the trust and distribute the trust property to the persons entitled to it.

Source: Laws 2003, LB 130, § 81.

Cross References

Nebraska Uniform Custodial Trust Act, see section 30-3501.
Nebraska Uniform Transfers to Minors Act, see section 43-2701.

30-3882 (UTC 817) Distribution upon termination.

(UTC 817) (a) Upon termination or partial termination of a trust, the trustee may send to the beneficiaries a proposal for distribution. The right of any beneficiary to object to the proposed distribution terminates if the beneficiary does not notify the trustee of an objection within thirty days after the proposal was sent but only if the proposal informed the beneficiary of the right to object and of the time allowed for objection.

(b) Upon the occurrence of an event terminating or partially terminating a trust, the trustee shall proceed expeditiously to distribute the trust property to the persons entitled to it, subject to the right of the trustee to retain a reasonable reserve for the payment of debts, expenses, and taxes.

(c) A release by a beneficiary of a trustee from liability for breach of trust is invalid to the extent:

(1) it was induced by improper conduct of the trustee; or

(2) the beneficiary, at the time of the release, did not know of the beneficiary's rights or of the material facts relating to the breach.

Source: Laws 2003, LB 130, § 82.

PART 9

PRUDENT INVESTOR RULE

30-3883 Prudent investor rule.

(a) Except as otherwise provided in subsection (b) of this section, a trustee who invests and manages trust assets owes a duty to the beneficiaries of the trust to comply with the prudent investor rule set forth in sections 30-3883 to 30-3889.

(b) The prudent investor rule, a default rule, may be expanded, restricted, eliminated, or otherwise altered by the provisions of a trust. A trustee is not liable to a beneficiary to the extent that the trustee acted in reasonable reliance on the provisions of the trust.

Source: Laws 1997, LB 54, § 2; R.S.1943, (1997), § 8-2202; Laws 2003, LB 130, § 83.

30-3884 Standard of care; portfolio strategy; risk and return objectives.

(a) A trustee shall invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.

(b) A trustee's investment and management decisions respecting individual assets must be evaluated not in isolation but in the context of the trust portfolio as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the trust.

(c) Among circumstances that a trustee shall consider in investing and managing trust assets are such of the following as are relevant to the trust or its beneficiaries:

(1) General economic conditions;

(2) The possible effect of inflation or deflation;

(3) The expected tax consequences of investment decisions or strategies;

(4) The role that each investment or course of action plays within the overall trust portfolio, which may include financial assets, interests in closely held enterprises, tangible and intangible personal property, and real property;

(5) The expected total return from income and the appreciation of capital;

(6) Other resources of the beneficiaries;

(7) Needs for liquidity, regularity of income, and preservation or appreciation of capital; and

(8) An asset's special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries.

(d) A trustee shall make a reasonable effort to verify facts relevant to the investment and management of trust assets.

(e) A trustee may invest in any kind of property or type of investment consistent with the standards of the prudent investor rule set forth in sections 30-3883 to 30-3889.

Source: Laws 1997, LB 54, § 3; R.S.1943, (1997), § 8-2203; Laws 2003, LB 130, § 84.

30-3885 Diversification.

A trustee shall diversify the investments of the trust unless the trustee reasonably determines that, because of special circumstances, the purposes of the trust are better served without diversifying.

Source: Laws 1997, LB 54, § 4; R.S.1943, (1997), § 8-2204; Laws 2003, LB 130, § 85.

30-3886 Duties at inception of trusteeship.

Within a reasonable time after accepting a trusteeship or receiving trust assets, a trustee shall review the trust assets and make and implement decisions concerning the retention and disposition of assets, in order to bring the trust portfolio into compliance with the purposes, terms, distribution requirements, and other circumstances of the trust, and with the requirements of the prudent investor rule set forth in sections 30-3883 to 30-3889.

Source: Laws 1997, LB 54, § 5; R.S.1943, (1997), § 8-2205; Laws 2003, LB 130, § 86.

30-3887 Reviewing compliance.

Compliance with the prudent investor rule is determined in light of the facts and circumstances existing at the time of a trustee's decision or action and not by hindsight.

Source: Laws 1997, LB 54, § 9; R.S.1943, (1997), § 8-2209; Laws 2003, LB 130, § 87.

30-3888 Delegation of investment and management functions.

(a) A trustee may delegate investment and management functions that a prudent trustee of comparable skills could properly delegate under the circumstances. The trustee shall exercise reasonable care, skill, and caution in:

(1) Selecting an agent;

(2) Establishing the scope and terms of the delegation, consistent with the purposes and terms of the trust; and

(3) Periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the terms of the delegation.

(b) In performing a delegated function, an agent owes a duty to the trust to exercise reasonable care to comply with the terms of the delegation.

(c) A trustee who complies with the requirements of subsection (a) of this section is not liable to the beneficiaries or to the trust for the decisions or actions of the agent to whom the function was delegated.

(d) By accepting the delegation of a trust function from the trustee of a trust that is subject to the law of this state, an agent submits to the jurisdiction of the courts of this state.

Source: Laws 1997, LB 54, § 10; R.S.1943, (1997), § 8-2210; Laws 2003, LB 130, § 88.

30-3889 Language invoking standard of prudent investor rule.

The following terms or comparable language in the provisions of a trust, unless otherwise limited or modified, authorizes any investment or strategy permitted under the prudent investor rule set forth in sections 30-3883 to 30-3889: Investments permissible by law for investment of trust funds, legal investments, authorized investments, using the judgment and care under the circumstances then prevailing that persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital, prudent man rule, prudent trustee rule, prudent person rule, and prudent investor rule.

Source: Laws 1997, LB 54, § 11; R.S.1943, (1997), § 8-2211; Laws 2003, LB 130, § 89.

PART 10

LIABILITY OF TRUSTEES AND RIGHTS OF PERSONS DEALING WITH TRUSTEE

30-3890 (UTC 1001) Remedies for breach of trust.

(UTC 1001) (a) A violation by a trustee of a duty the trustee owes to a beneficiary is a breach of trust.

(b) To remedy a breach of trust that has occurred or may occur, the court may:

(1) compel the trustee to perform the trustee's duties;

(2) enjoin the trustee from committing a breach of trust;

(3) compel the trustee to redress a breach of trust by paying money, restoring property, or other means;

(4) order a trustee to account;

(5) appoint a special fiduciary to take possession of the trust property and administer the trust;

(6) suspend the trustee;

(7) remove the trustee as provided in section 30-3862;

(8) reduce or deny compensation to the trustee;

(9) subject to section 30-38,101, void an act of the trustee, impose a lien or a constructive trust on trust property, or trace trust property wrongfully disposed of and recover the property or its proceeds; or

(10) order any other appropriate relief.

Source: Laws 2003, LB 130, § 90.

30-3891 (UTC 1002) Damages for breach of trust.

(UTC 1002) (a) A trustee who commits a breach of trust is liable to the beneficiaries affected for the greater of:

(1) the amount required to restore the value of the trust property and trust distributions to what they would have been had the breach not occurred; or

(2) the profit the trustee made by reason of the breach.

(b) Except as otherwise provided in this subsection, if more than one trustee is liable to the beneficiaries for a breach of trust, a trustee is entitled to contribution from the other trustee or trustees. A trustee is not entitled to contribution if the trustee was substantially more at fault than another trustee or if the trustee committed the breach of trust in bad faith or with reckless indifference to the purposes of the trust or the interests of the beneficiaries. A trustee who received a benefit from the breach of trust is not entitled to contribution from another trustee to the extent of the benefit received.

Source: Laws 2003, LB 130, § 91.

30-3892 (UTC 1003) Damages in absence of breach.

(UTC 1003) (a) A trustee is accountable to an affected beneficiary for any profit made by the trustee arising from the administration of the trust, even absent a breach of trust.

(b) Absent a breach of trust, a trustee is not liable to a beneficiary for a loss or depreciation in the value of trust property or for not having made a profit.

Source: Laws 2003, LB 130, § 92.

30-3893 (UTC 1004) Attorney's fees and costs.

(UTC 1004) In a judicial proceeding involving the administration of a trust, the court, as justice and equity may require, may award costs and expenses,

including reasonable attorney's fees, to any party, to be paid by another party or from the trust that is the subject of the controversy.

Source: Laws 2003, LB 130, § 93.

30-3894 (UTC 1005) Limitation of action against trustee.

(UTC 1005) (a) A beneficiary may not commence a proceeding against a trustee for breach of trust more than one year after the date the beneficiary or a representative of the beneficiary was sent a report that adequately disclosed the existence of a potential claim for breach of trust and informed the beneficiary of the time allowed for commencing a proceeding.

(b) A report adequately discloses the existence of a potential claim for breach of trust if it provides sufficient information so that the beneficiary or representative knows of the potential claim or should have inquired into its existence.

(c) If subsection (a) of this section does not apply, a judicial proceeding by a beneficiary against a trustee for breach of trust must be commenced within four years after the first to occur of:

(1) the removal, resignation, or death of the trustee;

(2) the termination of the beneficiary's interest in the trust; or

(3) the termination of the trust.

Source: Laws 2003, LB 130, § 94.

30-3895 (UTC 1006) Reliance on trust instrument.

(UTC 1006) A trustee who acts in reasonable reliance on the terms of the trust as expressed in the trust instrument is not liable to a beneficiary for a breach of trust to the extent the breach resulted from the reliance.

Source: Laws 2003, LB 130, § 95.

30-3896 (UTC 1007) Event affecting administration or distribution.

(UTC 1007) If the happening of an event, including marriage, divorce, performance of educational requirements, or death, affects the administration or distribution of a trust, a trustee who has exercised reasonable care to ascertain the happening of the event is not liable for a loss resulting from the trustee's lack of knowledge.

Source: Laws 2003, LB 130, § 96.

30-3897 (UTC 1008) Exculpation of trustee.

(UTC 1008) (a) A term of a trust relieving a trustee of liability for breach of trust is unenforceable to the extent that it:

(1) relieves the trustee of liability for breach of trust committed in bad faith or with reckless indifference to the purposes of the trust or the interests of the beneficiaries; or

(2) was inserted as the result of an abuse by the trustee of a fiduciary or confidential relationship to the settlor.

(b) An exculpatory term drafted or caused to be drafted by the trustee is invalid as an abuse of a fiduciary or confidential relationship unless the trustee

proves that the exculpatory term is fair under the circumstances and that its existence and contents were adequately communicated to the settlor.

Source: Laws 2003, LB 130, § 97.

30-3898 (UTC 1009) Beneficiary's consent, release, or ratification.

(UTC 1009) A trustee is not liable to a beneficiary for breach of trust if the beneficiary consented to the conduct constituting the breach, released the trustee from liability for the breach, or ratified the transaction constituting the breach, unless:

(1) the consent, release, or ratification of the beneficiary was induced by improper conduct of the trustee; or

(2) at the time of the consent, release, or ratification, the beneficiary did not know of the beneficiary's rights or of the material facts relating to the breach.

Source: Laws 2003, LB 130, § 98.

30-3899 (UTC 1010) Limitation on personal liability of trustee.

(UTC 1010) (a) Except as otherwise provided in the contract, a trustee is not personally liable on a contract properly entered into in the trustee's fiduciary capacity in the course of administering the trust if the trustee in the contract disclosed the fiduciary capacity.

(b) A trustee is personally liable for torts committed in the course of administering a trust, or for obligations arising from ownership or control of trust property, including liability for violation of environmental law, only if the trustee is personally at fault.

(c) A claim based on a contract entered into by a trustee in the trustee's fiduciary capacity, on an obligation arising from ownership or control of trust property, or on a tort committed in the course of administering a trust, may be asserted in a judicial proceeding against the trustee in the trustee's fiduciary capacity, whether or not the trustee is personally liable for the claim.

Source: Laws 2003, LB 130, § 99.

30-38,100 (UTC 1011) Interest as general partner.

(UTC 1011) (a) Except as otherwise provided in subsection (c) of this section or unless personal liability is imposed in the contract, a trustee who holds an interest as a general partner in a general or limited partnership is not personally liable on a contract entered into by the partnership after the trust's acquisition of the interest if the fiduciary capacity was disclosed in the contract or in a statement previously filed pursuant to the Uniform Partnership Act of 1998 or the Nebraska Uniform Limited Partnership Act.

(b) Except as otherwise provided in subsection (c) of this section, a trustee who holds an interest as a general partner is not personally liable for torts committed by the partnership or for obligations arising from ownership or control of the interest unless the trustee is personally at fault.

(c) The immunity provided by this section does not apply if an interest in the partnership is held by the trustee in a capacity other than that of trustee or is held by the trustee's spouse or one or more of the trustee's descendants, siblings, or parents, or the spouse of any of them.

(d) If the trustee of a revocable trust holds an interest as a general partner, the settlor is personally liable for contracts and other obligations of the partnership as if the settlor were a general partner.

Source: Laws 2003, LB 130, § 100.

Cross References

Nebraska Uniform Limited Partnership Act, see section 67-296.
Uniform Partnership Act of 1998, see section 67-401.

30-38,101 (UTC 1012) Protection of person dealing with trustee.

(UTC 1012) (a) A person other than a beneficiary who in good faith assists a trustee, or who in good faith and for value deals with a trustee, without knowledge that the trustee is exceeding or improperly exercising the trustee's powers is protected from liability as if the trustee properly exercised the power.

(b) A person other than a beneficiary who in good faith deals with a trustee is not required to inquire into the extent of the trustee's powers or the propriety of their exercise.

(c) A person who in good faith delivers assets to a trustee need not ensure their proper application.

(d) A person other than a beneficiary who in good faith assists a former trustee, or who in good faith and for value deals with a former trustee, without knowledge that the trusteeship has terminated is protected from liability as if the former trustee were still a trustee.

(e) Comparable protective provisions of other laws relating to commercial transactions or transfer of securities by fiduciaries prevail over the protection provided by this section.

Source: Laws 2003, LB 130, § 101.

30-38,102 Certification of trust; use; form.

(a) A trustee may present a certification of trust to any person other than a beneficiary in lieu of a copy of any trust instrument to establish the existence or terms of the trust. The trustee may present the certification of trust voluntarily or at the request of the person with whom he or she is dealing. Notwithstanding any provision of the Nebraska Uniform Trust Code to the contrary, no person is required to accept and rely solely on a certification of trust in lieu of a copy of, or excerpts from, the trust instrument itself.

(b) A certification of trust shall be in the form of an affidavit and signed and acknowledged by all acting trustees of the trust.

Source: Laws 2000, LB 1197, § 1; R.S.Supp.,2002, § 30-3701; Laws 2003, LB 130, § 102.

30-38,103 Certification of trust; contents.

(a) A certification of trust may confirm the following facts or contain the following information:

(1) The existence of a trust and, for an inter vivos trust, the date of execution or, for a testamentary trust, the date of death of the decedent;

(2) The identity of the grantor, settlor, or testator and each currently acting trustee;

(3) The powers of the trustee and any restrictions imposed upon the trustee in dealing with the assets of the trust;

(4) The name or method of choosing successor trustees;

(5) The revocability or irrevocability of the trust and the identity of any person holding a power to revoke it;

(6) If there is more than one trustee, whether all of the currently acting trustees must, or if less than all, may, act to exercise identified powers of the trustee;

(7) The identifying number of the trust and whether it is a social security number or an employer identification number;

(8) The name of each beneficiary and the relationship to the grantor, settlor, or testator;

(9) The state or other jurisdiction under which the trust was established; and

(10) The form in which title to the assets of the trust is to be taken.

(b) The certification of trust shall contain a statement that the trust has not been revoked or amended to make any representations contained in the certification of trust incorrect and that the signatures are those of all the acting trustees.

Source: Laws 2000, LB 1197, § 2; R.S.Supp.,2002, § 30-3702; Laws 2003, LB 130, § 103.

30-38,104 Certification of trust; additional information authorized.

A certification of trust need not contain the dispositive provisions of the trust, but the person to whom the certification of trust is presented may require copies of, or excerpts from, any trust instrument which designates the trustee or confers upon the trustee power to act in the pending transaction.

Source: Laws 2000, LB 1197, § 3; R.S.Supp.,2002, § 30-3703; Laws 2003, LB 130, § 104.

30-38,105 Reliance upon certification of trust; liability.

A person who acts in reliance upon a certification of trust without any knowledge that the representations contained in the certification of trust are incorrect is not liable to any person for such actions. A person who does not know that the representations contained in the certification of trust are incorrect may assume without inquiry the existence of the representations contained in the certification of trust. Knowledge may not be inferred solely from the fact that a copy of all or part of a trust instrument is held by the person relying upon the certification of trust.

Source: Laws 2000, LB 1197, § 4; R.S.Supp.,2002, § 30-3704; Laws 2003, LB 130, § 105.

30-38,106 Certification of trust; use; effect.

A person's failure to demand a certification of trust, or his or her refusal to accept and rely solely on a certification of trust, shall not be considered an improper act, and no inference as to whether he or she has acted in good faith shall be drawn from the failure to demand, or the refusal to accept and rely upon, a certification of trust. This section creates no implication that a person is liable for acting in reliance upon a certification of trust under circumstances in which the requirements of sections 30-38,102 to 30-38,107 are not satisfied.

Source: Laws 2000, LB 1197, § 5; R.S.Supp.,2002, § 30-3705; Laws 2003, LB 130, § 106.

30-38,107 Sections; applicability.

Sections 30-38,102 to 30-38,106 apply to all trusts whether established pursuant to Nebraska law or established pursuant to the law of another state or jurisdiction.

Source: Laws 2000, LB 1197, § 6; R.S.Supp.,2002, § 30-3706; Laws 2003, LB 130, § 107.

PART 11

MISCELLANEOUS PROVISIONS

30-38,108 (UTC 1101) Uniformity of application and construction.

(UTC 1101) In applying and construing the Nebraska Uniform Trust Code, 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 2003, LB 130, § 108.

30-38,109 (UTC 1102) Electronic records and signatures.

(UTC 1102) The provisions of the Nebraska Uniform Trust Code governing the legal effect, validity, or enforceability of electronic records or electronic signatures, and of contracts formed or performed with the use of such records or signatures, conform to the requirements of section 102 of the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7002, as such section existed on January 1 immediately preceding January 1, 2005, and supersede, modify, and limit the requirements of the Electronic Signatures in Global and National Commerce Act.

Source: Laws 2003, LB 130, § 109.

30-38,110 (UTC 1106) Application to existing relationships.

(UTC 1106) (a) Except as otherwise provided in the Nebraska Uniform Trust Code, on January 1, 2005:

(1) the code applies to all trusts created before, on, or after January 1, 2005;

(2) the code applies to all judicial proceedings concerning trusts commenced on or after January 1, 2005;

(3) the code applies to judicial proceedings concerning trusts commenced before January 1, 2005, unless the court finds that application of a particular provision of the code would substantially interfere with the effective conduct of the judicial proceedings or prejudice the rights of the parties, in which case the particular provision of the code does not apply and the superseded law applies; and

(4) an act done before January 1, 2005, is not affected by the code.

(b) If a right is acquired, extinguished, or barred upon the expiration of a prescribed period that has commenced to run under any other statute before January 1, 2005, that statute continues to apply to the right even if it has been repealed or superseded.

(c) Any reference to the powers authorized under the Nebraska Trustees' Powers Act as such act existed prior to January 1, 2005, is deemed to be a reference to the powers authorized under the Nebraska Uniform Trust Code.

(d) Subsection (a) of section 30-3838, section 30-3839, section 30-3848, subsection (c) of section 30-3849, and subdivision (b)(1) of section 30-3879 apply only to trusts which become irrevocable on or after January 1, 2005.

Source: Laws 2003, LB 130, § 110; Laws 2004, LB 999, § 29; Laws 2007, LB124, § 28.

Under subsection (a)(1) of this section, the Nebraska Uniform Trust Code is generally applicable to all trusts in existence on January 1, 2005, subject to certain statutory and perhaps constitutional exceptions. In re Trust Created by Inman, 269 Neb. 376, 693 N.W.2d 514 (2005).

CHAPTER 31

DRAINAGE

Article.
1. Drainage by County Authorities. 31-101 to 31-142.
2. Drainage by Individual Landowner. 31-201 to 31-230.
3. Drainage Districts Organized by Proceedings in District Court. 31-301 to 31-378.
4. Drainage Districts Organized by Vote of Landowners. 31-401 to 31-451.
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7. Sanitary and Improvement Districts.
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ARTICLE 1

DRAINAGE BY COUNTY AUTHORITIES

Section
31-101. Ditches; drains; watercourses; county board; powers.
31-101.01. Drainage ditches and improvements; construction under prior law; treatment.
31-102. Ditch, defined; petition, how construed; requirements.
31-103. Drainage improvements; costs and expenses; apportioned to county or railroad; when.
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31-106. Drainage improvements; change of proposed route; power of county board.
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31-109. Drainage improvements; schedule of land benefited; apportionment; estimate of cost of construction; specifications.
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31-111. Drainage improvements; hearing; procedure; order.
31-112. Drainage improvements; compensation and damages for land taken or affected; application; when made.
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Section
31-115. Drainage improvements; appeal from order of county board; grounds; procedure.
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31-118. Drainage improvements; advertisement for bids; awarding contract; conditions.
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31-120. Drainage improvements; uncompleted contract; reletting; conditions.
31-121. Drainage improvements; assessments.
31-122. Drainage improvements; deficiencies; supplemental assessments.
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31-124. Drainage improvements; proceedings; irregularities; effect.
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31-127. Drainage improvements; bonds; sale; lien; registration.
31-128. Drainage improvements; payment of assessments in cash; effect.
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31-130. Neglect of duty; penalty.
31-131. Drainage improvements; ditches in two counties; procedure.
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31-133. County ditch fund; borrowing from county general fund permitted; conditions.
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31-135. Drainage ditches; petition to clean and place in efficient condition.
31-136. Drainage ditches; petition; survey; cost estimate.
31-137. Drainage ditches; petition; hearing; notice.
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31-139. Drainage ditch; transfer to drainage district; petition.
31-140. Drainage ditch; transfer; hearing; notice.
31-141. Drainage ditch; transfer; hearing; findings.
31-142. Drainage ditch; transfer; powers of drainage district.

31-101 Ditches; drains; watercourses; county board; powers.

The county board of any county may, at any regular or special session, cause to be located and constructed, straightened, widened, altered, or deepened, any ditch, drain or watercourse, as hereinafter provided, when the same is necessary to drain any lots, lands, public or corporate road, or railroad, and will be conducive to the public health, convenience or welfare.

Source: Laws 1881, c. 51, § 1, p. 236; Laws 1911, c. 140, § 1, p. 453; R.S.1913, § 1718; C.S.1922, § 1665; C.S.1929, § 31-101.

1. Powers of county and county officers
2. Procedure
3. Miscellaneous

1. Powers of county and county officers

Void special assessment may be recovered from county. McClary v. County of Dodge, 176 Neb. 627, 126 N.W.2d 849 (1964).

County surveyor laying out drainage ditches and county commissioners in executing drainage contract under this article do not act as agents of the county, and there is no statutory provision making county liable for their neglect. Thompson v. Colfax County, 106 Neb. 351, 183 N.W. 571 (1921).

County board has authority to employ an engineer to survey and report upon location of drainage ditch. Holmvig v. Dakota County, 90 Neb. 576, 134 N.W. 166 (1912).

Before the amendment of 1911, county had no power to drain overflow lands. Campbell v. Youngson, 80 Neb. 322, 114 N.W. 415 (1907).

2. Procedure

Mode of procedure outlined in this article must be strictly followed. Shanahan v. Johnson, 170 Neb. 399, 102 N.W.2d 858 (1960).

Injunction lies to prevent construction of ditch under this article which floods lower riparian owners, until notice of time for hearing on damages is fixed. Costello v. Colfax County, 112 Neb. 40, 198 N.W. 357 (1924).

One whose land is traversed by a drainage ditch is entitled to recover the value of the land actually taken, together with any special damages to the remainder of the land caused by the construction of the improvement. Gutschow v. Washington County, 81 Neb. 275, 116 N.W. 46 (1908).

Chapter is constitutional, and provides due process of law. Morris v. Washington County, 72 Neb. 174, 100 N.W. 144 (1904); Dodge County v. Acom, 61 Neb. 376, 85 N.W. 292 (1901).

Mandamus will not lie to compel board to proceed, unless relator shows special interest. Van Horn v. State ex rel. Allen, 51 Neb. 232, 70 N.W. 941 (1897).

3. Miscellaneous

Original drain involved was constructed under this article. Harms v. County Board of Supervisors, 173 Neb. 687, 114 N.W.2d 713 (1962).

This act was not amended by sanitary district act. Whedon v. Wells, 95 Neb. 517, 145 N.W. 1007 (1914).

31-101.01 Drainage ditches and improvements; construction under prior law; treatment.

After June 30, 1972, no drainage ditches or other improvements shall be initiated under the provisions of sections 31-101 to 31-134. All drainage ditches or other improvements which have been approved as provided for by section 31-107 before July 1, 1972, shall not be affected by this section, and the legality of any such ditch or other improvement shall not be subject to any legal action based upon this section. Attempted initiations of drainage ditches or improvements under sections 31-101 to 31-134 which have not been completed before July 1, 1972, shall be null, void and of no effect.

Source: Laws 1969, c. 9, § 60, p. 134; Laws 1971, LB 544, § 6.

31-102 Ditch, defined; petition, how construed; requirements.

The word ditch, as used in sections 31-101 to 31-138, shall be held to include a drain or watercourse. The petition for any such improvement shall be held to include any side lateral, spur or branch ditch, drain or watercourse necessary to secure the object of the improvement, whether the same is mentioned therein or not; but no improvement shall be located unless a sufficient outlet is provided.

Source: Laws 1881, c. 51, § 2, p. 236; Laws 1911, c. 140, § 2, p. 453; R.S.1913, § 1719; C.S.1922, § 1666; C.S.1929, § 31-102.

Lateral does not qualify words following. Omaha & N.P.R. Co. v. Sarpy County, 82 Neb. 140, 117 N.W. 116 (1908).

31-103 Drainage improvements; costs and expenses; apportioned to county or railroad; when.

When the proposed improvement will drain the whole, or any part of any public or corporate road or railroad, or will so benefit any such road that the traveled track or roadbed thereof will be improved by its construction, there shall be apportioned to the county, if the road is a state or county road, or to the corporation, if a corporate road or railroad, a proper share of the costs and expenses thereof, as hereinafter provided.

Source: Laws 1881, c. 51, § 3, p. 236; Laws 1911, c. 140, § 3, p. 454; R.S.1913, § 1720; C.S.1922, § 1667; C.S.1929, § 31-103.

31-104 Drainage improvements; petition for construction.

A petition for any such improvements shall be made to the county board, signed by one or more owners of lots and lands which shall be benefited

thereby, which petition shall be filed with the county clerk, shall set forth the necessity of the proposed improvement and describe the route and termini thereof with reasonable certainty, and shall be accompanied by a good and sufficient bond signed by two or more sureties, to be approved by the county clerk, conditioned for the payment of all costs that may accrue in case the county board shall find against such improvement.

Source: Laws 1881, c. 51, § 4, p. 237; Laws 1911, c. 140, § 4, p. 454; R.S.1913, § 1721; C.S.1922, § 1668; C.S.1929, § 31-104.

Petition, stating ditch will drain lands owned by petitioners, is sufficient allegation of ownership. Seng v. Payne, 87 Neb. 812, 128 N.W. 625 (1910).

Petitioners are not liable for expenses of engineer after board finds for improvement. State ex rel. Sullivan v. Ross, 82 Neb. 414, 118 N.W. 85 (1908).

Description in petition was sufficient. Dodge County v. Acom, 61 Neb. 376, 85 N.W. 292 (1901).

Bond is jurisdictional; common law bond is sufficient. Casey v. Burt County, 59 Neb. 624, 81 N.W. 851 (1900).

If board has jurisdiction, irregularities in proceedings will not render assessment void. Darst v. Griffin, 31 Neb. 668, 48 N.W. 819 (1891).

Failure to make finding that petitioners are freeholders is not fatal. Objector must proceed promptly. County of Dakota v. Cheney, 22 Neb. 437, 35 N.W. 211 (1887).

31-105 Drainage improvements; survey; approval of county board.

The county clerk shall deliver a copy of the petition to the county board at its next meeting, which shall thereupon take to its assistance a competent surveyor or engineer, if in the opinion of the board his services are necessary, and at once proceed to view the line of the proposed improvement. The board shall determine by actual view of the premises along and in the vicinity thereof, whether the improvement is necessary, or will be conducive to the public health, convenience or welfare, and whether the line described is the best route. The board shall report its finding in writing, and order the clerk to enter the same on its journal.

Source: Laws 1881, c. 51, § 5, p. 237; Laws 1911, c. 140, § 5, p. 454; R.S.1913, § 1722; C.S.1922, § 1669; C.S.1929, § 31-105.

Statutory steps for levying of assessment must be strictly followed. Shanahan v. Johnson, 170 Neb. 399, 102 N.W.2d 858 (1960).

Hearing on claim for damage precedes construction of improvement. Costello v. Colfax County, 112 Neb. 40, 198 N.W. 357 (1924).

Where an inspection is made by two of three commissioners, a report of findings is sufficient. Seng v. Payne, 87 Neb. 812, 128 N.W. 625 (1910).

Board exercises legislative or ministerial function and may rescind order before rights of third parties vest. State ex rel. Sullivan v. Ross, 82 Neb. 414, 118 N.W. 85 (1908).

Finding as to necessity of ditch is not reviewable. Dodge County v. Acom, 61 Neb. 376, 85 N.W. 292 (1901).

Finding and entry that route is the best route is jurisdictional. State ex rel. Union Pacific Railway Company v. Colfax County, 51 Neb. 28, 70 N.W. 500 (1897).

31-106 Drainage improvements; change of proposed route; power of county board.

If the county board, upon actual view, shall find that the route proposed is not such as to best effect the object sought, it shall change the same and establish the route and determine the dimensions of the proposed improvements; *Provided*, any change so made shall not in any case exceed one hundred and sixty rods from the route described in the petition.

Source: Laws 1881, c. 51, § 6, p. 237; Laws 1911, c. 140, § 6, p. 455; R.S.1913, § 1723; C.S.1922, § 1670; C.S.1929, § 31-106.

31-107 Drainage improvements; survey; plat; estimate of work required.

If the county board shall find for the improvement, it shall cause to be entered on its journal an order directing the county surveyor, or an engineer, to go upon the line described in the petition, or as changed by the board in accordance with section 31-106; to survey and level the same and set a stake at

every hundred feet, numbering downstream; to note the intersection of section lines, road crossings, boundary lines, precinct and county lines; to make a report, profile and plat of the same; and to estimate the number of cubic yards for each working section as hereinafter provided.

Source: Laws 1881, c. 51, § 7, p. 238; Laws 1911, c. 140, § 7, p. 455; R.S.1913, § 1724; C.S.1922, § 1671; C.S.1929, § 31-107.

The county is authorized to employ an engineer, and the county, not petitioners, is liable. Holmvig v. Dakota County, 90 Neb. 576, 134 N.W. 166 (1912); State ex rel. Sullivan v. Ross, 82 Neb. 414, 118 N.W. 85 (1908).

Where a survey and plat of engineer is confirmed, it is deemed to be that of board. Dodge County v. Acom, 61 Neb. 376, 85 N.W. 292 (1901).

31-108 Drainage improvements; plat; profile; requisites; surveyor's report.

The plat provided for in section 31-107 shall be drawn upon a scale sufficiently large to represent all the meanderings of the proposed improvement, and shall show the boundary lines of each lot or tract of land, and of each road or railroad to be benefited thereby, the name of the owner of each lot or tract of land as it then appears on the tax duplicate, the authority or company having in charge or controlling each public or corporate road or railroad, the distance in feet through each tract or parcel of land, and such other matters as the surveyor or engineer deems material. The profile shall show the surface, the grade line, and the gradient fixed. The surveyor or engineer shall file his report with the county clerk within thirty days after making the survey and level.

Source: Laws 1881, c. 51, § 9, p. 238; Laws 1911, c. 140, § 9, p. 456; R.S.1913, § 1725; C.S.1922, § 1672; C.S.1929, § 31-108.

31-109 Drainage improvements; schedule of land benefited; apportionment; estimate of cost of construction; specifications.

The county board shall also by its order direct the surveyor or engineer to make and return a schedule of all lots, lands, public or corporate roads, or railroads that will be benefited by the proposed improvement, whether the same are abutting upon the line of the proposed improvement or not, an apportionment of a number of lineal feet and cubic yards to each lot, tract of land, road or railroad, according to the benefits which will result to each from the improvement, an estimate of the cost of location and construction to each, and a specification of the manner in which the improvement shall be made and completed.

Source: Laws 1881, c. 51, § 8, p. 238; Laws 1911, c. 140, § 8, p. 455; R.S.1913, § 1726; C.S.1922, § 1673; C.S.1929, § 31-109.

If land is benefited by the improvement it need not abut upon the line of a drainage district to be subject to special assessments. Loup River Public Power Dist. v. Platte County, 141 Neb. 29, 2 N.W.2d 609 (1942).

County board through surveyor or engineer shall schedule property benefited and property taken or damaged as well. Costello v. Colfax County, 112 Neb. 40, 198 N.W. 357 (1924).

31-110 Drainage improvements; hearing; notice.

Upon the filing of the report of the surveyor or engineer, the county clerk shall, without delay, fix a day for the hearing of the same, which shall not be more than forty days from the time of the filing of the report, and shall prepare a notice in writing, directed to the resident lot or land owners, and to the authorities or municipal or private corporations affected by the improvement, setting forth the pendency, substance and prayer of the petition, together with a tabular statement of the apportionment as made by the surveyor or engineer in

his report, and shall deliver the same to the sheriff, who shall serve a copy of the same upon each resident lot or land owner, each member of such public board or authority, and upon an officer or agent of such private corporation at least ten days before the time fixed for the hearing; *Provided*, the copies need contain only so much of the original notice as affects the interests of the persons so served. The county clerk shall in like manner notify each nonresident lot or land owner, or by publication in a newspaper printed and of general circulation in the county, for at least three consecutive weeks before the day set for the hearing, which notice shall be verified in the manner provided by law for the verification of notices by publication.

Source: Laws 1881, c. 51, § 10, p. 239; Laws 1911, c. 140, § 10, p. 456; R.S.1913, § 1727; C.S.1922, § 1674; C.S.1929, § 31-110.

Notice is jurisdictional to the owners whose lands are to be taken or damaged as well as to the persons on whose lands the cost is to be apportioned. Costello v. Colfax County, 112 Neb. 40, 198 N.W. 357 (1924).

31-111 Drainage improvements; hearing; procedure; order.

The county board shall meet at the office of the county clerk on the day fixed for the hearing, and shall first determine whether the requisite notice has been given. If it finds that due notice has not been given, it shall continue the hearing to a day to be fixed by the board, and order the notices to be served as provided in section 31-110. When the board finds that due notice has been given, it shall examine the report of the surveyor or engineer, including the apportionment made by him, and if it is in all respects fair and just, according to benefits, the board shall approve and confirm the same; but if it finds the apportionment to be unfair or unjust, it shall so order, and so amend the apportionment as to make it fair and just according to benefits.

Source: Laws 1881, c. 51, § 11, p. 240; Laws 1911, c. 140, § 11, p. 457; R.S.1913, § 1728; C.S.1922, § 1675; C.S.1929, § 31-111.

Findings cannot be attacked by injunction to avoid assessment. Omaha & N.P.R. Co. v. Sarpy County, 82 Neb. 140, 117 N.W. 116 (1908).

Board acts judicially in determining benefits, and on error proceedings to district court, findings have same weight as verdict. Dodge County v. Acom, 72 Neb. 71, 100 N.W. 136 (1904).

Jurisdictional steps of board set out and compliance therewith found to exist. Dodge County v. Acom, 61 Neb. 376, 85 N.W. 292 (1901).

31-112 Drainage improvements; compensation and damages for land taken or affected; application; when made.

At any time before the day set for hearing, after persons are notified as provided in section 31-110, any person or corporation whose lands are taken or affected in any way by the improvement may make application to the commissioners in writing for compensation and damages, and a failure to make such application shall be held a waiver of all rights thereto.

Source: Laws 1881, c. 51, § 12, p. 240; Laws 1911, c. 140, § 12, p. 457; R.S.1913, § 1729; C.S.1922, § 1676; C.S.1929, § 31-112.

Persons whose land will be damaged by construction of ditch must be compensated. Costello v. Colfax County, 112 Neb. 40, 198 N.W. 357 (1924).

Filing of claim waives irregularities in proceedings. Gutschow v. Washington County, 74 Neb. 794, 105 N.W. 548 (1905).

31-113 Drainage improvements; allowance of compensation and assessment of damages; when and how made.

The county board on actual view of the premises shall fix and allow such compensation for land appropriated and assess such damages as will in its

judgment accrue from the construction of the improvement to each person or corporation making application as provided by section 31-112 and without such application to each person with mental retardation, person with a mental disorder, or minor owning lands taken or affected by such improvement.

Source: Laws 1881, c. 51, § 13, p. 240; Laws 1911, c. 140, § 13, p. 457; R.S.1913, § 1730; C.S.1922, § 1677; C.S.1929, § 31-113; R.S. 1943, § 31-113; Laws 1986, LB 1177, § 13.

Land damaged by the construction of a ditch which diverts the waters from one stream into another, causing the latter to overflow and flood such land, must be compensated for. Costello v. Colfax County, 112 Neb. 40, 198 N.W. 357 (1924).

Compensation includes value of the land actually taken and consequential damages, but, if special benefits exceed cost apportioned, excess is set off. Gutschow v. Washington County, 81 Neb. 275, 116 N.W. 46 (1908); 74 Neb. 800, 107 N.W. 127 (1906); 74 Neb. 794, 105 N.W. 548 (1905).

Special benefit is increased market value due to drainage. Dodge County v. Acom, 61 Neb. 376, 85 N.W. 292 (1901).

Land is appropriated though fee is not taken; land damaged, but not taken, is subject to special but not general benefits. Martin v. Fillmore County, 44 Neb. 719, 62 N.W. 863 (1895).

31-114 Drainage improvements; objections to apportionment, compensation, damages; when made; exceptions; hearing; costs.

A person or corporation party to the proceedings may file exceptions to the apportionment, or to any claim for compensation or damages at any time before the time set for the final hearing of the report and apportionment. The county board may hear testimony and examine witnesses upon all questions made by the exceptions, and for that purpose may compel the attendance of witnesses by subpoena, which the county clerk shall issue on demand. The decisions of the board on the exceptions shall be entered on its journal, and if it sustains the exceptions, the cost of the hearing thereon shall be paid out of the county treasury, and if it overrules the same, such cost shall be paid by the person or corporation filing the same.

Source: Laws 1881, c. 51, § 14, p. 241; Laws 1911, c. 140, § 14, p. 457; R.S.1913, § 1731; C.S.1922, § 1678; C.S.1929, § 31-114.

31-115 Drainage improvements; appeal from order of county board; grounds; procedure.

Any person or corporation feeling aggrieved thereby may appeal to the district court within and for the proper county, from any final order or judgment of the board made in the proceedings and entered upon its journal determining any one of the following matters: (1) Whether the ditch will be conducive to the public health, convenience or welfare; (2) whether the route thereof is practicable; (3) the compensation for land appropriated; and (4) the damage claimed to property affected by the improvement. The appeal may be taken and prosecuted in the manner provided by law for appeals from the decision of the county board on claims against the county.

Source: Laws 1881, c. 51, § 15, p. 241; Laws 1911, c. 140, § 15, p. 458; R.S.1913, § 1732; C.S.1922, § 1679; C.S.1929, § 31-115.

An attempt to appeal under this section confers no jurisdiction upon the district court to review an order of county board making assessments to construct a drainage ditch. Loup River Public Power Dist. v. Platte County, 141 Neb. 29, 2 N.W.2d 609 (1942).

The right to appeal from the assessment of benefits by the county board in the creation of a drainage district is not provided by this section. Loup River Public Power Dist. v. Platte County, 135 Neb. 21, 280 N.W. 430 (1938).

Finding of board that ditch is conducive to public health, etc., is final, and court cannot review. Johannes v. Thayer County, 83 Neb. 689, 120 N.W. 176 (1909); Tyson v. Washington County, 78 Neb. 211, 110 N.W. 634 (1907); Dodge County v. Acom, 61 Neb. 376, 85 N.W. 292 (1901).

31-116 Drainage improvements; appeal; effect upon progress of work; bond.

No appeal taken in pursuance of the provisions of section 31-115 shall in any manner affect the progress of the construction of the proposed improvement; *Provided*, the petitioners shall enter into a good and sufficient bond to be approved by the district court or by the judge thereof at chambers, and filed with the clerk of the court, conditioned for the payment of all damages and costs that the appellant may sustain on the trial of the appeal.

Source: Laws 1881, c. 51, § 16, p. 242; Laws 1911, c. 140, § 16, p. 458; R.S.1913, § 1733; C.S.1922, § 1680; C.S.1929, § 31-116.

31-117 Drainage improvements; appeal; transcript; certification to county board.

The clerk of the district court, immediately after the close of the term at which the appeal is tried, as provided for in section 31-116, shall certify to the county board a full and complete transcript of the proceedings had upon such appeal in the district court, and the commissioners shall make such entry on their journals as may be necessary to give effect to the judgment of the district court.

Source: Laws 1881, c. 51, § 17, p. 242; Laws 1911, c. 140, § 17, p. 459; R.S.1913, § 1734; C.S.1922, § 1681; C.S.1929, § 31-117.

The portion of the report and apportionment of engineer and board, which affects property of appellant, must appear in record. Union Pac. R. Co. v. Colfax County, 84 Neb. 778, 122 N.W. 29 (1909).

31-118 Drainage improvements; advertisement for bids; awarding contract; conditions.

(1) Immediately after the transcript mentioned in section 31-117 is returned to the county clerk, immediately upon the filing of the bond mentioned in section 31-116, or, in case there is no appeal as hereinbefore provided, immediately after the hearing of the report mentioned in section 31-111, the county board shall proceed to advertise for sealed bids for the construction of the ditch in working sections not less in extent than the number of lineal feet apportioned to each lot or tract of land, public or corporate road, or railroad, and shall fix a time when the bids may be opened, giving not less than twenty days' notice thereof. The board shall attend at the time and place of opening the bids, shall let the contract or contracts to the lowest responsible bidder, shall take good and sufficient security for the faithful performance of such contract or contracts except as provided in subsection (2) of this section, and shall fix the time for the completion of such contract, not exceeding in any case one hundred fifty days from the time of entering into the same. No bid shall be entertained which exceeds the estimated cost of construction of the working section or sections upon which the bid is made.

(2) If a contract, the provisions of which are limited to the purchase of supplies or materials, is entered into pursuant to this section and if the amount of the contract is fifty thousand dollars or less, the person to whom the contract is awarded shall furnish the county with an irrevocable letter of credit, a certified check upon a solvent bank, or a performance bond in a guaranty company qualified to do business in Nebraska, as prescribed by and in a sum determined by the county board, conditioned for the faithful performance of the contract.

Source: Laws 1881, c. 51, § 18, p. 242; Laws 1911, c. 140, § 18, p. 459; R.S.1913, § 1735; C.S.1922, § 1682; C.S.1929, § 31-118; R.S. 1943, § 31-118; Laws 1987, LB 211, § 3.

Statutory steps must precede levy of valid assessment. Shanahan v. Johnson, 170 Neb. 399, 102 N.W.2d 858 (1960).

31-119 Drainage improvements; supervision of work; payment; progress certificates; exceptions.

The work shall be done under the supervision of the surveyor or engineer appointed by the county board, and when a part, not less than one-fourth of the portion included in any contract, is completed according to the specifications, he shall give the contractor a certificate thereof, showing the proportional amount which the contractor is entitled to be paid according to the terms of the contract. The county clerk shall, upon presentation of such certificate, draw his warrant upon the treasurer for seventy-five percent of said amount, and the treasurer will pay the same out of any funds in the treasury applicable to such purposes; *Provided*, no proportional amounts shall be certified or paid unless the whole of such contract exceeds two thousand lineal feet.

Source: Laws 1881, c. 51, § 19, p. 243; Laws 1911, c. 140, § 19, p. 459; R.S.1913, § 1736; C.S.1922, § 1683; C.S.1929, § 31-119.

31-120 Drainage improvements; uncompleted contract; reletting; conditions.

Any contract not completed within the time specified shall be reestimated and relet to the lowest responsible bidder, but not for a sum greater than the estimate, nor a second time to the same party; *Provided*, the county board, may for a good cause, extend the time of any contractors not to exceed two years.

Source: Laws 1881, c. 51, § 20, p. 243; Laws 1885, c. 94, § 1, p. 373; Laws 1911, c. 140, § 20, p. 460; R.S.1913, § 1737; C.S.1922, § 1684; C.S.1929, § 31-120.

In absence of fraud, contract is valid though there was only one bid. Gutschow v. Washington County, 74 Neb. 378, 104 N.W. 602 (1905).

Section is directory, and is not exclusive means of ascertaining damages. McDonald v. Dodge County, 41 Neb. 905, 60 N.W. 366 (1894).

31-121 Drainage improvements; assessments.

When the working sections are let, as hereinbefore provided, and the costs and expenses of location and construction, and all compensation and damages are ascertained, the county board shall meet and determine at what time and in what number of assessments it will require the same to be paid. The board shall order that the assessments as made by it shall be placed on the duplicate tax list against the lots and lands so assessed.

Source: Laws 1881, c. 51, § 21, p. 244; Laws 1909, c. 145, § 1, p. 504; Laws 1911, c. 140, § 21, p. 460; R.S.1913, § 1738; C.S.1922, § 1685; C.S.1929, § 31-121.

Statute impliedly confers power to impose a tax. Morris v. Washington County, 72 Neb. 174, 100 N.W. 144 (1904).

31-122 Drainage improvements; deficiencies; supplemental assessments.

In case of deficiencies appearing after the original assessment, supplemental assessments upon the proportional fixed by the main assessment may be made on the lands benefited to make up such deficiency, and the annual interest on such bonds shall be made from annual levies made upon the lands benefited on the proportional of the assessments.

Source: Laws 1911, c. 140, § 21, p. 461; R.S.1913, § 1739; C.S.1922, § 1686; C.S.1929, § 31-122.

31-123 Drainage improvements; assessments; collection; liens; interest.

Where the county board has made an assessment it shall cause an entry to be made directing the clerk to make and furnish to the treasurer a special duplicate, with the assessment arranged thereon, as required by its order. The clerk shall retain a copy thereof in his office, and all assessments shall be collected and accounted for by the treasurer. In case such assessments, or any part thereof, are not paid by the party or parties owning or controlling the lots or lands against which such assessments are made in the manner contemplated by sections 31-101 to 31-138, such assessments shall be and remain a perpetual lien against the premises so assessed; and the county treasurer shall proceed to advertise and sell said lots and lands, or such portions thereof as shall be necessary to pay such assessments, together with the costs, in the same manner as real estate is by law advertised and sold by him for the payment of delinquent taxes; *Provided*, the commissioners may extend the time of payment (without interest) of such assessments, to correspond with any extension of time that may be granted to any contractor under the provisions of section 31-120, and in case assessments are not paid when due, they shall draw nine percent interest per annum until paid.

Source: Laws 1881, c. 51, § 22, p. 244; Laws 1885, c. 94, § 2, p. 373; Laws 1911, c. 140, § 22, p. 461; R.S.1913, § 1740; C.S.1922, § 1687; C.S.1929, § 31-123; Laws 1933, c. 136, § 23, p. 536; C.S.Supp.,1941, § 31-123.

Section is constitutional. Legislature may authorize counties to make local improvements by special assessments. Dodge County v. Acom, 61 Neb. 376, 85 N.W. 292 (1901); Darst v. Griffin, 31 Neb. 668, 48 N.W. 819 (1891).

31-124 Drainage improvements; proceedings; irregularities; effect.

The collection of assessments to be levied to pay for the location or construction of any ditch shall not be enjoined nor declared void, nor shall such assessment be set aside in consequence of any error or irregularity committed or appearing in any of the proceedings provided by sections 31-101 to 31-138, and no injunction shall be allowed restraining the collection of any assessment until the party complaining shall first pay to the county treasurer the amount of his assessment, which amount so paid may be recovered from the county in an action brought for that purpose in case such injunction is made perpetual.

Source: Laws 1881, c. 51, § 28, p. 246; Laws 1911, c. 140, § 28, p. 464; R.S.1913, § 1741; C.S.1922, § 1688; C.S.1929, § 31-124.

Invalid special assessments under this section may be recovered from county. McClary v. County of Dodge, 176 Neb. 627, 126 N.W.2d 849 (1964).

This section is not broad enough to authorize reassessment of benefits. Shanahan v. Johnson, 170 Neb. 399, 102 N.W.2d 858 (1960).

Irregularities or failure to comply literally with provisions, where board has jurisdiction, is immaterial. Dodge County v. Acom, 61 Neb. 376, 85 N.W. 292 (1901).

Section does not apply where assessment is void. Morris v. Merrell, 44 Neb. 423, 62 N.W. 865 (1895).

31-125 Drainage improvements; bonds; when issued; rate of interest; installments.

When, in the judgment of the county board, the assessments are too large for immediate payment, the board may issue negotiable bonds of the county with interest coupons attached, which bonds and coupons shall be signed by the chairman of the board and countersigned by the county clerk of the county, and shall be paid in not to exceed ten installments, one bond maturing each year, to

pay the costs and expenses of location and construction, and all compensation and damages ascertained.

Source: Laws 1909, c. 145, § 1, p. 504; Laws 1911, c. 140, § 21, p. 460; R.S.1913, § 1742; C.S.1922, § 1689; C.S.1929, § 31-125; R.S. 1943, § 31-125; Laws 1969, c. 51, § 88, p. 330.

31-126 Drainage improvements; bonds; issuance; notice.

In the event of a county board determining to issue bonds, it shall give notice by publication once each week for three weeks of the proposed issue of bonds, and the amount thereof, at any time within sixty days after the date of the first publication of such notice.

Source: Laws 1911, c. 140, § 21, p. 461; R.S.1913, § 1743; C.S.1922, § 1690; C.S.1929, § 31-126.

31-127 Drainage improvements; bonds; sale; lien; registration.

All bonds shall be sold at not less than par and shall be and remain a first lien upon the property found to be benefited, each part and parcel to remain under such lien until the amount apportioned thereto shall be paid. All bonds shall be registered as provided by law for the registration of municipal bonds.

Source: Laws 1911, c. 140, § 21, p. 461; R.S.1913, § 1744; C.S.1922, § 1691; C.S.1929, § 31-127.

31-128 Drainage improvements; payment of assessments in cash; effect.

Any owner of any tract of land, or of an easement therein, may pay the whole of his assessment in cash, and in such case the bonds so issued shall not be a lien against the lands, lots or property of the owner.

Source: Laws 1909, c. 145, § 1, p. 505; Laws 1911, c. 140, § 21, p. 461; R.S.1913, § 1745; C.S.1922, § 1692; C.S.1929, § 31-128.

31-129 Drainage improvements; bonds; limitation on amount.

Bonds so issued shall be limited to the amount actually required, after taking into consideration cash payment by property owners that may be made as provided in section 31-128.

Source: Laws 1909, c. 145, § 1, p. 505; Laws 1911, c. 140, § 21, p. 461; R.S.1913, § 1746; C.S.1922, § 1693; C.S.1929, § 31-129.

31-130 Neglect of duty; penalty.

Any officer mentioned in sections 31-101 to 31-138 who shall neglect or refuse to perform any duty imposed upon him by the provisions of said sections, shall forfeit and pay a fine of twenty-five dollars for every such offense.

Source: Laws 1881, c. 51, § 23, p. 245; Laws 1911, c. 140, § 23, p. 462; R.S.1913, § 1747; C.S.1922, § 1694; C.S.1929, § 31-130.

31-131 Drainage improvements; ditches in two counties; procedure.

When a ditch is proposed which will require a location in more than one county, application shall be made to the county board of each county so affected, and the surveyor or engineer shall make a report for each county.

Application for damages shall be made, and appeals from the findings of the boards in joint session, locating and establishing such ditch, and from the assessment of damages or compensation, shall be taken to the district court in the county in which the lots or lands which are immediately affected are located. A majority of the boards of each county, when in joint session, shall be competent to locate and establish such ditch.

Source: Laws 1881, c. 51, § 24, p. 245; Laws 1911, c. 140, § 24, p. 462; R.S.1913, § 1748; C.S.1922, § 1695; C.S.1929, § 31-131.

County may establish a new system covering joint ditch, but may not evade expense of cleaning old ditch. Morris v. Washington County, 72 Neb. 174, 100 N.W. 144 (1904).

31-132 Repealed. Laws 1959, c. 132, § 34.

31-133 County ditch fund; borrowing from county general fund permitted; conditions.

The county board of any county in this state is hereby authorized, whenever it deems necessary, to create a county ditch fund, to consist of taxes collected from county levies, and all balances remaining unexpended of special ditch funds, arising from excess of assessments made on ditch improvements after the expenses thereof have been fully paid. The county board is hereby authorized, whenever necessary, to borrow from the county general fund for the benefit of the above-named ditch fund. All money so borrowed shall be, as soon as practicable, returned to the county general fund.

Source: Laws 1881, c. 51, § 26, p. 246; Laws 1911, c. 140, § 26, p. 463; R.S.1913, § 1750; C.S.1922, § 1697; C.S.1929, § 31-133.

It is the duty of the county to keep ditch free of obstructions. Gray v. Chicago, St. P., M. & O. R. Co., 90 Neb. 795, 134 N.W. 961 (1912).

Ditch fund is for maintenance of ditch by county. Gutschow v. Washington County, 81 Neb. 275, 116 N.W. 46 (1908).

Borrowing from general fund is discretionary with board, and mandamus does not lie. Hall v. State ex rel. Renard, 54 Neb. 280, 74 N.W. 590 (1898).

31-134 Obstructing drainage ditch; penalty.

Any person or persons or association of any kind or any corporation, who shall either for himself or for another deposit within the banks, limits or right-of-way of any drain or ditch, that has been, or shall hereafter be constructed under the terms and provisions of sections 31-101 to 31-138, or within the banks of watercourses or draws, or within any road ditches along any public highways that lead or empty into such drains or ditches, any brush, trees, hay, straw, manure or any other debris, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than ten dollars nor more than fifty dollars, and shall moreover be liable in damages to any party injured.

Source: Laws 1881, c. 51, § 27, p. 246; Laws 1905, c. 159, § 1, p. 608; Laws 1909, c. 142, § 1, p. 500; Laws 1911, c. 140, § 27, p. 464; R.S.1913, § 1751; C.S.1922, § 1698; C.S.1929, § 31-134.

31-135 Drainage ditches; petition to clean and place in efficient condition.

In any county wherein a drainage ditch has been constructed under the provisions of sections 31-101 to 31-134, or by any drainage district which shall have been dissolved, a petition may be filed with the county clerk, signed by at least twenty-five percent of the landowners benefited by any such ditch, praying

that the county board may cause such ditch to be cleared and placed in efficient condition and the cost thereof apportioned equitably.

Source: Laws 1911, c. 141, § 1, p. 465; R.S.1913, § 1752; C.S.1922, § 1699; Laws 1929, c. 130, § 2, p. 481; C.S.1929, § 31-135; R.S.1943, § 31-135; Laws 1949, c. 79, § 1, p. 212.

31-136 Drainage ditches; petition; survey; cost estimate.

Upon the filing of the petition provided for in section 31-135, it shall be the duty of the county board to cause a survey and estimate of the cost of such improvement to be made by some competent surveyor within sixty days thereafter.

Source: Laws 1911, c. 141, § 2, p. 465; R.S.1913, § 1753; C.S.1922, § 1700; C.S.1929, § 31-136.

31-137 Drainage ditches; petition; hearing; notice.

Upon filing of the report and estimate of the surveyor in the office of the county clerk, it shall be the duty of the county board to set a day for hearing thereon, not more than forty days from the date of said filing, and to give notice by publication thereof for three weeks in some newspaper of general circulation in the county.

Source: Laws 1911, c. 141, § 3, p. 465; R.S.1913, § 1754; C.S.1922, § 1701; C.S.1929, § 31-137.

31-138 Drainage ditches; petition; procedure; cost of improvement; how paid.

The proceedings in regard to the hearing by the county board on the petition and surveyor's report, orders of the county board, appeals, letting of contracts for cleaning ditches as provided for by sections 31-135 to 31-137, supervision thereof, assessment of cost and collection of the same shall be governed, so far as applicable, by the provisions of sections 31-101 to 31-134 relating to the original construction of ditches. Any expenses for clearing ditches and placing them in efficient condition shall be defrayed by a special tax on the lands benefited, apportioned as provided in sections 31-101 to 31-134, for the original cost of constructing the ditch or ditches.

Source: Laws 1911, c. 141, § 4, p. 465; R.S.1913, § 1755; C.S.1922, § 1702; C.S.1929, § 31-138; R.S.1943, § 31-138; Laws 1961, c. 138, § 1, p. 396.

31-139 Drainage ditch; transfer to drainage district; petition.

In any county wherein a drainage ditch has been constructed under the provisions of sections 31-101 to 31-134, or by any drainage district which shall have been dissolved, which benefits an area in part within or adjacent to the boundaries of a drainage district organized under Chapter 31, article 3 or 4, a petition may be filed with the county clerk, signed by at least three of the land owners within the district or the proposed district, praying that the county board cause such ditch to be transferred so as to become a part of and operated and maintained in the same manner as the ditch or ditches of a drainage district created under the provisions of Chapter 31, article 3 or 4. Such petition

must bear the approval of a majority of the board of directors of such drainage district to which it is to be attached.

Source: Laws 1965, c. 155, § 1, p. 500.

31-140 Drainage ditch; transfer; hearing; notice.

Upon the filing of such petition it shall be the duty of the county board to set a day for hearing thereon, not more than fifty days from the date of such filing and to give notice by publication thereof for one week in some newspaper of general circulation in the county and the county clerk shall mail a copy of such notice to each of the landowners benefited by such ditch, as shown by the records of the office of the county treasurer, not less than ten days before such hearing.

Source: Laws 1965, c. 155, § 2, p. 501.

31-141 Drainage ditch; transfer; hearing; findings.

The county board may, after public hearing on the petition, thereupon change the boundaries of the original drainage district organized under the provisions of Chapter 31, article 3 or 4, so as to include the area benefited by the drainage ditch constructed under the provisions of sections 31-101 to 31-134, or by the drainage district which has been dissolved; *Provided*, that the county board shall first find and determine that such change of boundaries is just and will be conducive to the public health, convenience or welfare.

Source: Laws 1965, c. 155, § 3, p. 501.

31-142 Drainage ditch; transfer; powers of drainage district.

Upon the inclusion of any drainage ditch constructed under the provisions of sections 31-101 to 31-134, or of any drainage district which shall have been dissolved, which benefits an area in part within or adjacent to the boundaries of a drainage district organized under the provisions of Chapter 31, article 3 or 4, the board of directors of the district to which such transfer shall have been made shall operate and maintain the ditch so transferred in the same manner as the ditches originally constructed by such district and shall have the power to levy taxes upon the lands benefited thereby in the same manner as in the case of the ditch or ditches constructed by such district.

Source: Laws 1965, c. 155, § 4, p. 501.

ARTICLE 2

DRAINAGE BY INDIVIDUAL LANDOWNER

Section
31-201. Drainage by landowner; to what extent allowed.
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31-202.01. Watercourses; obstructions; power of county board.
31-202.02. Watercourses; obstructions; petition by landowners.
31-202.03. Watercourses; obstructions; cost; assessment.
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31-204. Drains or ditches; petition for construction or maintenance; bond for costs and expenses.
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Section
31-209. Drains or ditches; appraisers; oath; procuring right-of-way.
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31-229. Cities of the metropolitan class; obstructions; petition for removal.
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31-201 Drainage by landowner; to what extent allowed.

Owners of land may drain the same in the general course of natural drainage by constructing an open ditch or tile drain, discharging the water therefrom into any natural watercourse or into any natural depression or draw, whereby such water may be carried into some natural watercourse; and when such drain or ditch is wholly on the owner's land, he shall not be liable in damages therefor to any person or corporation.

Source: Laws 1911, c. 142, § 1, p. 466; R.S.1913, § 1771; C.S.1922, § 1718; C.S.1929, § 31-301.

1. Drainage on own land
2. Discharge on other land
3. Natural watercourse
4. Miscellaneous

1. Drainage on own land

Owners of land will not be held liable for damages to landowners downstream for draining waters into a natural drainageway that begins on the owner's property, as long as this is done in a reasonable and careful manner. Romshek v. Osantowski, 237 Neb. 426, 466 N.W.2d 482 (1991).

To relieve from liability, ditch or drain must be wholly on owner's land. Bussell v. McClellan, 155 Neb. 875, 54 N.W.2d 81 (1952).

Owner has right to discharge waters from a temporary pond or basin by means of an artificial channel on his own property in the natural course of drainage. Pospisil v. Jessen, 153 Neb. 346, 44 N.W.2d 600 (1950).

Drainage by landowner must be wholly on own land. Skolil v. Kokes, 151 Neb. 392, 37 N.W.2d 616 (1949).

Owner of land may dig ditches on his own land to relieve against seepage without liability for damages to adjoining landowners because of lowering of water table. Halligan v. Elander, 147 Neb. 709, 25 N.W.2d 13 (1946).

Owner has right to drain lagoons into natural drains on his own land, though same is then carried over other's land. Arthur v. Glover, 82 Neb. 528, 118 N.W. 111 (1908); Aldritt v. Fleischauer, 74 Neb. 66, 103 N.W. 1084 (1905); Todd v. York County, 72 Neb. 207, 100 N.W. 299 (1904).

2. Discharge on other land

A possessor of land may not divert water onto the land of another by means of a drainageway which did not exist in a state of nature. Jameson v. Nelson, 211 Neb. 259, 318 N.W.2d 259 (1982).

Waters which may be discharged hereunder without liability do not include waste irrigation waters in quantities which are injurious to neighboring land. Peters v. Langrehr, 188 Neb. 480, 197 N.W.2d 698 (1972).

Owner cannot cut channel across natural embankment and cause water to flow into basin partly on his land and partly on land of another to his damage. Yocum v. Labertew, 145 Neb. 120, 15 N.W.2d 384 (1944).

Construction of an open ditch enlarging a natural waterway will not be enjoined unless it is clearly shown that water normally carried will be diverted upon another's land to his damage. Miksch v. Tassler, 108 Neb. 208, 187 N.W. 796 (1922).

Owner cannot dam up natural drain so as to injure neighbor's land. Mapes v. Bolton, 89 Neb. 815, 132 N.W. 386 (1911).

Owners cannot collect and discharge surface water, contrary to natural drainage, upon another's land. Shavlik v. Walla, 86 Neb. 768, 126 N.W. 376 (1910).

The right of the upper proprietor to discharge water is not absolute; but the discharge must be done in a reasonable and careful manner and without negligence. Hickman v. Hunkins, 1 Neb. App. 25, 489 N.W.2d 316 (1992).

3. Natural watercourse

This section permits a landowner to divert water into a natural watercourse, which runs through his or her land, even if the water would otherwise never have reached the watercourse. Bierbower v. Hanson, 228 Neb. 716, 424 N.W.2d 132 (1988).

Under facts in this case, defendant obstructed waters that ran in the equivalent of a natural watercourse and plaintiff was entitled to injunction and consideration of issue relating to damages. Paasch v. Brown, 190 Neb. 421, 208 N.W.2d 695 (1973).

Proprietor of land cannot dam up and permanently obstruct a natural drain. Town of Everett v. Teigeler, 162 Neb. 769, 77 N.W.2d 467 (1956).

Where water is impounded by natural conditions, owner has no right to remove impediment to its flowage. Rudolf v. Atkinson, 156 Neb. 804, 58 N.W.2d 216 (1953).

Regardless of deed or contract, owner of land may exercise right to drain basin into natural watercourse as provided herein, and where such drain is wholly on owner's land, there is no liability for damages. Bures v. Stephens, 122 Neb. 751, 241 N.W. 542 (1932).

4. Miscellaneous

When a landowner substitutes a permanent artificial drainageway crossing his or her own land for a natural one obstructed by that landowner, the landowner impresses the artificial drainageway with a servitude in favor of the land drained thereby, and the upper proprietor (the owner of the land drained) may enforce this servitude against the substituting landowner and its successors in interest; the mere fact that the land through which the easement runs is later subdivided does not destroy the easement. Nu-Dwarf Farms v. Stratbucker Farms, 238 Neb. 395, 470 N.W.2d 772 (1991).

The protection afforded a defendant by this section is not absolute. A defendant can still be held responsible if plaintiff alleges and proves defendant acted negligently or without reasonable care. Stuthman v. Adelaide D. Hull Trust, 233 Neb. 586, 447 N.W.2d 23 (1989).

Alteration of natural drainage is acceptable where interests of good husbandry are served, circumstances are such that the alteration is necessary, and the particular alteration is reasonable under all the circumstances present. Bohaty v. Briard, 219 Neb. 42, 361 N.W.2d 502 (1985).

Construction of ditch from natural lake was not authorized. Lackaff v. Bogue, 158 Neb. 174, 62 N.W.2d 889 (1954).

This section does not control the drainage of natural lakes covering an area in excess of twenty acres. Lackaff v. Department of Roads & Irrigation, 153 Neb. 217, 43 N.W.2d 576 (1950).

City discharging water from its sewage disposal plant into a gully or creek for a period of over ten years, in open, notorious, peaceful, uninterrupted, and adverse manner, may acquire an easement for that purpose. Hall v. City of Friend, 134 Neb. 652, 279 N.W. 346 (1938).

Evidence in case did not bring it within provisions of above section. Warner v. Berggren, 122 Neb. 86, 239 N.W. 473 (1931).

When drainage districts are organized under this article and statutory notice is not given to mortgagees of record, special assessments are subject to liens of mortgages. Board of Commissioners of Hamilton County v. Northwestern Mut. Life Ins. Co., 114 Neb. 596, 209 N.W. 256 (1926).

31-202 Watercourse, defined.

Any depression or draw two feet below the surrounding lands and having a continuous outlet to a stream of water, or river or brook shall be deemed a watercourse.

Source: Laws 1911, c. 142, § 2, p. 466; R.S.1913, § 1772; C.S.1922, § 1719; C.S.1929, § 31-302.

1. Watercourse
2. Not a watercourse
3. Miscellaneous

1. Watercourse

A watercourse need not flow continuously, but it must have a well-defined and substantial existence. Northport Irr. Dist. v. Jess, 215 Neb. 152, 337 N.W.2d 733 (1983).

Under facts in this case, defendant obstructed waters that ran in the equivalent of a natural watercourse and plaintiff was entitled to injunction and consideration of issue relating to damages. Paasch v. Brown, 190 Neb. 421, 208 N.W.2d 695 (1973).

Where springs are source of definite watercourse, owner of land does not have exclusive right to control and use. Brummund v. Vogel, 184 Neb. 415, 168 N.W.2d 24 (1969).

Regardless of depth, flow of surface water in well-defined course cannot be arrested. Town of Everett v. Teigeler, 162 Neb. 769, 77 N.W.2d 467 (1956).

Watercourse must be stream in fact as distinguished from mere surface drainage. Reed v. Jacobson, 160 Neb. 245, 69 N.W.2d 881 (1955); Mader v. Mettenbrink, 159 Neb. 118, 65 N.W.2d 334 (1954); McGill v. Card-Adams Co., 154 Neb. 332, 47 N.W.2d 912 (1951).

Watercourse is defined, but a depression or draw is not. Bussell v. McClellan, 155 Neb. 875, 54 N.W.2d 81 (1952).

Watercourse is defined by statute, and may not be obstructed. Courter v. Maloley, 152 Neb. 476, 41 N.W.2d 732 (1950).

Artificial ditch may be a watercourse. Jack v. Teegarden, 151 Neb. 309, 37 N.W.2d 387 (1949).

A watercourse is a stream of water with a well-defined existence which makes it valuable to riparian owners along its course. Cooper v. Sanitary Dist. No. 1, 146 Neb. 412, 19 N.W.2d 619 (1945).

Ravine with well-defined banks of some fifteen feet in depth draining off surface water from tributary gullies is a watercourse within statutory definition. Faiman v. City of Omaha, 131 Neb. 870, 270 N.W. 484 (1936).

Drainage ditch fulfilled statutory requirements of a watercourse. Barthel v. Liermann, 2 Neb. App. 347, 509 N.W.2d 660 (1993).

2. Not a watercourse

To constitute a watercourse depression must have an outlet into a stream. Skolil v. Kokes, 151 Neb. 392, 37 N.W.2d 616 (1949).

Cutting a channel through a natural embankment to drain lake into a basin does not bring case under this section. Yocum v. Labertew, 145 Neb. 120, 15 N.W.2d 384 (1944).

A draw, although more than two feet deep where it enters land, does not continue to be a watercourse, where it flattens out and water runs wherever gravity will take it. Hengelfelt v. Ehrmann, 141 Neb. 322, 3 N.W.2d 576 (1942).

Where water collecting in basin was not drained into any natural watercourse, natural depression or draw draining into natural watercourse, did not bring case under above section. Warner v. Berggren, 122 Neb. 86, 239 N.W. 473 (1931).

Flow of water involved in action to enjoin maintenance of dam was diffused surface water and not a watercourse. Muhleisen v. Krueger, 120 Neb. 380, 232 N.W. 735 (1930).

Watercourse must be a stream in fact as distinguished from mere temporary surface drainage. Miksch v. Tassler, 108 Neb. 208, 187 N.W. 796 (1922).

3. Miscellaneous

Surface water is defined as water which appears upon the surface of the ground in a diffused state, with no permanent source of supply or regular course, which ordinarily results from rainfall or melting snow. In order to constitute an exception to the general rule that surface water may be repelled, at least some of the distinctive attributes of a watercourse must be demonstrated. Shotkoski v. Prososki, 219 Neb. 213, 362 N.W.2d 59 (1985).

In order to constitute an exception to the general rule that surface water may be repelled, at least some of the distinctive attributes of a watercourse must be demonstrated. Grint v. Hart, 216 Neb. 406, 343 N.W.2d 921 (1984).

The flow of surface water in any well-defined course, whether it be a ditch, swale, or draw in its primitive condition, and whether or not it is two feet below the surrounding land, cannot be arrested or interfered with to the injury of neighboring proprietors. Barry v. Wittmersehouse, 212 Neb. 909, 327 N.W.2d 33 (1982).

City discharging water from its sewage disposal plant into a gully or creek for a period of over ten years, in open, notorious, peaceful, uninterrupted, and adverse manner, may acquire an easement for that purpose. Hall v. City of Friend, 134 Neb. 652, 279 N.W. 346 (1938).

Owner of drainage ditch in continuous use for more than ten years acquires an easement for the purpose of drainage and damages are not recoverable by owner of servient estate against owner of easement unless latter was negligent in use. Bures v. Stephens, 122 Neb. 751, 241 N.W. 542 (1932).

31-202.01 Watercourses; obstructions; power of county board.

In all counties the county board shall have the power to cause all natural watercourses to be kept clean and free of obstructions.

Source: Laws 1951, c. 95, § 1, p. 263; Laws 1969, c. 246, § 1, p. 904.

31-202.02 Watercourses; obstructions; petition by landowners.

Whenever any natural watercourse in a county is filled with trees, silt, or debris in such a manner as to obstruct the natural flow thereof and cause damage by flooding of adjacent lands, any five landowners owning land in such county abutting on the natural watercourse may, by petition, request the county board to cause same to be cleaned out and rendered free of obstructions.

Source: Laws 1951, c. 95, § 2, p. 263; Laws 1972, LB 1053, § 1.

Under the facts in this case, the depression or draw involved does not qualify as a watercourse as defined in this section. Peters v. Langrehr, 188 Neb. 480, 197 N.W.2d 698 (1972).

Where springs are source of definite watercourse, owner of land does not have exclusive right to control and use. Brummund v. Vogel, 184 Neb. 415, 168 N.W.2d 24 (1969).

31-202.03 Watercourses; obstructions; cost; assessment.

The county board, upon receipt of such request, may, if they find natural flow is being obstructed, cause the natural watercourse to be cleaned out. The cost thereof shall be apportioned among the property owners specially benefited thereby and collected in the same manner as special assessments are levied and collected for drainage improvements under sections 31-121 to 31-124.

Source: Laws 1951, c. 95, § 3, p. 264; Laws 1972, LB 1053, § 2.

31-203 Drainage supervisors, county board act as; powers.

The members of the county board shall be the drainage supervisors in and for their respective counties, and as such shall be a body politic and corporate, and shall be the corporate authorities of all the drainage districts within their respective counties.

Source: Laws 1911, c. 142, § 3, p. 467; R.S.1913, § 1773; C.S.1922, § 1720; C.S.1929, § 31-303.

31-204 Drains or ditches; petition for construction or maintenance; bond for costs and expenses.

Any person or persons desiring the construction of any drain or drains, ditch or ditches, or the repair and maintenance of the same, may file a petition with the county board, accompanied with a good and sufficient bond, to be approved by such board, conditioned to pay all costs and expenses of a surveyor or engineer in surveying the proposed ditch or drain and the land affected thereby as hereinafter provided, in case such ditch or drain shall not be deemed necessary for the public welfare, or for agricultural or sanitary purposes, by said board of drainage supervisors.

Source: Laws 1911, c. 142, § 4, p. 467; R.S.1913, § 1774; C.S.1922, § 1721; C.S.1929, § 31-304.

31-205 Drains or ditches; petition; contents.

The petition shall set forth a description of the ditch or ditches, drain or drains, stating the boundaries of the ditch or drain, giving the number of sections or fractional parts thereof, and stating that the proposed drain or ditch shall empty into a watercourse or depression or draw whereby the water flowing therein will be carried into a natural watercourse; and that such drain or ditch is necessary for agricultural or sanitary purposes, and that it will be conducive to the public welfare.

Source: Laws 1911, c. 142, § 5, p. 467; R.S.1913, § 1775; C.S.1922, § 1722; C.S.1929, § 31-305.

31-206 Drains or ditches; survey; estimates.

Whenever the petition and bond as provided for in sections 31-204 and 31-205 have been filed with the county board and the bond approved by it, the board shall cause said ditch or ditches, drain or drains, and the lands or lots affected thereby to be surveyed, and may for this purpose, in its discretion, employ a civil engineer or surveyor, other than the county surveyor. Such surveyor or civil engineer shall proceed to make such survey and estimates as the board may direct, and shall make and return to the board a map or plat of his or their survey and a full report of all estimates so required of him or them by the board.

Source: Laws 1911, c. 142, § 6, p. 467; R.S.1913, § 1776; C.S.1922, § 1723; C.S.1929, § 31-306.

31-207 Drains or ditches; notice of hearing on petition; contents; service.

Upon the filing and examination of the report of the surveyor or civil engineer as provided in section 31-206, the county board shall examine the same and, if it finds that the ditch or ditches, drain or drains, is or are necessary for agricultural or sanitary purposes, that they will be conducive to

the public welfare, and that the benefits to be derived therefrom will equal or exceed the cost of procuring the right-of-way therefor and the expense of constructing the same, the board shall cause the county clerk to notify all landowners whose lands or lots may be damaged, taken, affected or crossed by such ditch or drain at least five days prior to the day set for hearing said matter. Such notice shall be given in writing by personal service, or by a copy thereof being left at the usual place of residence of the owner or owners of said lands or lots, if the owner or owners of the lands or lots are residents of the county, the notice to be served by the sheriff of the county, unless the owner or owners of the lands or lots shall in writing accept service thereof. If the owner or owners of such lands or lots are nonresidents of the county, then the notice shall be published once each week for three successive weeks in some newspaper published and of general circulation in the county, and if no newspaper is published in the county, such notice shall be published in some newspaper having a general circulation therein. The board shall also cause a notice to be served upon the occupant or occupants or agents, if any, of the lands or lots belonging to any nonresident owner or owners. The notice shall state the time and place when all matters relating to such ditch or drain will be heard, the land affected thereby, and the time of the appointment of the appraisers as hereinafter provided.

Source: Laws 1911, c. 142, § 7, p. 468; R.S.1913, § 1777; C.S.1922, § 1724; C.S.1929, § 31-307.

Word landowner embraces mortgagees of record and notice must be given to them of proposed organization of drainage district under this article before special assessments levied against land can become liens superior to their liens. Board of Commissioners of Hamilton County v. Northwestern Mut. Life Ins. Co., 114 Neb. 596, 209 N.W. 256 (1926).

31-208 Drains or ditches; appraisers; appointment.

At the time and place fixed in the notice as provided in section 31-207, the county board may again consider the question of public utility, if requested so to do by any interested party, and may also consider the advisability of such improvements, although it be found to be of public utility, and if no reconsideration is had on the question of public utility, and upon such hearing the construction of such improvements is deemed advisable, the board shall proceed to appoint three disinterested freeholders, residents of the county, who shall act as appraisers for that particular case.

Source: Laws 1911, c. 142, § 8, p. 469; R.S.1913, § 1778; C.S.1922, § 1725; C.S.1929, § 31-308.

31-209 Drains or ditches; appraisers; oath; procuring right-of-way.

The appraisers shall first take and subscribe to an oath to well and truly perform the duties required of them as such appraisers, and they shall then proceed to procure the right-of-way for the ditch or ditches, drain or drains, from the owner or owners of the lands or lots which may be crossed by such ditch or drain so far as they may be able so to do by agreement with the owners, which release or releases of the right-of-way shall be in writing and duly acknowledged by the grantor or grantors, and shall upon consideration thereof and upon confirmation of the acts of the appraisers by the county board, be a perpetual bar to all claims for damages by the grantor or grantors, or their assigns, on account of the construction of such ditch or ditches, drain or drains. Such release or releases shall be filed and recorded in the office of

the county clerk or register of deeds in and for the county in which said lands or lots are situated.

Source: Laws 1911, c. 142, § 8, p. 469; R.S.1913, § 1779; C.S.1922, § 1726; C.S.1929, § 31-309.

31-210 Drains or ditches; failure of mutual agreement; right of eminent domain; procedure.

If the appraisers shall for any reason fail to procure the right-of-way for the proposed ditch or ditches, drain or drains, from any of the owners of the land crossed thereby, by a mutual agreement with such owners, the county board may acquire same 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 1911, c. 142, § 9, p. 469; R.S.1913, § 1780; C.S.1922, § 1727; C.S.1929, § 31-310; R.S.1943, § 31-210; Laws 1951, c. 101, § 71, p. 479; Laws 1961, c. 138, § 2, p. 396.

31-211 Drains or ditches; appraisal; costs; damages; assessments.

The appraisers shall ascertain as nearly as may be the actual cost of construction of the ditch or ditches, drain or drains, together with all costs relating thereto, including the costs of the surveyor and engineer and the costs of appraisement and advertising, and shall ascertain to the best of their judgment the amount of the benefits which will accrue to each tract of land to be benefited thereby, and shall appraise and determine the amount of damage sustained by each landowner whose premises may be crossed by the proposed ditch or drain and award the same, and shall assess to each tract of land benefited by the construction of such improvements, its proportionate share of the costs of the right-of-way thereof, the costs of construction and other expenses above mentioned. They shall thereupon make and file with the county clerk a full and complete report of their acts and doings in the premises, together with the releases obtained from the property owners along the right-of-way of the proposed ditch or drain, and a statement of the amount or amounts to be paid for such release or releases. They shall also file an assessment roll therewith in which shall appear in proper columns the names of the owners, if known, and if unknown so stated, a description of the premises affected, the number of acres in each tract of land so affected and the value thereof, and if damages are allowed, the amount of the same, and if benefits are assessed the amount thereof.

Source: Laws 1911, c. 142, § 10, p. 470; R.S.1913, § 1781; C.S.1922, § 1728; C.S.1929, § 31-311.

Where notice to mortgagee was not given, lien of special assessments was subject to lien of the mortgage. Board of Commissioners of Hamilton County v. Northwestern Mut. Life Ins. Co., 114 Neb. 596, 209 N.W. 256 (1926).

31-212 Drains or ditches; highway benefits; assessment to county or township.

In case the public highways shall be benefited by the construction of such proposed ditch or ditches, drain or drains, the appraisers shall determine as nearly as may be the amount of such benefits so accruing to the township or county, as the case may be, and said township or county shall pay such pro rata

share of the costs and expenses of the construction of the ditch or ditches, drain or drains.

Source: Laws 1911, c. 142, § 11, p. 471; R.S.1913, § 1782; C.S.1922, § 1729; C.S.1929, § 31-312.

31-213 Drains or ditches; appraisers; report; assessment roll; when filed; confirmation.

The appraisers shall within twenty days from the date of their appointment file their report and assessment roll with the county clerk, and any person or persons or corporation owning land affected by the proceedings may, within thirty days from the date of the appointment of the appraisers, file with the county clerk objections to the report or assessment roll, or settlement made by the appraisers on any point, including the amount or amounts proposed to be paid for voluntary releases. If no objections are filed to the report and assessment roll, the county board at its next regular or adjourned session after the expiration of the time for filing objections, shall, if deemed advisable, confirm such report and assessment roll.

Source: Laws 1911, c. 142, § 12, p. 471; R.S.1913, § 1783; C.S.1922, § 1730; C.S.1929, § 31-313.

31-214 Drains or ditches; report; assessment roll; notice of objections.

If objections are filed to any matter contained in the report or assessment roll, the county clerk shall thereupon issue a notice to all interested parties concerned therein, which notice shall be served upon such parties, if residents of the county, at least three days prior to the consideration of the matter by the county board, and if the interested parties are nonresidents, notice shall be published, in one issue of the official newspaper published and of general circulation in the county, at least ten days prior to the day when the matter will be heard by the county board.

Source: Laws 1911, c. 142, § 12, p. 471; R.S.1913, § 1784; C.S.1922, § 1731; C.S.1929, § 31-314.

31-215 Drains or ditches; report; assessment roll; hearing on objections; procedure.

At the time fixed in the notice, or on any adjourned day thereafter, the board shall proceed to hear and determine all matters in relation to the objections, and for that purpose may take the sworn testimony of witnesses produced by interested parties to the controversy and may in its discretion change the amount of the assessment made, and the damages awarded by the appraisers.

Source: Laws 1911, c. 142, § 12, p. 471; R.S.1913, § 1785; C.S.1922, § 1732; C.S.1929, § 31-315.

31-216 Drains or ditches; appeal from assessment; how taken; bond.

When the objections have been heard and determined by the board, any interested party may appeal therefrom to the district court by filing with the county clerk a written notice of the appeal within ten days from the date of such decision; *Provided*, they shall give a bond to be approved by the county clerk, conditioned to pay all costs of the proceedings on appeal, should the decision of the county board be sustained, and shall within thirty days file a

transcript of the proceedings had upon the objection, with the clerk of the district court, where the matter shall be tried and determined as in ordinary civil cases.

Source: Laws 1911, c. 142, § 12, p. 472; R.S.1913, § 1786; C.S.1922, § 1733; C.S.1929, § 31-316.

31-217 Drains or ditches; assessment; entry on tax books; how collected.

If no objections are filed to the report of the appraisers within the time as provided in section 31-213, or no appeal has been perfected from the decision of the county board upon objections determined by it, the county board shall direct the county clerk to place the assessment roll upon the tax book of the county against the lands or lots affected thereby together with the costs of all proceedings relating thereto, and shall confirm in whole or in part the report of the appraisers as to voluntary releases. The assessments to be made and placed upon the tax books of the county shall be collected by the county treasurer in the same manner as is provided for the collection of ordinary taxes.

Source: Laws 1911, c. 142, § 13, p. 472; R.S.1913, § 1787; C.S.1922, § 1734; C.S.1929, § 31-317.

Notice must be sent to mortgagees or organization of drainage district before special assessment can be levied. Board of Commissioners of Hamilton County v. Northwestern Mut. Life Ins. Co., 114 Neb. 596, 209 N.W. 256 (1926).

31-218 Drains or ditches; assessment; payment before entry on tax books allowed.

Any person or persons against whose land any assessment shall have been levied shall in his discretion have the right to pay to the county treasurer the amount of such assessment before the same has been placed upon the tax books of the county clerk.

Source: Laws 1911, c. 142, § 15, p. 473; R.S.1913, § 1788; C.S.1922, § 1735; C.S.1929, § 31-318.

31-219 Drains or ditches; appraisers; compensation; expenses.

The appraisers shall receive the sum of three dollars per day for the time necessarily employed, together with necessary traveling expenses, with reimbursement for mileage to be made at the rate provided in section 81-1176, to be taxed as costs and to be paid from the money received from said special assessments as provided in section 31-211.

Source: Laws 1911, c. 142, § 14, p. 472; R.S.1913, § 1789; C.S.1922, § 1736; C.S.1929, § 31-319; R.S.1943, § 31-219; Laws 1981, LB 204, § 46; Laws 1996, LB 1011, § 19.

31-220 Drains or ditches; appraisers, employees, and contractors; entry on land authorized.

The drainage supervisors, any time after receiving any petition as provided in section 31-204, may authorize any appraisers or employees to go upon the lands affected for the purpose of examining the same and making a survey thereof. After the matter has been fully determined by the board or by the court on appeal, and condemnation or purchase money paid, the supervisors may authorize all contractors with their servants, teams, tools, instruments or other equipment to go upon the lands or lots for the purpose of constructing any

ditch or ditches, drain or drains, and for this purpose may designate some responsible person to supervise the work.

Source: Laws 1911, c. 142, § 16, p. 473; R.S.1913, § 1790; C.S.1922, § 1737; C.S.1929, § 31-320; R.S.1943, § 31-220; Laws 1961, c. 370, § 2, p. 1144.

31-221 Injuring or obstructing watercourse, drain, or ditch; penalty; liability for costs of cleaning.

If any person or persons shall willfully fill up, injure or destroy any watercourse or any drain or ditch constructed as herein required, or willfully prevent or delay the construction or repair of any watercourse or any drain or ditch in the manner provided by sections 31-201 to 31-223, such person or persons shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not less than twenty-five dollars nor more than one hundred dollars, or be confined in the county jail not to exceed thirty days, and in addition thereto may be liable for the cost of cleaning out any such watercourse, drain, or ditch as determined by the court.

Source: Laws 1911, c. 142, § 17, p. 473; R.S.1913, § 1791; C.S.1922, § 1738; C.S.1929, § 31-321; R.S.1943, § 31-221; Laws 1965, c. 156, § 5, p. 503.

31-222 Drains or ditches; assessment; credit allowed for work done by persons assessed.

In case any person assessed for benefits shall contract to do any work on the ditch or drain, and the work is done according to contract, the drainage supervisors shall give said person or persons a receipt thereof to the amount earned by such work, and such receipt shall be received by the county treasurer as payment of so much of such assessment.

Source: Laws 1911, c. 142, § 18, p. 473; R.S.1913, § 1792; C.S.1922, § 1739; C.S.1929, § 31-322.

31-223 Drains or ditches; additional assessments; levy; collection.

When the assessments as provided for in sections 31-201 to 31-222 shall be inadequate to complete the work proposed, or when assessments shall be necessary for the maintenance and repair of such ditches or drains, each tract of land shall be assessed by the county board such proportion of the additional costs as its original assessment bore to the total original assessment, and the said additional assessment shall be made and collected in the same manner as nearly as may be as the original assessment was made. In all subsequent matters in relation thereto, the same proceedings shall be had as hereinbefore required in regard to the original assessment.

Source: Laws 1911, c. 142, § 19, p. 474; R.S.1913, § 1793; C.S.1922, § 1740; C.S.1929, § 31-323.

31-224 Watercourses, drains, or ditches; annual removal of rubbish by landowners or tenants; exceptions.

It shall be the duty of landowners in this state, or tenants of such landowners when in possession, owning or occupying lands through which a watercourse, slough, drainage ditch or drainage course lies, runs or has its course, to clean

such watercourse, slough, drainage ditch or drainage course at least once a year, between March 1 and April 15, of all rubbish, weeds or other substance blocking or otherwise obstructing the flow of the water in such watercourse, slough, drainage ditch or drainage course, whenever such obstruction is caused by any of the acts of said owner or tenant, or with his knowledge or consent; *Provided, however*, this and sections 31-225 and 31-226 shall not apply to drainage ditches under control of any drainage company or corporation.

Source: Laws 1911, c. 143, § 1, p. 474; R.S.1913, § 1794; C.S.1922, § 1741; C.S.1929, § 31-324.

Owner of adjoining lands is required to maintain river in course to which diverted by authorized nonnegligent construction and is not entitled to recover for negligent maintenance. Idlewild Farm Co. v. Elkhorn River Drainage District, 116 Neb. 300, 216 N.W. 817 (1927).

Landowners do not have to cause the obstruction in a waterway before this section requires them to clear it; the obstruction need only have occurred with their knowledge or consent. Landowners who were aware of weeds and cattle obstructing the ditch had a duty to clean the ditch out under this section despite the fact that they did not affirmatively obstruct the ditch. Barthel v. Liermann, 2 Neb. App. 347, 509 N.W.2d 660 (1993).

31-225 Watercourses, drains, or ditches; annual clearing and deepening by landowner or tenant.

It shall be the duty of any landowner or tenant who shall occupy or use land through which a watercourse, slough, drainage ditch or drainage course shall run or have its course, and who shall plow over or plant crops in the bed of such watercourse, slough, drainage ditch or drainage course, to dig out or by other means deepen, at least once a year, between March 1 and April 15, to a depth at least equal to that of such watercourse, drainage ditch, slough or drainage course, before same was plowed or seeded to crop, if plowing and planting as aforesaid causes an overflow or flooding of other lands along the course of said drainage ditch, slough or drainage course.

Source: Laws 1911, c. 143, § 2, p. 475; R.S.1913, § 1795; C.S.1922, § 1742; C.S.1929, § 31-325.

31-226 Watercourses, drains, or ditches; failure to clear after notice; penalty.

Any person or individual violating any provisions of sections 31-224 and 31-225, and who shall have been notified by an owner or tenant having the same watercourse, slough, drainage ditch or drainage course running through the land owned or occupied by such person or individual, at least ten days before the filing of a complaint, to remove an obstruction in such watercourse, slough, drainage ditch or drainage course, and who shall fail to comply with such notice, shall be deemed guilty of a misdemeanor, and upon conviction shall be fined not more than ten dollars and be liable for all damages caused by reason of such obstruction.

Source: Laws 1911, c. 143, § 3, p. 475; R.S.1913, § 1796; C.S.1922, § 1743; C.S.1929, § 31-326.

31-227 Cities of the metropolitan class; county boards; concurrent jurisdiction over watercourses.

The city council of any city of the metropolitan class shall have concurrent jurisdiction with the county board of any county having a population of two hundred thousand inhabitants or more, and the power to cause all natural watercourses, as defined in section 31-228, which are within its corporate

limits or within three miles thereof, to be kept clean and free of obstructions in such manner as to permit the natural flow thereof.

Source: Laws 1965, c. 156, § 1, p. 502.

31-228 Concurrent jurisdiction; watercourse, defined.

Any depression or draw two feet or more below the surrounding lands and having a continuous outlet to a stream of water, or river or brook shall be deemed a watercourse.

Source: Laws 1965, c. 156, § 2, p. 502.

31-229 Cities of the metropolitan class; obstructions; petition for removal.

Whenever any natural watercourse, as defined in section 31-228, within the corporate limits of a city of the metropolitan class, or within three miles thereof, is filled with trees, silt, or debris in such a manner as to obstruct the natural flow thereof and cause damage by flooding of adjacent lands, any five landowners owning land in the corporate limits of such city or within three miles thereof abutting on the natural watercourse may, by petition, request the city council to cause the same to be cleaned out and rendered free of obstructions.

Source: Laws 1965, c. 156, § 3, p. 503.

31-230 Cities of the metropolitan class; drainage; cleaning out watercourse; special assessments.

The city council of a city of the metropolitan class upon receipt of such request, may, if it finds that natural flow is being obstructed, cause the natural watercourse to be cleaned out. Except as provided in section 31-221, the cost thereof may be apportioned among the property owners specially benefited thereby and collected in the same manner as special assessments are levied and collected.

Source: Laws 1965, c. 156, § 4, p. 503.

ARTICLE 3

DRAINAGE DISTRICTS ORGANIZED BY PROCEEDINGS IN DISTRICT COURT

Section

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31-378. Repealed. Laws 1999, LB 4, § 1.

31-301 Drainage districts organized by proceedings in district court; formation; articles of association; contents.

A majority in interest of the owners in any contiguous body of swamp or overflowed lands in this state, situated in one or more counties in this state, may form a drainage district for the purpose of having such land reclaimed and protected from the effects of water, by drainage or otherwise. For that purpose they may make and sign articles of association, in which shall be stated the name of the district, the number of years the same is to continue, the limits of the proposed drainage district, which shall in no event embrace an area of less than one hundred and sixty acres, the names and places of residence of the owners of the land in the proposed district, the description of the several tracts or parcels of land situated in the district owned by those who may organize the district, and the name or names and the description of the real estate owned by such as do not join in the organization of the district but who will be benefited thereby. Such owners of real estate as are unknown may be set out in such articles as such. The articles shall further state that the owners of real estate so forming the district for such purposes are willing and obligate themselves to pay the tax or taxes which may be assessed against them to pay the expense of making the improvements that may be necessary to effect the drainage of the lands so formed into a district, as provided by law, praying that they may be declared a drainage district under sections 31-301 to 31-369.

Source: Laws 1905, c. 161, § 1, p. 610; Laws 1909, c. 147, § 1, p. 507; R.S.1913, § 1797; C.S.1922, § 1744; C.S.1929, § 31-401.

1. Constitutionality
2. Organization
3. Status as public corporation
4. Powers and restrictions
5. Miscellaneous

1. Constitutionality

Act sustained as constitutional as against claim that it gives legislative power to the courts. Mooney v. Drainage District No. 1 of Richardson County, 126 Neb. 219, 252 N.W. 910 (1934).

Drainage district act upheld as constitutional. Drainage District No. 1 of Pawnee County v. Chicago, B. & Q. R. Co., 96 Neb. 1, 146 N.W. 1055 (1914); O'Neill v. Leamer, 239 U.S. 244 (1915).

Act, as amended in 1909, is constitutional, though it omits provisions to recover damages. Nemaha Valley Drainage District No. 2 v. Marconnit, 90 Neb. 514, 134 N.W. 177 (1912).

Title was sufficiently comprehensive to include assessment of public highways when benefited. Drainage Dist. No. 1 of Richardson County v. Richardson County, 86 Neb. 355, 125 N.W. 796 (1910).

Court performs judicial and not administrative functions. Barnes v. Minor, 80 Neb. 189, 114 N.W. 146 (1907).

Creation of such political administrative corporations is constitutional. Neal v. Vansickle, 72 Neb. 105, 100 N.W. 200 (1904).

2. Organization

Lands within district are not required to actually adjoin. Petersen v. Thurston, 157 Neb. 833, 62 N.W.2d 68 (1954).

The court acquires jurisdiction to organize district under this article by filing of articles of association and service of notice, and the court, having jurisdiction, may permit additional landowners in district to join in articles of association. Henderson v. Holliman, 108 Neb. 67, 187 N.W. 128 (1922).

Notice must be given to all owners of land within the district who have not signed the articles. Latham v. Chicago, B. & Q. R. Co., 100 Neb. 173, 158 N.W. 923 (1916).

Articles of incorporation, if properly drawn, may take the place of petition or application, and the statute defines what they shall contain. Drainage Dist. No. 1 of Otoe and Johnson Counties v. Wilkins, 93 Neb. 567, 141 N.W. 151 (1913).

Court may refuse to declare the district organized, where petitioners are nonresidents of county. Catron v. Dailey, 84 Neb. 487, 121 N.W. 462 (1909).

3. Status as public corporation

Drainage district organized under this article is a public and not a private corporation, and it has no authority to engage in irrigation, or to consent to the diversion, for purposes of irrigation, of any waters carried in any drainage ditch. Drainage Dist. No. 1 v. Suburban Irrigation Dist., 139 Neb. 333, 297 N.W. 645 (1941).

A drainage district is a public and not a private corporation. Mooney v. Drainage District No. 1 of Richardson County, 133 Neb. 197, 274 N.W. 467 (1937). Judgment vacated on rehearing, 134 Neb. 192, 278 N.W. 368 (1938).

Drainage district organized under this article is a public corporation. O'Neill v. Leamer, 93 Neb. 786, 142 N.W. 112 (1913), affirmed, 239 U.S. 244 (1915); Drainage Dist. No. 1 of Richardson County v. Richardson County, 86 Neb. 355, 125 N.W. 796 (1910).

4. Powers and restrictions

District is liable for failure to maintain and keep in repair its works. McGree v. Stanton-Pilger Drainage Dist., 164 Neb. 552, 82 N.W.2d 798 (1957).

Power is conferred to drain swamp or overflowed lands. Petersen v. Thurston, 161 Neb. 758, 74 N.W.2d 528 (1956).

Duty is imposed upon district to maintain and keep system in repair. County of Johnson v. Weber, 160 Neb. 432, 70 N.W.2d 440 (1955).

Drainage district organized under this article has no authority to levy assessments on property outside of district. Drainage Dist. No. 1 v. Village of Hershey, 139 Neb. 205, 296 N.W. 879 (1941).

Drainage assessments levied by board cannot be enjoined unless void. Richardson County v. Drainage District No. 1 of Richardson County, 113 Neb. 662, 204 N.W. 376 (1925).

Petitioners cannot restrict powers of corporation as to manner of drainage. Nemaha Valley Drainage Dist. No. 2 v. Marconnit, 90 Neb. 514, 134 N.W. 177 (1912).

5. Miscellaneous

Proceedings for the establishment of a drainage district is purely statutory. Kuhlman v. Folkers, 179 Neb. 80, 136 N.W.2d 364 (1965).

Proceedings to form sanitary and improvement district are similar to proceedings under this article. Zwink v. Ahlman, 177 Neb. 15, 128 N.W.2d 121 (1964).

Assessment of benefit units for drainage improvement to streets and alleys of a village within a drainage district cannot be ascertained to an exact nicety of apportionment. Drainage District No. 1 of Lincoln County v. Village of Hershey, 145 Neb. 138, 15 N.W.2d 337 (1944).

Waters running in drainage ditches constructed and maintained by a drainage district organized under this article are not subject to legal appropriation under irrigation laws. Drainage Dist. No. 1 v. Suburban Irrigation Dist., 139 Neb. 460, 298 N.W. 131 (1941).

Incorporation of drainage district and proceedings had pursuant to statute create contracts between the district and individual landowners which cannot be impaired by subsequent legislation. Ritter v. Drainage Dist. No. 1 of Otoe and Johnson Counties, 137 Neb. 866, 291 N.W. 718 (1940).

Landowners acquired vested property rights by payment of legal assessments on their lands to a public drainage district, and it could not discontinue operation. Mooney v. Drainage District No. 1 of Richardson County, 134 Neb. 192, 278 N.W. 368 (1938).

Drainage district is liable for damages caused by negligence in construction or maintenance. Miller v. Drainage District No. 1 of Richardson County, 112 Neb. 206, 199 N.W. 28 (1924).

31-301.01 Drainage districts; formation prohibited after June 30, 1972; exceptions.

After June 30, 1972, no new drainage districts shall be organized under the provisions of sections 31-301 to 31-377. Attempted formations of drainage districts under sections 31-301 to 31-377 which have not been completed before July 1, 1972, shall be null, void and of no effect for the purpose of organizing such district. All drainage districts having valid corporate existence before July 1, 1972, shall enjoy all rights, duties, powers and authorities conferred by sections 31-301 to 31-377 and shall not be affected by this section, nor shall the legality of formation, organization, or operation of any such district be subject to any legal action based on this section.

Source: Laws 1969, c. 9, § 61, p. 134; Laws 1971, LB 544, § 7.

31-302 Formation; articles; where filed.

After the articles of association shall be signed, the same shall be filed in the office of the clerk of the district court of the county in which such drainage district is located, or if such drainage district is composed of tracts, or parcels

of land in two or more counties, then in the office of the clerk of the district court of the county in which the greater portion of such proposed drainage district may be situated.

Source: Laws 1905, c. 161, § 1, p. 611; Laws 1909, c. 147, § 1, p. 508; R.S.1913, § 1797; C.S.1922, § 1744; C.S.1929, § 31-401.

Articles should be filed in county having larger portion of lands. Petersen v. Thurston, 157 Neb. 833, 62 N.W.2d 68 (1954).

31-303 Formation; notice to landowners affected; summons; service by publication.

Immediately after such articles of association shall have been filed, the clerk of the district court of the county in which the proposed district is located, and in case the drainage district be composed of territory situated in different counties, the clerk of the district court of the county in which the greater portion of the land and of the proposed district shall be situated, shall issue a summons, as provided by law, returnable at the next term of the district court, directed to the several owners of real estate in the proposed district who may be averred to be benefited thereby but have not signed the articles of association, which shall be served as summons in civil cases. In case any owner or owners of real estate in the proposed district are unknown, or are nonresidents, they shall be notified in the same manner as nonresident defendants are by law notified in actions in the district courts of this state, setting forth in such notice that the articles of association have been filed, the purpose thereof, that the real estate of such owner or owners situated in the district, fully describing the same, will be affected thereby and rendered liable to taxation or assessment for the purposes of draining such district, and that application will be made to have the district declared a drainage district for the purposes of draining and reclaiming the same.

Source: Laws 1905, c. 161, § 2, p. 611; R.S.1913, § 1798; C.S.1922, § 1745; C.S.1929, § 31-402.

Notice must be given to owners of land who have not signed the articles of association. Latham v. Chicago, B. & Q. R. Co., 100 Neb. 173, 158 N.W. 923 (1916).

Nonresident means not a resident of the state. Catron v. Dailey, 84 Neb. 487, 121 N.W. 462 (1909).

31-304 Formation; objections; hearing; judgment.

All owners of real estate situated in the proposed district who have not signed the articles of association and who may object to the organization of the drainage district, after having been duly summoned shall, on or before the second day of the term of court to which they have been summoned to appear, file their objection or objections in writing, if any they may have, why such drainage district should not be organized and declared a public corporation of this state, and why their land will not be benefited by drainage, and should not be embraced in the drainage district and liable to taxation for draining the same. All such objections shall be heard by the court in a summary manner, without any unnecessary delay, and in case such objections are overruled, the district court shall, by its order duly entered of record, declare the drainage district a public corporation of this state. The fact that the district contains one hundred and sixty acres or more of wet, overflowed, or submerged lands shall be sufficient cause for declaring the public utility of such improvements, and shall be sufficient grounds for declaring the organization of a public corporation of this state. In case any owner of such real estate shall satisfy the court

that his real estate, or a part thereof, has been wrongfully included in the district, and will not be benefited thereby, then the court may exclude such real estate as will not be benefited, and declare the remainder a district as prayed for.

Source: Laws 1905, c. 161, § 3, p. 612; R.S.1913, § 1799; C.S.1922, § 1746; C.S.1929, § 31-403.

District was organized properly. County of Johnson v. Weber, 160 Neb. 432, 70 N.W.2d 440 (1955).

Where portion of land will not be benefited, it may be excluded. Petersen v. Thurston, 157 Neb. 833, 62 N.W.2d 68 (1954).

Judgment sustaining objections to including lands in drainage district without prejudice to subsequent inclusion does not bar subsequent inquiry. Shepherdson v. Fagin, 116 Neb. 806, 219 N.W. 187 (1928).

After jurisdiction is acquired, the court may permit additional landowners in district to join in articles of association. Henderson v. Holliman, 108 Neb. 67, 187 N.W. 128 (1922).

This act does not contemplate that the question of damages by third persons shall be decided at the hearing upon the application for formation of district, and statute permitting intervention is not applicable. Latham v. Chicago, B. & Q. R. Co., 100 Neb. 173, 158 N.W. 923 (1916).

Facts which court must find to enter order are properly raised by filing of articles. Drainage Dist. No. 1 of Otoe and Johnson Counties v. Wilkins, 93 Neb. 567, 141 N.W. 151 (1913).

31-305 Formation; articles; filing and recording.

Within twenty days after the district has been declared a corporation by the court, the clerk thereof shall transmit to the Secretary of State a certified copy of the record relating thereto, and the same shall be filed in his office in the same manner as articles of incorporation are required to be filed under the general law concerning corporations. A copy of such record, together with a plat of the district, shall also be filed in the office of the county clerk of the county or counties in which the district, or any part thereof, is situated.

Source: Laws 1905, c. 161, § 4, p. 613; R.S.1913, § 1800; C.S.1922, § 1747; C.S.1929, § 31-404.

31-306 First board of supervisors; election; number; basis of representation; succeeding boards, how chosen.

Within thirty days after the district court shall have declared any drainage district organized, the clerk of the court shall, upon fifteen days' notice, call a meeting of the owners of the real estate situated in the district, at the day and hour specified, in some public place in the county in which the district was organized, for the purpose of electing a board of five supervisors to be composed of owners of real estate in the district and a majority of whom shall be residents of the county or counties in which such district is situated. At such election every acre of land shall represent one share and each owner shall be entitled to one vote for every acre of land owned by him in such district. The five persons receiving the highest number of votes shall be declared elected as supervisors, and they shall immediately, by lot, determine their terms of office, which shall be respectively, one, two, three, four and five years, and until their successors are elected and qualified; *Provided, however*, at any time thereafter not more often than once in twelve months, upon the petition of the owners of at least twenty percent of the land acreage within the drainage district, an election shall be called for the selection of a new board, and upon the filing of such petitions with the secretary of the board, notice of such election shall be given by the secretary in the same manner and for the same time as is provided for at the original election under the notice given by the clerk of the district court. Special elections shall in all respects be governed by the provisions applicable to the regular election herein provided for.

Source: Laws 1905, c. 161, § 5, p. 613; Laws 1907, c. 152, § 1, p. 466; Laws 1911, c. 144, § 1, p. 476; R.S.1913, § 1801; C.S.1922, § 1748; C.S.1929, § 31-405.

Objections that subject of amendment was not referred to in original act, and not germane thereto, were not valid after inclusion in statutory revisions. Lost Creek Drainage Dist. v. Kring, 193 Neb. 450, 227 N.W.2d 421 (1975).

Where no resident owner signed the petition, court is justified in denying organization. Catron v. Dailey, 84 Neb. 487, 121 N.W. 462 (1909).

31-307 Supervisors; annual elections; notice.

Every year after the election of the first board of supervisors, at such time and place in the county in which the district was organized as the board of supervisors may designate, and upon not less than fifteen days' notice, unless waived in writing, such owners shall meet and elect one supervisor in the same manner as provided in section 31-306, who shall hold his office for five years and until his successor is elected and qualified. Notice may be given by personal service or by publication for two weeks in a newspaper in each county in the district and of general circulation therein, which notice shall be sufficient if it notifies the landowners of the district without naming them individually, of the time, place, and purpose of the meeting. The secretary of the board shall mail to the last-known post office address of each owner of land in the district a copy of a published notice. In case of a vacancy in any office of supervisor, the remaining supervisors may fill such vacancy until the next annual election when a successor shall be elected for the unexpired term.

Source: Laws 1905, c. 161, § 6, p. 613; Laws 1907, c. 152, § 2, p. 467; R.S.1913, § 1802; C.S.1922, § 1749; C.S.1929, § 31-406.

Objections that subject of amendment was not referred to in title to original act, and not germane thereto, were not valid after inclusion in statutory revisions. Lost Creek Drainage Dist. v. Kring, 193 Neb. 450, 227 N.W.2d 421 (1975).

31-308 Supervisors; oath; bond; auditing of accounts.

Each supervisor, before entering upon his official duties as such, shall take and subscribe an oath before some officer authorized by law to administer oaths, that he will honestly, faithfully, and impartially demean himself in office as supervisor of the various districts in which he was elected, and that he will not neglect any of the duties imposed upon him by law. The president and secretary of the drainage board shall each enter into a bond in the sum of ten thousand dollars to the district for the faithful performance of his duties as such officer. Each of the remaining members of the board shall give bond in the sum of twenty-five hundred dollars, conditioned in the same manner. All of such bonds shall be approved by the clerk of the district court, and the expense of such bonds shall be paid by the drainage district; *Provided, however*, upon the completion of the drainage improvements of the district the amount of all of the bonds shall be reduced to the sum of fifteen hundred dollars each. All expenditures of the drainage district shall from time to time be audited by a committee of three elected by the landowners of each district at their annual meeting for the election of officers. Such auditing committee shall file written reports of its examinations with the secretary of the drainage district.

Source: Laws 1905, c. 161, § 7, p. 614; Laws 1911, c. 144, § 2, p. 477; R.S.1913, § 1803; C.S.1922, § 1750; C.S.1929, § 31-407.

31-309 Officers and assistants; reports; compensation.

The board of supervisors shall, immediately after its election, choose one of its number chairperson and another secretary. The board may adopt a seal, with a suitable device, and shall keep a record of all its proceedings open to the inspection of all owners of real estate in the drainage district. At each annual meeting the board shall make a report of what work has been done and shall

annually publish a statement of its receipts and expenditures in a legal newspaper printed, published, and of general circulation in the county in which the district was organized or, if none is printed and published in the county, in a legal newspaper of general circulation in such county where the district was organized. The supervisors shall receive two dollars per day compensation for time actually employed in the business of the district, not exceeding eighty dollars each per year, but reasonable allowance shall be made for necessary clerical work and assistance, and the secretary shall receive for his or her services such compensation as the board of supervisors may agree upon, payable out of the district drainage fund. The board of supervisors may employ an attorney to act for the district and to advise the board.

Source: Laws 1905, c. 161, § 8, p. 614; Laws 1909, c. 147, § 2, p. 508; R.S.1913, § 1804; C.S.1922, § 1751; C.S.1929, § 31-408; R.S. 1943, § 31-309; Laws 1986, LB 960, § 22.

31-310 Topographical surveys; maps; profiles; plans.

The board of supervisors of any drainage district organized under the provisions of sections 31-301 to 31-305 shall cause a topographical survey to be made of the district by some competent engineer. The engineer shall make a complete topographical survey of the district and submit the same to the board of supervisors with maps and profiles of such survey and a full and complete plan for draining, reclaiming, and protecting the lands in the district from the overflow of, or damage by water or floods. The survey shall show the physical characteristics and location of any right-of-way, roadbed, bridge or bridges and other property or improvements in the district belonging to or under the control of any railroad company. The engineer shall report the location of any and all public highways which may be crossed by the right-of-way of any ditch, levee, or other improvement planned for the district

Source: Laws 1905, c. 161, § 9, p. 614; Laws 1909, c. 147, § 3, p. 509; R.S.1913, § 1805; C.S.1922, § 1752; C.S.1929, § 31-409.

Complete topographical survey was made. Petersen v. Thurston, 161 Neb. 758, 74 N.W.2d 528 (1956).

Feasibility of route is matter for consideration after organization of district. Petersen v. Thurston, 157 Neb. 833, 62 N.W.2d 68 (1954).

31-311 Estimates of cost.

The engineer shall also make an estimate of the cost of the entire drainage works and improvements required in the district to protect and reclaim the lands and property, showing the several items of the same.

Source: Laws 1905, c. 161, § 9, p. 614; Laws 1909, c. 147, § 3, p. 509; R.S.1913, § 1806; C.S.1922, § 1753; C.S.1929, § 31-410.

District engineer is required to make estimate of cost of entire project. Petersen v. Thurston, 161 Neb. 758, 74 N.W.2d 528 (1956).

31-312 Inspections and examinations.

The engineer shall go over and inspect and examine the lands in the district, the railroad rights-of-way, roadbeds, bridges, culverts, depot grounds, grades, and all other railroad, telephone and telegraph property in the district. He shall inspect and examine all other improvements, streets, highways and bridges belonging to any county, municipal or other corporation which may be affected by the proposed drainage and reclamation works and improvements, and also

the streams, watercourses, ditches, ponds, lakes and bayous within the district or partly within and partly without the district.

Source: Laws 1905, c. 161, § 9, p. 614; Laws 1909, c. 147, § 3, p. 509; R.S.1913, § 1807; C.S.1922, § 1754; C.S.1929, § 31-411.

Inspection of lands affected was made. Petersen v. Thurston, 161 Neb. 758, 74 N.W.2d 528 (1956).

31-313 Assessment of benefits.

The engineer shall assess, as hereinafter directed and according to the rules hereinafter prescribed, the amount of benefits which will accrue to each tract or parcel of land and corporate property above named, by virtue of the works and improvements of the drainage district. Each tract or parcel of land, right-of-way, railroad bed, bridge, culvert and depot within the district shall bear its share of the entire cost and expenses incurred by the district in making such works and improvements in proportion to the benefits assessed, whether such improvements be made on the tract or parcel of land, right-of-way, or railroad bed, or not.

Source: Laws 1905, c. 161, § 9, p. 614; Laws 1909, c. 147, § 3, p. 510; R.S.1913, § 1808; C.S.1922, § 1755; C.S.1929, § 31-412.

It is sufficient if classification of benefits is made upon a uniform plan which is fair and just. Petersen v. Thurston, 161 Neb. 758, 74 N.W.2d 528 (1956).

Where drainage district levies assessment for special drainage benefits accruing to land, the levies are not void because an older drainage district previously levied and collected assessments on the same land. Schobert-Zimmerman Drainage Dist. v. Soll, 132 Neb. 629, 272 N.W. 775 (1937).

31-314 Estimate of benefits to property; how determined.

The engineer, in estimating the benefits to lands, streets, highways, railroad property, rights-of-way, railroad beds, not traversed by the works and improvements, shall not consider what benefits will be derived by such lands after other ditches, improvements, or drainage plans shall be constructed, but only the benefits which will be derived by the construction of the aforesaid works and improvements as they afford drainage or an outlet for drainage, or protection from overflow or damage by water.

Source: Laws 1905, c. 161, § 9, p. 614; Laws 1909, c. 147, § 3, p. 510; R.S.1913, § 1809; C.S.1922, § 1756; C.S.1929, § 31-413.

Engineer may estimate benefits before improvement is made. Nemaha Valley Drainage Dist. v. Marconnit, 90 Neb. 514, 134 N.W. 177 (1912).

Lands of state held under contract for purchase are assessable, and sale for tax does not affect state's interest. Morehouse v. Elkhorn River Drainage Dist. No. 2, 90 Neb. 406, 133 N.W. 446 (1911).

31-315 Assessments; basis.

No assessment shall be made for benefits to any lands upon any other principle than that of benefits derived, but all assessments shall be made upon the basis of benefits derived and secured by reason of the construction of such improvements and works in affording drainage, or giving an outlet for drainage, protection from overflow, and damage from water.

Source: Laws 1905, c. 161, § 9, p. 614; Laws 1909, c. 147, § 3, p. 510; R.S.1913, § 1810; C.S.1922, § 1757; C.S.1929, § 31-414.

Assessments are made upon basis of benefits derived. Petersen v. Thurston, 161 Neb. 758, 74 N.W.2d 528 (1956).

Where board of supervisors of a drainage district assess property not within the district, and do not assess on basis of benefits derived, the order levying assessments is void and

subject to collateral attack. Drainage Dist. No. 1 v. Village of Hershey, 139 Neb. 205, 296 N.W. 879 (1941).

Levy need not be confined to part actually overflowed if the whole is benefited. Nemaha Valley Drainage Dist. No. 2 v. Higgins, 90 Neb. 513, 134 N.W. 185 (1912).

Exact apportionment in detail is impossible, but it is sufficient if each tract as a whole is improved. Land appropriated for ditch must be excluded from land assessed. Nemaha Valley Drainage District No. 2 v. Stocker, 90 Neb. 507, 134 N.W. 183 (1912).

31-316 Estimate of benefits to highways and railroad property; how determined.

The benefits to public streets and highways, railroad property, right-of-way and roadbed, shall be assessed according to the increased efficiency and value added thereto by reason of, and the protection derived from, the aforesaid drainage works and improvements.

Source: Laws 1905, c. 161, § 9, p. 614; Laws 1909, c. 147, § 3, p. 510; R.S.1913, § 1811; C.S.1922, § 1758; C.S.1929, § 31-415.

Benefits accruing to railroad by drainage of flood waters may be assessed by drainage district. Rudersdorf Drainage District v. Chicago, R. I. & P. Ry. Co., 118 Neb. 43, 223 N.W. 639 (1929); Missouri Pacific Railroad Company v. Drainage District No. 5 of Richardson County, 110 Neb. 762, 195 N.W. 113 (1923).

31-317 Classification of lands on basis of percentage of benefit.

The engineer shall also classify all lots, tracts, lands, and other property according to the benefit that each may receive from such drainage improvement, and the lots, tracts, and lands receiving the greatest percentage of benefits shall be classified at one hundred, those receiving a less percentage of benefit at such less number as its benefit may determine. The property of public and private corporations may be classified in a list by themselves, each according to the relation its total benefits bear to the total benefit in the district.

Source: Laws 1905, c. 161, § 9, p. 614; Laws 1909, c. 147, § 3, p. 510; R.S.1913, § 1812; C.S.1922, § 1759; C.S.1929, § 31-416.

If land outside the district will apparently benefit, the chairman of the board must petition the district court to annex it. Lost Creek Drainage Dist. v. Elsam, 188 Neb. 705, 199 N.W.2d 387 (1972).

Lands receiving greatest benefits are classified and assessed equally at one hundred. Petersen v. Thurston, 161 Neb. 758, 74 N.W.2d 528 (1956).

31-318 Maps, plans, and profiles; requisites; report; filing.

The maps hereinbefore provided for shall be drawn upon a scale sufficiently large to represent all the meanderings of the proposed improvements, and shall show the boundary lines of each lot, or tract of land, and of each street, road or railroad to be benefited thereby, the name of the owner of each lot or tract of land, as it then appeared on the deed records, the authority or company having in charge or controlling each public or corporate street, road or railroad, the distance in feet through each tract or parcel of land, the acreage thereof, and such other matters as the surveyor or engineer deems material. The profile shall show the surface, the grade lines, gradients, fixed and working sections. The report shall be filed with the board of supervisors of the district within sixty days after making such survey.

Source: Laws 1905, c. 161, § 9, p. 614; Laws 1909, c. 147, § 3, p. 511; R.S.1913, § 1813; C.S.1922, § 1760; C.S.1929, § 31-417.

Maps and profiles are required to be made. Petersen v. Thurston, 161 Neb. 758, 74 N.W.2d 528 (1956).

31-319 Drain commissioner; appointment; duties; tenure of office; oath; bond.

The board of supervisors of any district organized under sections 31-301 to 31-305 shall appoint some competent person to award all contracts contemplated in sections 31-301 to 31-369 to the lowest bidder, subject to the approval of the board of supervisors, except as herein otherwise provided, to be known as the drain commissioner. He shall hold his office for one year and until his successor is appointed and qualified. He shall have general superintendence of all works put under contract by the district, subject to the supervision and control of the board of supervisors. He shall report the same when completed according to the terms and stipulations of the contract, and certify the same to the board of supervisors, which shall review and accept or reject the work so completed. The drain commissioner shall, before entering upon the discharge of his duties, enter into bond with proper surety, subject to the approval of the board of supervisors, in any sum not less than two thousand dollars, nor more than ten thousand dollars, to the drainage district of which he shall be appointed, conditioned that he will faithfully and honestly perform all of the duties required of him by law, and deliver to his successor in office all instruments, papers, and documents that may have come to his hands by virtue of his office. He shall take and subscribe the oath required by section 31-308, which shall be endorsed upon his bond, and filed in the office of the county clerk of the county in which the district, or the greater part thereof, shall be situated.

Source: Laws 1905, c. 161, § 10, p. 616; R.S.1913, § 1814; C.S.1922, § 1761; C.S.1929, § 31-418.

31-320 Land outside of district; inclusion; conditions; procedure.

If, upon the filing of the report of the engineer, together with his estimates as provided in section 31-311, it shall appear that lands, other than those incorporated by the court in the district, will be benefited by the drainage improvements of the district, it shall be the duty of the chairman of the board of supervisors to file a petition in the district court of the county where the district was originally organized, containing a description of the lands, the name or names of the owners as they appear on the tax duplicate of the county in which the lands are situated and their place or places of residence, and alleging that such land will be benefited by the improvements and ought in justice bear its proportion of the expense and cost of such improvement, and that such land was not incorporated within the limits of the said drainage district as originally established by the court. If the names of the owners of any such tract or tracts of land are unknown, this fact shall be stated. The prayer of the petition shall be that such tract or tracts of land may be incorporated and made a part of the district. Upon the filing of such petition, duly verified, as herein provided, the clerk of the district court shall issue summons or notice to the parties interested as provided by section 31-303 with reference to the original petition for the establishment of the district, the same proceedings shall be had upon the petition and in the same court as upon the original petition for the establishment of the district, and the same provisions of law shall apply thereto insofar as the same are applicable. Upon the return day of such notice or summons, or at any other time to which the court shall adjourn the cause, the court shall have jurisdiction to try and determine such matter at chambers and to make all necessary orders, judgments and decrees. The owners of such lands may by writing, duly verified, waive the issuance and service of all notice or process and consent that the court may at once upon the filing of the petition and

waiver enter the necessary decree. Upon filing the petition it shall be the duty of the clerk to docket the cause, as a proceeding in and part of the original cause for the establishment of the district. After entering of the decree of the court, the land and all of the parties so brought into the district shall be subject to the same provisions of law as would have applied to them had they been incorporated in the original petition and decree entered thereon; *Provided*, no land shall be included in such drainage district or be subject to taxation for the drainage except wet, submerged and swamp lands or land within a district subject to overflow.

Source: Laws 1905, c. 161, § 11, p. 616; R.S.1913, § 1815; C.S.1922, § 1762; C.S.1929, § 31-419.

If land outside the district will apparently benefit, the chairman of the board must petition the district court to annex it. Lost Creek Drainage Dist. v. Elsam, 188 Neb. 705, 199 N.W.2d 387 (1972).

Lands benefited may be brought in after organization. Petersen v. Thurston, 157 Neb. 833, 62 N.W.2d 68 (1954).

Lands subject to overflow from accumulated waters arising from rain and snow are within a district subject to overflow, and it was proper to include them in drainage district. Shepherdson v. Fagin, 116 Neb. 806, 219 N.W. 187 (1928).

31-321 Board of supervisors; right-of-way; right of eminent domain; procedure.

When the members of the board of supervisors, by order entered of record, have agreed upon a location or route for the ditch or ditches and formulated a plan for the other improvements contemplated, then the board in behalf of such district, shall have the right to acquire and if need be condemn any real estate, easement, or franchise, whether the same be within the limits of such district or outside its boundaries, that may be necessary for a right-of-way over or upon which to construct and maintain the ditches, dikes, drains, and other works contemplated by any of the provisions of sections 31-301 to 31-369. The procedure to condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724.

Source: Laws 1905, c. 161, § 12, p. 618; R.S.1913, § 1816; C.S.1922, § 1763; C.S.1929, § 31-420; R.S.1943, § 31-321; Laws 1951, c. 101, § 72, p. 479.

District is given power to acquire easements for rights-of-way. County of Johnson v. Weber, 160 Neb. 432, 70 N.W.2d 440 (1955).

District is given the power of eminent domain to acquire rights-of-way whether within or without the district. Latham v. Chicago, B. & Q. R. Co., 100 Neb. 173, 158 N.W. 923 (1916).

This and following section are constitutional. Drainage Dist. No. 1 of Pawnee County v. Chicago, B. & Q. R. Co., 96 Neb. 1, 146 N.W. 1055 (1914).

31-322 Right-of-way; obstruction in watercourses; condemnation; procedure.

The board of supervisors, in behalf of such district, shall have the right to acquire, and if need be, condemn in the same manner as is provided in section 31-321, any natural or artificial obstruction in any existing watercourse, and remove the same therefrom for the benefit of the district.

Source: Laws 1905, c. 161, § 12, p. 618; R.S.1913, § 1817; C.S.1922, § 1764; C.S.1929, § 31-421; R.S.1943, § 31-322; Laws 1951, c. 101, § 73, p. 480.

Act, as amended 1909, is constitutional, though it omits provisions for recovery of damages. Nemaha Valley Drainage Dist. No. 2 v. Marconnit, 90 Neb. 514, 134 N.W. 177 (1912).

31-323 Engineer's report; objections to classification and assessments; hearing; time.

Within ten days after the filing of the report of the engineer with the chairman of the board of supervisors of the drainage district, the chairman of the board shall call a meeting at some public place in the county in which the district was organized, at which meeting the board shall fix the time and place in the county, not more than fifty nor less than forty days from the day of such meeting, for the hearing of all objections to the report of such engineer, and to the classification of the lands and other property therein, and all objections made by the owner or owners of any land, property, easement or franchise upon which the engineer proposes an assessment for benefits. At such meeting the board shall determine whether the classification is fair and just, whether the proposed assessment exceeds the benefits accruing to their respective lands and property from the drainage improvements, and all other matters and things connected with the proposed classification and assessment of benefits, in any way affecting such lands and property.

Source: Laws 1905, c. 161, § 13, p. 619; Laws 1909, c. 147, § 4, p. 511; R.S.1913, § 1818; C.S.1922, § 1765; C.S.1929, § 31-422.

Hearing on apportionments of benefits is to cover all objections by an owner of lands upon which the engineer recommends an assessment of benefits. Lost Creek Drainage Dist. v. Elsam, 188 Neb. 705, 199 N.W.2d 387 (1972).

31-324 Engineer's report; notice of hearing; form; publication.

The board of supervisors shall give notice of the meeting provided for in section 31-323 by causing a publication thereof to be made once a week for two consecutive weeks in some newspaper published in each county in the district, the last publication to be at least ten days before the day set for the hearing. It shall not be necessary in such notice for the board to name the parties interested, and the following form shall be sufficient:

Notice is hereby given to all parties interested in the following described lands and property in .... County, Nebraska, (here describe the lands and property) included within (here insert name of drainage district) that the engineer heretofore appointed to make a topographical survey of such drainage district and maps and profiles thereof, and a complete plan for draining, reclaiming, and protecting such district and an estimate of the cost of the proposed drainage improvements, and to assess benefits to the property and lands in such drainage district and to classify the same, filed a report with the board of supervisors of (here insert the name of the drainage district) on the .... day of .... 20...., and you and each of you are hereby notified that you may file objections to such report within the time fixed by law.

....

Chairperson of the board of supervisors of Drainage District Number .... of .... County, Nebraska.

Source: Laws 1905, c. 161, § 13, p. 619; Laws 1909, c. 147, § 4, p. 512; R.S.1913, § 1819; C.S.1922, § 1766; C.S.1929, § 31-423; R.S. 1943, § 31-324; Laws 2004, LB 813, § 12.

Hearing on apportionments of benefits is in part to assess benefits to property in the district and to classify same. Lost Creek Drainage Dist. v. Elsam, 188 Neb. 705, 199 N.W.2d 387 (1972).

Assessment in excess of benefits, or without notice to owners, is void. Neal v. Vansickle, 72 Neb. 105, 100 N.W. 200 (1904).

31-325 Engineer's report; notice of hearing; record; contents; filing.

A copy of the above notice fixing the time and place of such hearing together with a resolution adopting the same shall be spread on the records of the board.

The reports of the engineer shall be spread at large on the minutes of the proceedings of the board of supervisors of the drainage district, and the maps and profiles shall be placed on file with the secretary of the board where all persons interested may have access to the same.

Source: Laws 1905, c. 161, § 13, p. 620; Laws 1909, c. 147, § 4, p. 512; R.S.1913, § 1820; C.S.1922, § 1767; C.S.1929, § 31-424.

31-326 Engineer's report; objections; procedure; pleadings; hearing; adjournment.

The drainage district by its attorney or any owner of land or other property in the district whose land or property may be affected thereby may file objections to the surveyor's report or to any item of the classification or the assessment of benefits therein set out, within ten days after the last day of publication of the notice provided for in section 31-324. All objections shall be heard by the board of supervisors fully and fairly and as speedily as may be to carry out liberally the purposes and needs of such drainage district. It shall not be necessary for the drainage district to file any answer or other pleadings to the objections, claims or other pleadings filed by such persons in answer to the proposed assessment as provided in this section, but such matters shall be deemed denied, and the drainage district shall have the right to interpose any matters in defense thereto which it may have. The board of supervisors may adjourn any hearing or hearings for good cause from day to day, or to some future day as it may deem best, and the property owners, for good cause shown by affidavit of themselves or agents, may have the hearings adjourned for a period not to exceed two weeks.

Source: Laws 1905, c. 161, § 14, p. 621; Laws 1909, c. 147, § 5, p. 513; R.S.1913, § 1821; C.S.1922, § 1768; C.S.1929, § 31-425.

Determination of board levying drainage assessments cannot be enjoined unless void, especially when adequate remedy exists at law. Richardson County v. Drainage Dist. No. 1 of Richardson County, 113 Neb. 662, 204 N.W. 376 (1925).

31-327 Engineer's report; objections; hearing; procedure; findings; powers of the board.

At the time and place fixed in the notice, the board of supervisors shall meet for the hearing of the objections. If it finds that due notice has not been given as required by section 31-324, it shall continue the hearing to a date to be fixed by the board, and order the publication of the notice as hereinbefore provided. When the board finds that due notice has been given, it shall proceed to hear any objection or objections that may have been filed upon which an issue has been made, and for that purpose shall have the power to subpoena, swear, and examine witnesses, and to do all things necessary and incidental to a proper hearing and adjudication of such issues. It shall examine the maps, profiles, plans and report of the engineer, the items of the estimated cost of the drainage improvement recommended, the classification of the land and property in the district, and the assessment of the benefits to the same as proposed by the engineer. The drainage board shall also have the power to establish the classification of the lands and property, and to determine and adjudicate, the total amount of the benefit that will accrue to each lot, tract, or parcel of land or other property in the district, from the drainage improvements. Whether an objection is sustained or overruled, the board may modify the report in any particular; but if the objections are overruled, the board may approve and confirm the report as to the property affected, and if it finds the classification of

assessment of benefits to the lands and other property to be in any respect inequitable, either less than or in excess of the benefits accruing to the lands and property from the drainage improvements, or in any particular unfair and unjust, it shall so order, shall thereupon so amend, adjust and equalize the classification and benefits as may appear fair, just and equitable to them. When the board has adjusted, equalized and determined the classification of, and assessment of total benefits to the lands and other property as above required, it shall enter an order confirming the same. All pleadings and other papers filed in the matter of such hearings shall be filed with the secretary of the board of supervisors. Subpoenas and other process shall be issued by the secretary, who shall be empowered to administer oaths to witnesses, and to certify to records and papers under the seal of the drainage district.

Source: Laws 1905, c. 161, § 15, p. 622; Laws 1909, c. 147, § 6, p. 513; Laws 1911, c. 144, § 4, p. 481; R.S.1913, § 1822; C.S.1922, § 1769; C.S.1929, § 31-426.

Members of boards are not disqualified because they own property; findings sustained. Nemaha Valley Drainage Dist. No. 2 v. Marconnit, 90 Neb. 514, 134 N.W. 177 (1912); Nemaha Valley Drainage Dist. No. 2 v. Skeen, 90 Neb. 510, 134 N.W. 184 (1912).

31-328 Engineer's report; objections; hearing; costs; how taxed.

The costs of the hearing in case of contest shall be taxed and assessed as follows:

(1) If the matter shall be determined by the board against the party's contention objecting to the assessment, all costs upon the hearing of his objections shall be adjudged against such objector; and the board of supervisors shall have the right to recover the same from such objector or objectors for the benefit of the drainage corporation in a civil action for that purpose before any court of competent jurisdiction in the name of the drainage corporation;

(2) In case the matter is finally determined by the board of supervisors partly in favor of and partly against the contention of any objector or objectors, the costs shall be apportioned between the drainage district and the objectors as the board shall deem just and equitable; and

(3) In case the contention of the objectors is wholly sustained and the matter is fully determined in their favor by the board, the costs shall be paid by the drainage district.

The fees allowed upon such hearing shall be the same as those now allowed upon the trial of civil actions in county court.

Source: Laws 1905, c. 161, § 16, p. 623; R.S.1913, § 1823; C.S.1922, § 1770; C.S.1929, § 31-427; R.S.1943, § 31-328; Laws 1972, LB 1032, § 206.

31-329 Engineer's report; objections; decision; appeal; bond; procedure.

Any person or corporation who has filed objections and had a hearing as herein provided for, feeling aggrieved by the decision and judgment of the board of supervisors, may appeal to the district court within and for the county in which the drainage district was originally established, upon giving a bond conditioned the same as in appeals to the district court as from civil actions in county court in this state and payable to the drainage district, and in addition thereto conditioned that he will pay all damages which may accrue to the drainage district by reason of such appeal. The bond shall be approved by the

secretary of the board of supervisors, and filed with the secretary within ten days after the rendition of the decision appealed from. Within ten days after the filing of the bond the secretary shall make and file a transcript of the proceedings appealed from, together with all the papers relating thereto, with the clerk of the district court in which said matter has been appealed. Upon the filing of the transcript and bond the district court shall have jurisdiction of the cause, and the same shall be docketed and filed as in appeals in other civil actions to such court. The court shall hear and determine all such objections in a summary manner as in a case in equity, and shall increase or reduce the amount of benefit on any tract where the same may be required in order to make the apportionment equitable. All objections that may be filed shall be heard and determined by the court as one proceeding, and only one transcript of the final order of the board of supervisors, fixing the apportionments or benefits, shall be required. The clerk of the district court shall forthwith certify the decision of the court to the board of supervisors, which shall take such action as may be rendered necessary by such decisions.

Source: Laws 1905, c. 161, § 17, p. 623; Laws 1909, c. 147, § 7, p. 515; R.S.1913, § 1824; C.S.1922, § 1771; C.S.1929, § 31-428; R.S. 1943, § 31-329; Laws 1972, LB 1032, § 207.

Appeals from apportionment of benefits and classification may be taken to district court which is to determine all objections in a summary manner as in equity. Lost Creek Drainage Dist. v. Elsam, 188 Neb. 705, 199 N.W.2d 387 (1972).

Upon appeal to district court from board of supervisors of a drainage district, objections are heard and determined as in equity and upon appeal to the Supreme Court, cause is tried de novo. Drainage Dist. No. 10 v. Canaday, 188 Neb. 701, 199 N.W.2d 385 (1972).

Case is tried de novo upon appeal to the Supreme Court. Petersen v. Thurston, 161 Neb. 758, 74 N.W.2d 528 (1956).

Filing of transcript of proceedings upon objections of appellant gives jurisdiction. Nemaha Valley Drainage Dist. No. 2 v. Marconnit, 90 Neb. 514, 134 N.W. 177 (1912).

On appeal, district is the moving party and has the burden of proof. Drainage Dist. No. 1 of Richardson County v. Bowker, 89 Neb. 230, 131 N.W. 208 (1911).

Judicial hearing without a jury to determine special assessment is constitutional. Drainage Dist. No. 1 of Richardson County v. Richardson County, 86 Neb. 355, 125 N.W. 796 (1910).

31-330 Assessments levied; interest on bonds; bonds; installments; reassessment of benefits; return of surplus.

As soon as the board of supervisors has adjudicated, fixed, and established the classification and benefits as provided by sections 31-327 to 31-329, it may at once levy a tax on the lands and other property in the district to which benefits have been assessed, equal in amount to the cost of such drainage works and improvements as estimated by the engineer and as modified and confirmed by the board, plus the actual expenses of organizing the district, the probable working and administrative expenses, and damages (as estimated by the board of supervisors) in the completion of the works and improvements, and the carrying out of the objects of the district. In case bonds are issued, as provided in section 31-336, then the amount of the interest (as estimated by the board of supervisors) which shall accrue on such bonds shall be included and added to the tax. The tax shall be apportioned to and levied on each tract of land or property in the district in proportion to the benefits assessed, and not in excess thereof. The board shall determine whether the tax shall be collected and paid in a single assessment, or by dividing into not to exceed twenty annual installments. If any assessment of benefits heretofore or hereafter made shall be found or declared to be invalid for any reason, either as to the whole assessment or the assessment as to any particular tract, interest, county, town or city, or other corporation, either to the whole of such assessment or to any part thereof, it shall be lawful and valid, and it shall be the duty of the board of the district to reassess such property or interest against which the former assess-

ment has been found and declared to be invalid, after giving notice and taking the same steps and following the same procedure as required in making the original assessment of benefits. Such reassessment of benefits shall be made so as to do justice to all property, parties and interests, and shall take into consideration and give credit for all payments made under the assessment which has been found and declared to be valid. A new report of benefits, as to the part declared to be invalid, shall be made against the property or interest that was released by the finding of invalidity of the former assessment. In case any such drainage district shall have accumulated funds over and above the necessary cost of construction and upkeep, the board of supervisors of such district in its discretion may cause so much of such accumulated funds as are not required to be apportioned to each tract of land or property in the district prorated accordingly and in proportion to the benefits assessed and collected, and such board shall draw warrants on the treasurer of the drainage district for the payment of such accumulated funds to the proper owners.

Source: Laws 1905, c. 161, § 18, p. 624; Laws 1907, c. 152, § 3, p. 468; Laws 1909, c. 147, § 8, p. 516; R.S.1913, § 1825; Laws 1915, c. 27, § 1, p. 89; C.S.1922, § 1772; Laws 1925, c. 130, § 1, p. 343; C.S.1929, § 31-429.

Provisions for tax levies refer to property within the district. Lost Creek Drainage Dist. v. Elsam, 188 Neb. 705, 199 N.W.2d 387 (1972).

Reassessment of benefits is provided for when original assessment is invalid. Shanahan v. Johnson, 170 Neb. 399, 102 N.W.2d 858 (1960).

Drainage district is a department of government with sovereign power of taxation and, being a creature of the Legislature, is one over which the Legislature has full power. Mooney v. Drainage District No. 1 of Richardson County, 134 Neb. 192, 278 N.W. 368 (1938).

31-331 Assessments; certificate of levy to county clerk; form.

The levy of the tax when so fixed and determined, shall be evidenced and certified by the board of supervisors to the county clerk of each county in which lands of the district are situated, which certificate shall be substantially in the following form:

State of Nebraska,)

)ss.

County of ....)

To ...., county clerk of the county:

This is to certify that by virtue of the provisions and terms of sections 31-330 and 31-331, the board of supervisors of (here insert name of drainage district) including lands and property in the counties of .... in the State of Nebraska, have determined to and do hereby levy the special tax provided for in such sections on the lands and property situated in your county, described in the following table, in which are (1) the names of owners of the lands and property as they appeared in the decree of the district court organizing the district or as then shown by the deed records of the county, (2) the description of the lands and property opposite the names of the owners, and (3) the amount of the tax levied on each tract of land or piece of property: (here insert table). The tax shall be collected and payable in .... annual installments, and the amount of each annual installment will be certified to you not later than September 1 in each year. Witness the signature of the chairperson of the board of supervisors, attested by the seal of the district and the signature of the secretary of the board on this .... day of .... A.D. 20.... .

....

Secretary (Seal) Chairperson

The county clerk shall file the certificate in his or her office and record the same.

Source: Laws 1907, c. 152, § 3, p. 468; Laws 1909, c. 147, § 8, p. 517; R.S.1913, § 1826; C.S.1922, § 1773; C.S.1929, § 31-430; R.S. 1943, § 31-331; Laws 1995, LB 589, § 6; Laws 2004, LB 813, § 13.

31-332 Additional assessments; notice of hearing; publication; erroneous assessments; correction.

If for any reason the cost of the drainage works and improvements exceeds the amount of the tax levied against the lands and property as above set out, the board of supervisors may levy such other and further installments as may be necessary to complete the works and improvements, but the total amount of all such levies and installments shall in no event exceed the total amount of benefits assessed to the lands and property in the district, and such additional cost shall be apportioned to the lots, tracts, lands and property in the same proportion as in the first apportionment; *Provided*, the board of supervisors shall first give notice thereof by causing a publication to be made once a week for two consecutive weeks in some newspaper published in each county in the district, the last publication to be at least ten days before the day set for hearing. The board of supervisors may correct erroneous assessments and grant relief therefrom, and may correct clerical or other manifest errors in the schedules of the apportionment of the cost discovered after certification to the county clerk.

Source: Laws 1909, c. 147, § 8, p. 517; R.S.1913, § 1827; C.S.1922, § 1774; C.S.1929, § 31-431.

Provisions for tax levies refer to property within the district. Lost Creek Drainage Dist. v. Elsam, 188 Neb. 705, 199 N.W.2d 387 (1972).

31-333 Drainage tax; levy; certificate; form; extension on tax books; collection.

The board of supervisors shall annually thereafter determine, order, and levy the amount of the installment of the tax hereinbefore named which shall become due and be collected during the year at the same time that county taxes are due and collected, and in case bonds are issued, the amount of the interest which will accrue on such bonds shall be included and added to the tax. The annual installment and levy shall be evidenced and certified by the board, on or before September 20, to the county clerk of each county in which lands of the district are situated, which certificate shall be substantially in the following form:

State of Nebraska,)
)ss.
County of ....)

To .... county clerk of the county:

This is to certify that by virtue of the provisions of sections 31-330 to 31-333, the board of supervisors of .... drainage district, including lands and property in the counties of .... in the State of Nebraska, have determined to and do hereby levy the annual installment of the total tax, heretofore certified to you under the direction of such sections, on the lands and property situated in your county described in the following table in which are (1) the names of the owners of such lands and properties as they appeared in the decree of the district court organizing the district or as shown by the certificate heretofore filed showing the total assessment against the property, (2) the description of the lands and property opposite the names of owners, and (3) the amount of the annual installment and interest levied on each tract of land or piece of property: (Here insert table). The installments of tax shall be collectible and payable the present year at the same time that county taxes are due and collected. Witness the signature of the chairperson of the board of supervisors and attested by the seal of the district and the signature of the secretary of the board this .... day of .... A.D. 20.... .

. . . .

Secretary (Seal) Chairperson

The certificate shall be filed in the office of the clerk, and the annual installment of the total tax so certified shall be extended by the county clerk on the tax books of the county against the real property, right-of-way, road, or property to be benefited, situated in such drainage district, in the same manner that other taxes are extended on the tax books of the county in a column under the heading of Drainage Tax, and the taxes shall be collected by the treasurer of the county in which the real property is situated on which the tax is levied at the same time and in the same manner that the county taxes on such property are collected. The county clerk shall be allowed the same fees as he or she receives for like services in other cases.

Source: Laws 1907, c. 152, § 3, p. 469; Laws 1909, c. 147, § 8, p. 518; R.S.1913, § 1828; C.S.1922, § 1775; C.S.1929, § 31-432; R.S. 1943, § 31-333; Laws 1961, c. 138, § 3, p. 397; Laws 1972, LB 1053, § 3; Laws 1992, LB 1063, § 24; Laws 1992, Second Spec. Sess., LB 1, § 24; Laws 1993, LB 734, § 35; Laws 1995, LB 452, § 8; Laws 1995, LB 589, § 7; Laws 2004, LB 813, § 14.

31-334 Drainage tax; levy insufficient; supplemental assessment; how levied and collected.

Whenever it shall appear to the satisfaction of the board of supervisors that the levy theretofore made will be insufficient to pay the cost of the improvement or to pay the interest and principal of the bonds which the district desires to issue to pay the cost of such improvement, and that therefor a supplemental assessment is necessary to be made as provided in section 31-332, the board shall, by a resolution duly passed and entered in the record of its proceedings, declare the amount of such deficit and the purpose to which such supplemental assessment should be applied, and shall thereupon cause a supplemental

assessment roll to be made, which shall apportion the amount necessary to be raised and declared as aforesaid upon the lands in the proportion of the former assessment, and shall set opposite each parcel of land (described by its legal description) the amount of such supplemental assessment expressed in dollars and cents. Upon such roll the real estate and the amounts of the several assessments may be described by current and usual abbreviations, if the board so desires. Thereupon the board shall proceed to enter judgment by confirmation upon such supplemental assessment roll, and such supplemental assessments shall be levied and certified in all respects as provided for herein. From time to time, and as often as occasion may arise, supplemental assessments may be levied as in this section provided. In the event that any supplemental assessment is levied before any bonds are issued by the district, it shall be divided into installments, payable when the installments of the first original assessment are payable, and shall be collected therewith, and together they shall constitute one fund against which drainage bonds may be issued as herein provided.

Source: Laws 1909, c. 149, § 2, p. 529; R.S.1913, § 1829; C.S.1922, § 1776; C.S.1929, § 31-433.

31-335 Streets, highways, and railroad property; assessment; tax; collection.

When any ditch, drain, improved watercourse, dike, levee or other drainage improvement, located and established under sections 31-301 to 31-369, crosses, drains, or protects either in whole or in part any street, highway, public or corporate road of any railroad, or benefits any or either of such streets, roads or railroads, the board of supervisors shall apportion and set off to the county or a township, if a county road, or to a company, if incorporated, or a railroad, and to a city or village, if a street or alley, a portion of the cost and expense of the whole drainage improvements, the same as to private individuals, and in proportion to the benefits conferred by such drainage improvements on such street, roads and railroads. Any apportionment of the cost and expenses of the drainage improvements that may be levied as a special tax or assessment against the property of any incorporated road, or any railroad, or any telegraph or telephone company for benefits accruing to the property of such corporations situated within the physical boundaries of such drainage district, shall be enforced and collected in the same manner that county taxes are enforced against them under the general revenue laws of the state. Any apportionment of the costs and expenses aforesaid to a county, township, city or village, shall be filed as a claim with the county, township, city or village clerk, as the case may be, and may be enforced and collected as other judgments against such county, township or municipal corporation are enforced and collected.

Source: Laws 1905, c. 161, § 19, p. 624; Laws 1909, c. 147, § 9, p. 520; R.S.1913, § 1830; C.S.1922, § 1777; C.S.1929, § 31-434; R.S. 1943, § 31-335; Laws 1972, LB 1053, § 4.

Creating liability against a village for benefits to streets and alleys for drainage improvement within a drainage district is not in contravention of the Constitution. Drainage District No. 1 of Lincoln County v. Village of Hershey, 145 Neb. 138, 15 N.W.2d 337 (1944).

Supervisors have power hereunder to assess railroad company. Drainage Dist. No. 1 of Pawnee County v. Chicago, B. & Q. R. Co., 96 Neb. 1, 146 N.W. 1055 (1914).

Section is constitutional. County property may be assessed for special improvements, and assessments should be charged to county and not township. Drainage Dist. No. 1 of Richardson County v. Richardson County, 86 Neb. 355, 125 N.W. 796 (1910).

31-336 Bonds; authority to issue; terms.

The board of supervisors may, if in its judgment it seems best, issue negotiable bonds (1) not to exceed the amount of the total tax levy certified to the county clerk or clerks as provided by law, (2) in denominations of not less than one hundred dollars, (3) bearing interest payable semiannually, (4) to mature at annual intervals in not to exceed twenty years, and (5) with both principal and interest payable at the office of the county treasurer of the county in which the drainage district was organized, or at some convenient banking house or trust company office to be named in the bonds. The bonds and interest coupons shall be executed in the name of the district, and shall be signed by the chairman of the board of supervisors, attested with the seal of the drainage district and by the signature of the secretary of the board. Such bonds shall be made to run for not more than twenty years, and in case they are made to mature at different times within such period, the assessment shall be divided into as many installments as there are different dates of maturity. The installments shall be numbered consecutively as issued, and bear date at the time of their issue.

Source: Laws 1905, c. 161, § 20, p. 625; Laws 1907, c. 152, § 4, p. 470; Laws 1909, c. 147, § 10, p. 520; R.S.1913, § 1831; C.S.1922, § 1778; C.S.1929, § 31-435; R.S.1943, § 31-336; Laws 1947, c. 15, § 15, p. 91; Laws 1969, c. 51, § 89, p. 330.

31-337 Bonds; maturity; recitals.

The maturity of all bonds shall be fixed on July 1 of the year in which they mature and shall contain a recital that the same were issued in accordance with the provisions of sections 31-336 to 31-348, and that they are to be paid out of a sinking fund to be created as provided in section 31-351.

Source: Laws 1905, c. 161, § 20, p. 626; Laws 1907, c. 152, § 4, p. 471; Laws 1909, c. 147, § 10, p. 521; R.S.1913, § 1832; C.S.1922, § 1779; C.S.1929, § 31-436.

31-338 Bonds; issuance; resolution required; payment; record; contents.

Before issuing any bonds under the provisions of sections 31-336 to 31-348, the board of supervisors of the district shall by resolution duly engrossed in the minutes of a meeting to be specially held for that purpose, order and direct the issue thereof, specifying their number, amount, rate of interest, date of maturity, and place of payment. Such minutes shall be engrossed on the record of the board of supervisors, which minutes and the record of bonds shall at all times be open to the inspection of all parties interested in the district, either as taxpayers or bondholders. Upon the payment of any bond, an entry shall be made in the records accordingly.

Source: Laws 1905, c. 161, § 20, p. 626; Laws 1907, c. 152, § 4, p. 71; Laws 1909, c. 147, § 10, p. 521; R.S.1913, § 1833; C.S.1922, § 1780; C.S.1929, § 31-437.

31-339 Bonds; sale; from what funds payable.

The bonds shall not be sold for less than par with accrued interest, shall show on their face the purpose for which they are issued, and shall be payable out of money derived from the drainage assessments or taxes.

Source: Laws 1907, c. 152, § 4, p. 471; Laws 1909, c. 147, § 10, p. 522; R.S.1913, § 1834; C.S.1922, § 1781; C.S.1929, § 31-438.

31-340 Bonds and interest; annual tax levy to pay at maturity.

It shall be the duty of the board of supervisors in making the annual tax levy as provided in section 31-333, to take into account the maturing bonds and interest on all bonds, and make ample provisions in advance for the payment thereof.

Source: Laws 1907, c. 152, § 4, p. 472; Laws 1909, c. 147, § 10, p. 522; R.S.1913, § 1835; C.S.1922, § 1782; C.S.1929, § 31-439.

31-341 Repealed. Laws 2001, LB 420, § 38.

31-342 Bonds; issuance; delivery of certified transcript.

The secretary of the board of supervisors of the drainage district in which bonds are issued shall furnish a duly certified transcript to the holder of any such bond on demand.

Source: Laws 1909, c. 147, § 10, p. 522; R.S.1913, § 1837; C.S.1922, § 1784; C.S.1929, § 31-441; R.S.1943, § 31-342; Laws 2001, LB 420, § 24.

31-343 Bonds; payment of levy by landowner; effect; record.

Before such bonds are issued any person or corporation whose land or property has been assessed for benefits by the district may pay the total amount of the cost and expenses apportioned to and levied as a tax against such land and property or any lot, tract, or subdivision thereof as set out in the assessment roll. The amount of bonds to be issued shall be reduced by the amount thus paid. When such payment has been made to the board of supervisors, it shall place the sum so received in the depository provided for in section 31-350, and shall give to such owner an acquittance showing such payment. The lands and property upon which payment has been made shall be released from the lien of such drainage tax, and the bonds and interest thereon shall be chargeable solely against the lots, tracts, land and property upon which such payment has not been made. The drainage board shall certify to the county clerk a list of the lands and property upon which such payment has been made, which list shall be filed and recorded in the office of the county clerk.

Source: Laws 1905, c. 161, § 20, p. 627; Laws 1907, c. 152, § 4, p. 472; Laws 1909, c. 147, § 10, p. 522; R.S.1913, § 1838; C.S.1922, § 1785; C.S.1929, § 31-442.

31-344 Bonds; issuance; resolution; contents; declarations.

Before issuing any bonds the board shall pass a formal resolution in which shall be found and declared (1) the total amount of the tax as confirmed (both by the original and the supplemented assessment, if any), (2) the total amount of the deductions, if any, thereon, (3) the estimated cost of collection, and (4) the total amount of the net tax available for the payment of the principal and the interest of the bonds the district intends to issue.

Source: Laws 1909, c. 149, § 1, p. 528; R.S.1913, § 1839; C.S.1922, § 1786; C.S.1929, § 31-443.

31-345 Bonds; issuance; resolution; contents; pledge of funds.

The board shall then, in such resolution, divide the total levy theretofore made into convenient installments, and opposite each shall set the year in which they shall become payable respectively. The board shall then authorize the bonds which the district proposes to issue, fixing the terms, date and maturities thereof in such a manner that the installments of the tax will be sufficient to pay the corresponding installments of bonds as and when they become due. In the same resolution the board shall provide that in due time, manner and season it will cause the annual levy to be made in compliance with such resolution, and thereupon the fund, to the extent that it may be necessary to pay the bonds, shall be pledged and hypothecated to the payment of the bonds, which pledge and hypothecation, to the amount so expressed and declared, shall be superior to any other charge against the same.

Source: Laws 1909, c. 149, § 1, p. 528; R.S.1913, § 1840; C.S.1922, § 1787; C.S.1929, § 31-444.

31-346 Board of supervisors; power to borrow money; purpose; limitation.

Before funds can be secured by the levy of a tax or the sale of bonds, the board of supervisors of such drainage district shall have power to borrow money and pledge the credit of the district for the payment of the same, with interest, in any sum not to exceed five thousand dollars, to pay the necessary cost and expenses of the organization and incorporation of the district and all other legitimate charges and expenses incurred by the board and its officers and employees in performing the services and duties required of them by sections 31-301 to 31-369.

Source: Laws 1909, c. 147, § 10, p. 523; R.S.1913, § 1841; C.S.1922, § 1788; C.S.1929, § 31-445.

31-347 Bonds; sale; how made.

The board may sell the bonds from time to time in such quantities as may be necessary and most advantageous, to raise the money for the construction of the ditches and works, the acquisition of rights-of-way and property, and otherwise to fully carry out the objects and purposes of sections 31-301 to 31-369. Before making any sale the board shall at a meeting, by resolution, declare its intention to sell a specified amount of the bonds, and the day and hour and place of such sale, and shall cause such resolution to be entered in the minutes, and notice of the sale to be given by publication thereof at least twenty days in a daily newspaper published in the city of Lincoln, and in any other newspaper, at its discretion. The notice shall state that sealed proposals will be received by the board at its office, for the purchase of bonds until the day and hour named in the resolution. At the time appointed the board shall open the proposals and award the purchase of the bonds to the highest responsible bidder, and may reject all bids; but the board shall in no event sell any of the bonds for less than par.

Source: Laws 1905, c. 161, § 22, p. 627; Laws 1907, c. 152, § 5, p. 472; R.S.1913, § 1842; C.S.1922, § 1789; C.S.1929, § 31-446.

31-348 Bonds; sale; record.

The secretary shall keep a record of the bonds sold, their number, the date of sale, the price received, and the name of the purchaser.

Source: Laws 1905, c. 161, § 20, p. 626; Laws 1907, c. 152, § 5, p. 472; R.S.1913, § 1843; C.S.1922, § 1790; C.S.1929, § 31-447.

31-349 Bonds; sale; proceeds; use.

The proceeds of the sale of bonds, or any of them, shall be used to pay for the works and improvements in the drainage of the district, and such costs, expenses, fees and salaries as may be authorized by law.

Source: Laws 1907, c. 152, § 5, p. 472; R.S.1913, § 1844; C.S.1922, § 1791; C.S.1929, § 31-448.

31-350 Bonds; sale; proceeds; deposits and withdrawals.

The money derived from the sale of any bonds shall be deposited by the board of supervisors with some bank or trust company in any county in the district under such conditions as the board may prescribe, and may be withdrawn from such depository when ordered by the board on check or warrant signed by the chairman and countersigned by the secretary. Such depository shall execute and deliver to the board of supervisors of the drainage district a bond with good and sufficient securities, to be approved by the board of supervisors, conditioned that the depository shall account for, safely keep, and pay over, as required by law and as ordered by the board of supervisors, any and all money received by such depository on account for the drainage district.

Source: Laws 1907, c. 152, § 5, p. 473; R.S.1913, § 1845; C.S.1922, § 1792; C.S.1929, § 31-449.

31-351 Assessments; lien; interest on delinquent assessments; collection; sinking fund to retire bonds.

All the assessments on real property and easements shall be a lien against the property assessed from and after the first Monday in April in the year in which it is assessed and shall draw interest at the rate of nine percent per annum from May 1 of the year following said assessment, and such lien is not removed until the assessments are paid or the property sold for the payment thereof. It shall be the duty of the county treasurers to collect such assessments in the same manner as other taxes against real estate are collected, and the revenue laws of the state for the collection and sale of land for such taxes are hereby made applicable to the collection of assessments under sections 31-301 to 31-369. When bonds have been issued by the drainage district, the taxes so collected to pay the same shall constitute a sinking fund to be used for the payment of such bonds and the interest thereon.

Source: Laws 1905, c. 161, § 21, p. 627; R.S.1913, § 1846; C.S.1922, § 1793; C.S.1929, § 31-450; Laws 1933, c. 136, § 24, p. 537; C.S.Supp.,1941, § 31-450.

31-352 Watercourses; cleaning and changing.

In order to effect the drainage of the district, the board is authorized to clean out and remove all obstructions from the bed of any stream, creek, bayou, lagoon or other watercourse in the district; to straighten or shorten and deepen or widen the course of any stream or to abandon the bed of any stream and

construct a new channel therefor; and to fill up any channel, or part of a channel, of any stream, creek, bayou, or other watercourse, in order to turn the direction of the volume of water, or to concentrate the water, so as to deepen and form a main channel.

Source: Laws 1905, c. 161, § 23, p. 628; R.S.1913, § 1847; C.S.1922, § 1794; C.S.1929, § 31-451.

Drainage district may be required to construct bridge occasioned by reason of failure to keep its drainage system in repair. Ritter v. Drainage Dist. No. 1, 148 Neb. 873, 29 N.W.2d 782 (1947).

Right of supervisors to keep drainage ditch in repair includes the right to straighten its channel or lengthen and better its outlet. Richardson County v. Drainage District No. 1 of Richardson County, 113 Neb. 662, 204 N.W. 376 (1925).

31-353 Crossing of highways or railroads; mutual agreement; condemnation.

The board shall have the power to construct the works across any street, avenue, highway, railway, canal, ditch or flume which the route of the ditches may intersect or cross, in such manner as to afford security for life and property, but the board shall restore the same, when so crossed or intersected, to its former state as nearly as may be, or in a manner not to impair its usefulness unnecessarily. Every company whose railroad shall be intersected or crossed by the works shall unite with the board in forming such intersections and crossings, and shall grant the privilege aforesaid. If such railroad company and the board, or the owners and controllers of such property, thing or franchise so to be crossed, cannot agree upon the amount to be paid therefor, or the points or the manner of such crossings, the same shall be ascertained and determined in all respects as is provided in respect to the taking of land.

Source: Laws 1905, c. 161, § 23, p. 628; R.S.1913, § 1848; C.S.1922, § 1795; C.S.1929, § 31-452.

Where erosion destroys highway and bridges over drainage ditch, drainage district is required to restore bridges and their approaches in such manner as to permit the maintenance of public highway over and across the same. Ritter v. Drainage Dist. No. 1, 148 Neb. 873, 29 N.W.2d 782 (1947).

If old bridge is rendered unnecessary, county must maintain. Richardson County ex rel. Sheehan v. Drainage Dist. No. 1 of Richardson County, 92 Neb. 776, 139 N.W. 648 (1913).

District must maintain bridge over a ditch crossing a highway. State ex rel. Hutter v. Papillion Drainage Dist., 89 Neb. 808, 132 N.W. 398 (1911).

31-354 Public lands; grant of right-of-way.

The right-of-way is hereby given, dedicated and set apart, to locate, construct and maintain such works over and through any of the lands which are now or may be the property of the state.

Source: Laws 1905, c. 161, § 23, p. 629; R.S.1913, § 1849; C.S.1922, § 1796; C.S.1929, § 31-453.

31-355 Bids for construction; award of contract; conditions; supervision of work.

(1) After the board of supervisors has certified the total levy of the costs and expenses of the drainage improvements to the county clerk as directed by law, it may proceed to let a contract for the construction of such improvements. The board shall give notice of its intention to let such contract by publication thereof for twenty days in the newspapers of general circulation in the county or counties in which the drainage district is situated and in such other newspapers as it may deem advisable. The notice shall call for sealed bids for the construction of such improvements or any part thereof, notify the public of

the time and place where such bids will be received and opened, and notify the public where the plans and specifications may be seen. On the day fixed, the board shall open and consider the bids and may let the contract for the whole work, or any part thereof, to the lowest responsible bidder, may reject any and all bids and readvertise for proposals, or may proceed to construct the work under its own superintendent. Contract for the purchase of materials shall be awarded to the lowest responsible bidder. Except as provided in subsection (2) of this section, the person to whom a contract is awarded shall enter into a bond with good and sufficient surety in a sum not less than twenty-five percent of the contract price, conditioned for the faithful performance of such contract. The work shall be done under the direction and to the satisfaction of the drain commissioner, subject to the approval of the board.

(2) If a contract, the provisions of which are limited to the purchase of supplies or materials, is entered into pursuant to this section and if the amount of the contract is fifty thousand dollars or less, the bidder shall furnish the county with an irrevocable letter of credit, a certified check upon a solvent bank, or a performance bond in a guaranty company qualified to do business in Nebraska, as prescribed by and in a sum determined by the county board of supervisors, conditioned for the faithful performance of such contract.

Source: Laws 1905, c. 161, § 24, p. 629; Laws 1909, c. 147, § 11, p. 523; Laws 1911, c. 144, § 5, p. 483; R.S.1913, § 1850; C.S.1922, § 1797; C.S.1929, § 31-454; R.S.1943, § 31-355; Laws 1987, LB 211, § 4.

31-356 Sections, how construed; limitation on granted powers.

None of the provisions of sections 31-301 to 31-369 shall be construed as repealing or in anywise modifying the provisions of any other law relating to the subject of draining, reclaiming or protecting swamp, overflowed or submerged lands. Nothing herein contained shall be deemed to authorize any person or persons to divert the waters of any river, creek, stream, canal or ditch from its channel to the detriment of any person or persons having any interest in such river, creek, stream, canal or ditch, or the waters therein, unless previous compensation be ascertained and paid therefor, under the laws of this state authorizing the taking of private property for public use.

Source: Laws 1905, c. 161, § 25, p. 630; R.S.1913, § 1851; C.S.1922, § 1798; C.S.1929, § 31-455.

31-357 Joint outlet of two districts; cost of improvements; how allocated.

When two or more districts shall have their outlet or discharge into the same natural watercourse or stream, each district shall be assessed for the cost of such work in the same ratio to such total cost as the discharge of waters of such district bears to the combined discharge of waters of the several districts emptying into such natural watercourse or stream; but no district shall be liable to contribute for any improvement or costs and expenses incurred in improving such natural watercourse or stream above the point of discharge of the waters of such district into the same.

Source: Laws 1905, c. 161, § 26, p. 630; R.S.1913, § 1852; C.S.1922, § 1799; C.S.1929, § 31-456.

Drainage district cannot be released from private property rights established by judgment by subsequent legislation. Mooney v. Drainage Dist. No. 1 of Richardson County, 134 Neb. 192, 278 N.W. 368 (1938), reversing on rehearing, 133 Neb. 197, 274 N.W. 467 (1937).

Above section is not of such vital importance as to form inducement to passage of remainder of law, and even if invalid, would not excuse a duty enjoined by valid portion. Mooney v. Drainage District No. 1 of Richardson County, 126 Neb. 219, 252 N.W. 910 (1934).

31-358 Ditches, drains, or watercourses; use by landowners.

The owner of any land, lot or premises that have been assessed for the payment of the cost of the location and construction of any ditch, drain or watercourse, as hereinbefore provided, shall have the right to use the ditch, drain or watercourse as an outlet for lateral drains from said land, lot or premises.

Source: Laws 1905, c. 161, § 27, p. 631; R.S.1913, § 1853; C.S.1922, § 1800; C.S.1929, § 31-457.

This section is only special provision conferring special rights in the use of drainage ditches, and does not authorize use for purpose of irrigation. Drainage Dist. No. 1 v. Suburban Irr. Dist., 139 Neb. 333, 297 N.W. 645 (1941).

31-359 Subdistricts; creation by mutual agreement, district court action; procedure.

If any person who owns land within the drainage district which has been assessed for benefits, and which is separated from the ditch, drain or watercourse for which it has been assessed, by the land of another or others, shall desire to ditch or drain his land across the land of such other or others into such ditch, drain or watercourse, and shall be unable to agree with such other or others on the terms and conditions on which he may enter upon their lands and construct such drains or ditch, he may proceed in the manner herein provided, and the ditch or drain which he shall construct or cause to be constructed shall be considered to be conducive to the public health, welfare, convenience and utility to promote which the drainage district was established. He may file his petition with the clerk of the district court asking the court to establish a subdistrict within the limits of the original district for the purpose of securing more complete drainage, describing the lands to be affected thereby by metes and bounds, or otherwise, so as to convey an intelligent description of such lands; and all proceedings shall be the same as herein provided for the establishment, formation and construction of original districts and improvement thereof, including the assessment of damages, and the assessment of benefits. When established and constructed, it shall become and be a part of the drainage system of such drainage district, and be under the control and supervision of the board of supervisors.

Source: Laws 1905, c. 161, § 28, p. 631; R.S.1913, § 1854; C.S.1922, § 1801; C.S.1929, § 31-458.

31-360 Treasurer; duties; collection of assessments; disbursement.

The treasurer of the county in which the drainage district, or the largest portion thereof, is situated, shall be ex officio treasurer of the district for the purposes of collecting and disbursing taxes or assessments. The treasurers of the counties in which the smaller parts of the district shall be situated shall pay over to him any and all funds collected and paid over to them for the benefit of the drainage district, and shall take the receipt of the treasurer therefor in duplicate. The original receipt the treasurer paying the money shall keep for his own protection, and the duplicate shall be filed in the office of the clerk of the county of which the person receiving such money shall be treasurer. It shall be

the duty of the treasurer, who is ex officio treasurer of the drainage district, to pay any money in his hands, collected as aforesaid, upon warrants signed by the chairman and attested by the secretary of the board of supervisors of the district, when the same shall be presented for payment.

Source: Laws 1905, c. 161, § 29, p. 632; R.S.1913, § 1855; C.S.1922, § 1802; C.S.1929, § 31-459.

County treasurer is ex officio treasurer of drainage district, which has no treasurer of its own. School District No. 22 of Harlan County v. Harlan County, 127 Neb. 4, 254 N.W. 701 (1934).

Drainage district is entitled to interest obtained by the county from the fund in the hands of treasurer as ex officio treasurer of the district. Nemaha Valley Drainage District No. 2 of Nemaha County v. Nemaha County, 100 Neb. 64, 158 N.W. 438 (1916).

31-361 Drainage district warrants; form.

All warrants issued by the board of supervisors of any drainage district shall be in the following form:

$ .... No. ....

Treasurer of the County of ....

Pay to .... dollars out of any money in the treasury belonging to .... Drainage District in the County of .... Given at the town of ...., State of Nebraska, by order of the board of supervisors of .... Drainage District.

Attest:

....

Secretary Chairman

Source: Laws 1905, c. 161, § 29, p. 632; R.S.1913, § 1856; C.S.1922, § 1803; C.S.1929, § 31-460.

31-362 Warrants; laws governing county warrants applicable.

The law of this state under which county warrants are issued, sold, transferred, assigned, presented for payment and paid, shall apply to all warrants issued by virtue of the provisions of sections 31-301 to 31-369.

Source: Laws 1905, c. 161, § 30, p. 632; R.S.1913, § 1857; C.S.1922, § 1804; C.S.1929, § 31-461.

31-363 Officers and employees; salaries.

The board of supervisors, except where otherwise provided, shall, by resolution, at the time of hiring or appointing, provide for the compensation for work done and necessary expenses incurred by any officer, engineer, attorney, or other employee, and shall also pay the fees of all court and county officers who may by virtue of sections 31-301 to 31-369 render service to the district.

Source: Laws 1905, c. 161, § 31, p. 632; Laws 1909, c. 147, § 12, p. 524; R.S.1913, § 1858; C.S.1922, § 1805; C.S.1929, § 31-462.

County is entitled to retain, as a part of its general fund, fees fixed by statute for all taxes and special assessments collected by county treasurer for drainage district. Nemaha Valley Drainage District No. 2 of Nemaha County v. Nemaha County, 100 Neb. 64, 158 N.W. 438 (1916).

31-364 Installations; repairs; assessment; tax levy; procedure.

If at any time after the final construction of such improvement the same shall become out of repair, obstructed, inefficient, or defective from any cause, except such as are the result of the use of said improvements as a joint outlet for other systems of drainage improvements, the board of supervisors, if in its

discretion it is practicable and feasible to make such repairs, remove such obstructions, and correct such inefficiencies, may order an assessment upon the lands and property benefited by the drainage system, for the purpose of placing the same in proper and suitable condition for drainage purposes, using the original assessment upon the property in the district as a basis to ascertain the ratio that each separate tract or lot of land or property bears to the whole amount to be levied. The board shall fix and determine the amount of the assessment or tax that shall be levied against each separate piece of property in the district, which assessment shall be limited to the amount necessary to make and complete such repairs, remove such obstructions, or remedy any such defect or defects, and shall be levied and collected in the same manner as the other assessments for the location, construction and operation of said system of drainage are levied and collected as provided in sections 31-301 to 31-369; *Provided, however*, the board of supervisors of any such district, if it deems advisable, or is ordered so to do by a majority vote at a landowners meeting of the district, instead of proceeding as above mentioned, shall, when it is found that funds are necessary for minor repairs and maintenance of its drains or ditches, or for the administration of the affairs of the district, or for upkeep or protection of its tools and machinery, levy a tax annually, sufficient in amount to pay for such items of expense, without the estimate of an engineer, and certify the same to the proper authorities, and the same shall be extended on the tax rolls of the county and collected as other taxes. All such annual assessments shall be based upon the original apportionment of benefits to the lands and property within the district, and apportioned as the original assessment. The board of supervisors shall also determine and certify to the said authorities at that time the amount each tract of land or separate property shall pay as its proportion of the funds so found necessary, and levied for said purposes. If the repair is made necessary by the act or negligence of the owner of any land or other property through which the improvement is constructed or by the act or negligence of his or its agent or employee, or if the same is filled and obstructed by the cattle, hogs, or other stock of such owner, employee or agent, then the cost thereof shall be assessed and levied against the lands or property of such owner alone.

Source: Laws 1905, c. 161, § 32, p. 633; R.S.1913, § 1859; C.S.1922, § 1806; Laws 1929, c. 126, § 1, p. 475; C.S.1929, § 31-463; Laws 1935, c. 74, § 1, p. 258; C.S.Supp.,1941, § 31-463.

Provisions for tax levies refer to property within the district. Lost Creek Drainage Dist. v. Elsam, 188 Neb. 705, 199 N.W.2d 387 (1972).

Board of supervisors was given power to order an assessment for the purpose of making repairs, even though district was dissolved by expiration of charter. Wellensiek v. Drainage Dist. No. 1, 172 Neb. 869, 112 N.W.2d 267 (1961).

A drainage district organized by proceedings in district court is required to repair its drainage system which has become out of repair, obstructed, inefficient, or defective from any cause. Ritter v. Drainage Dist. No. 1, 148 Neb. 873, 29 N.W.2d 782 (1947).

A landowner who, with his predecessors in title, has accepted the benefits of a legally organized drainage system for thirty years, and has paid all preceding assessments of taxes against his property for the construction, maintenance and repair of the drainage system, is estopped to question the validity of an order making an eleventh supplemental assessment. Engles v. Drainage District No. 1, 142 Neb. 876, 8 N.W.2d 166 (1943).

Legislature, by amendatory act, could not relieve district from duty to enlarge outlet to its drainage system imposed by court order. Mooney v. Drainage District No. 1 of Richardson County, 134 Neb. 192, 278 N.W. 368 (1938).

Enlargement of outlet of drainage district is improvement and repair within statute imposing mandatory duty on drainage district to keep system in condition. Mooney v. Drainage District No. 1 of Richardson County, 126 Neb. 219, 252 N.W. 910 (1934).

Right of supervisors to keep drainage ditch in repair includes the right to straighten its channel or lengthen and better its outlet. Richardson County v. Drainage District No. 1 of Richardson County, 113 Neb. 662, 204 N.W. 376 (1925).

31-365 Care of ditches; overseers; appointment; duties.

For the purpose of preserving any ditch, drain, dike, or other works constructed or erected under the provisions of sections 31-301 to 31-369, the board

of supervisors shall have the power to appoint not more than three overseers of the respective districts, who shall hold their offices for the term of one year, whose duty it shall be to keep the ditches, drains, dikes, and other works erected or constructed for the reclamation of the lands in the drainage district, in good repair, and remove all obstructions from all ditches, drains, or watercourses within their respective districts. It shall also be the duty of the overseers to cause the arrest of all persons who shall be known to have filled up, or put any timber or brush into, or to have in any way obstructed any ditch, drain or watercourse, or have damaged any dike, or other work erected or constructed for the reclamation of lands as aforesaid, within their respective districts.

Source: Laws 1905, c. 161, § 33, p. 633; R.S.1913, § 1860; C.S.1922, § 1807; C.S.1929, § 31-464; R.S.1943, § 31-365; Laws 1972, LB 1032, § 208.

A drainage district organized by proceedings in district court is required to remove all obstructions from its ditches and keep its works in good repair. Ritter v. Drainage Dist. No. 1, 148 Neb. 873, 29 N.W.2d 782 (1947).

Duty to maintain drainage ditch free from obstructions shows legislative intent not to permit maintenance of check for irrigation. Drainage District No. 1 v. Suburban Irr. Dist., 139 Neb. 333, 297 N.W. 645 (1941).

It is duty of the board of supervisors of a drainage district to repair ditches which become ineffective. Ritter v. Drainage Dist. No. 1 of Otoe and Johnson Counties, 137 Neb. 866, 291 N.W. 718 (1940).

Court may order drainage district to enlarge outlet to drainage system to provide effective drainage. Mooney v. Drainage District No. 1 of Richardson County, 134 Neb. 192, 278 N.W. 368 (1938).

31-366 Injuring or obstructing ditch, drain, or watercourse; penalty.

If any person shall willfully obstruct or injure any ditch, drain, or watercourse, or damage or destroy any dike or other work constructed under the provisions of sections 31-301 to 31-369, he shall be liable to the drainage district for the full amount of the injury occasioned by the damage thereto, the same to be recovered by a civil action in the name of the district. In addition thereto he shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not exceeding the sum of one hundred dollars.

Source: Laws 1905, c. 161, § 34, p. 634; R.S.1913, § 1861; C.S.1922, § 1808; C.S.1929, § 31-465.

31-367 Sections, how construed; judgments and decisions, effect; irregularities, rights of parties aggrieved.

Sections 31-301 to 31-369 shall be liberally construed to promote the drainage and reclamation of wet, overflowed or submerged lands. The establishment of said corporation, and the collection of assessments, shall not be defeated by reason of any defect in the proceedings occurring prior to the judgment of the court, or of the board of supervisors confirming and establishing the assessment of benefits and injuries, but such judgment shall be conclusive and final that all prior proceedings were regular and according to law. No person shall be permitted to take advantage of any error, defect, or informality, unless the person complaining thereof is directly affected thereby, at any stage of the proceedings. If the court or board of supervisors shall deem it just to release any person, or modify his assessment or liability, it shall in no manner affect the right or liability of any other person.

Source: Laws 1905, c. 161, § 35, p. 634; R.S.1913, § 1862; C.S.1922, § 1809; C.S.1929, § 31-466.

Sections 31-301 to 31-369 shall be liberally construed to promote drainage and judgments of court or board of supervisors establishing assessments of benefits and injuries shall be conclusive that all prior proceedings were regular and lawful. Only a person directly affected may take advantage of any error or defect, and modification as to his assessment shall not affect right or liability of another. Lost Creek Drainage Dist. v. Elsam, 188 Neb. 705, 199 N.W.2d 387 (1972).

31-368 Assessments; irregularities; effect; injunction, when allowed.

The collection of assessments to be levied to pay for the location, construction, maintenance or repair of any ditch, levee, dike or watercourse, shall not be enjoined or declared void, nor shall such assessment be set aside in consequence of any error, omission, or irregularity committed or appearing in any of the proceedings provided for in sections 31-301 to 31-369. No injunction shall be allowed restraining the collection of any assessment until the party complaining shall first pay to the county treasurer the amount of his assessment, which amount so paid may be recovered from the district in an action brought for that purpose in case the injunction is made perpetual.

Source: Laws 1905, c. 161, § 36, p. 635; R.S.1913, § 1863; C.S.1922, § 1810; C.S.1929, § 31-467.

Before injunction can be allowed, party complaining is required to first pay to county treasurer amount of assessment. Richardson County v. Drainage District No. 1 of Richardson County, 113 Neb. 662, 204 N.W. 376 (1925).

Constitutionality raised but not determined; even if void, invalidity would not render entire act void. Drainage District No. 1 of Pawnee County v. Chicago, B. & Q. R. Co., 96 Neb. 1, 146 N.W. 1055 (1914).

31-369 Drainage district; name; corporate powers; liabilities.

Every district organized under the provisions of sections 31-301 to 31-369 shall be a body politic and corporate and shall be known by the corporate name of Drainage District Number .... of .... County, and shall have power and authority to take and hold real and personal property necessary for its use, to make contracts, to sue and be sued, have and use a corporate seal, and exercise any and all other powers, as a corporation, necessary to carry out the purposes of said sections. All such districts shall be liable for all injuries and damages, caused by the construction of said drainage improvements, arising by virtue of contract or tort.

Source: Laws 1905, c. 161, § 37, p. 635; Laws 1911, c. 144, § 6, p. 483; R.S.1913, § 1864; C.S.1922, § 1811; C.S.1929, § 31-468.

District was liable for all damages caused by construction of improvement. Wellensiek v. Drainage Dist. No. 1, 172 Neb. 869, 112 N.W.2d 267 (1961).

District is liable for damages caused by negligence in construction or maintenance. Miller v. Drainage Dist. No. 1 of Richardson County, 112 Neb. 206, 199 N.W. 28 (1924).

Damages to third parties are recoverable in proceedings other than those for the organization of the district. Latham v. Chicago, B. & Q. R. Co., 100 Neb. 173, 158 N.W. 923 (1916).

District is a public corporation and may sue and be sued. Nemaha Valley Drainage District No. 2 v. Marconnit, 90 Neb. 514, 134 N.W. 177 (1912).

31-370 Drainage improvements; election required, when; notice; publication; change in plans.

In all districts organized under sections 31-301 to 31-369, the board of directors, having first adopted detailed plans and specifications of the work proposed to be done, having made an estimate of the total cost of such contemplated improvement, and having filed such plans, specifications, and estimated cost with the clerk of the county having the largest area of land of any county to be included in the drainage district, shall then publish once each week for three consecutive weeks in a newspaper in each county of such district a notice of an election to vote on the question of proceeding with such work and incurring the necessary liability in all cases in which the estimate of the contemplated work equals seven percent of the taxable value of the lands

assessed for such improvement. The election shall be held in all respects as other elections provided for in sections 31-301 to 31-369 and 31-401 to 31-450. If the majority of the votes cast at such election are in favor of proceeding with the work and incurring the necessary liability, then the board, in proceeding therein, shall not incur indebtedness in a total sum in excess of the estimated cost so filed and published. No changes in such plans and specifications shall be made thereafter by the board which cost in the aggregate more than fifteen percent above such estimated cost. If a majority of the votes at such election vote against proceeding and incurring the liability, then the board shall abandon the work and shall thereupon certify to the county clerks a tax levy on all the tracts in the district by valuation sufficient to pay all the liabilities of the district to and including the date of such abandonment, and the levy shall be entered and collected as other general taxes and used to pay the liabilities.

Source: Laws 1929, c. 128, § 1, p. 478; C.S.1929, § 31-470; R.S.1943, § 31-370; Laws 1969, c. 247, § 1, p. 905; Laws 1979, LB 187, § 128; Laws 1992, LB 719A, § 121.

31-371 Refunding bonds; issuance; power of board; limitation; interest; term.

The board of supervisors of any drainage district in the State of Nebraska organized under and by virtue of the provisions of sections 31-301 to 31-369, and any amendments thereto, which has issued, or may hereafter issue valid interest-bearing bonds under the provisions of said sections, and which bonds are now or may hereafter be outstanding and unpaid, may take up and pay off any such bonds whenever the same can be brought about by lawful means, by the issue and sale or the issue and exchange therefor of the refunding bonds of such drainage district; but bonds so to be issued shall not exceed the amount lawfully owing and unpaid upon the bond or bonds so sought to be taken up and paid. Bonds so issued shall not bear interest greater in rate or amount per annum than the bonds so sought to be taken up and paid, and shall be made to run for not more than twenty years from date of issuance.

Source: Laws 1929, c. 132, § 1, p. 483; C.S.1929, § 31-471.

31-372 Refunding bonds; issuance; resolution; notice; publication; procedure where no objections filed.

Whenever it is desired to issue refunding bonds under sections 31-371 to 31-374, the board of supervisors shall, by resolution entered in the minutes of its proceedings, direct public notice to be given, stating the amount of the indebtedness sought to be taken up and paid, the date it was issued, the rate of interest it bears, and if issued in installments the date when the various installments become due, that the same is sought to be taken up and paid off by the issuance and sale, or the issuance and exchange of refunding bonds bearing interest at an equal or less rate and amount per annum, and the date on which, and the place where any taxpayer of such drainage district may file objections to such proposed action. Such notice shall be signed by the president and secretary of the drainage district, and shall be published for four weeks in some newspaper of general circulation in the drainage district, and by posting a notice in three of the most public places in the district for at least thirty days prior to such date. If, after such publication and on the date for filing objections, no objections to such action by the board of supervisors are filed,

then the board of supervisors may issue and sell, or exchange, as the case may be, the bonds authorized by sections 31-371 to 31-374, not exceeding the amount stated in such notice, nor exceeding the amount of an actual bonded indebtedness of the district then outstanding and unpaid, including any unpaid interest, if any, nor bearing interest greater in rate or amount than the bonds to be taken up, and thereby take up and pay off the bonds described in the notice.

Source: Laws 1929, c. 132, § 2, p. 484; C.S.1929, § 31-472.

31-373 Refunding bonds; objections; hearing; determination; appeal; procedure.

If, on the day appointed in such notice, any written objections be filed, the objection or objections shall be heard and decided by the board of supervisors of such drainage district. From its decision an appeal may be taken to the district court in the manner of appeals from the county board.

Source: Laws 1929, c. 132, § 3, p. 485; C.S.1929, § 31-473.

31-374 Refunding bonds; recitals; delivery; effect of issuance; payment.

The bonds so issued shall have recited therein the object of the issue, the title of the article under which the issue was made, stating the issue to be made in pursuance thereof, and shall also state the number, date, and amount of the bonds for which such issue is substituted and amount of the delinquent interest, if any. Such new bonds shall not be delivered until the surrender of the bond or bonds so designated, and they shall be paid and levy made and taxes collected for their payment in accordance with laws now governing the bonds heretofore issued under the provisions of sections 31-301 to 31-369. The assessment of benefits conferred and taxes levied by any such drainage district under the provisions of said sections shall remain valid and binding obligations upon the several tracts of land, but the time of payment of such taxes shall be extended to the same extent as the time of payment of the bonds refunded is extended by the issuing of such refunding bonds, and collection of such taxes shall be made as provided in said sections. The board of supervisors shall issue and file, with the county clerk of the county in which the drainage district was organized, a new certificate of levy of taxes, showing the changed dates when such taxes shall become due, otherwise in the same form and containing the same matter as in the certificate required to be issued by section 31-331, and such taxes shall be used to pay the principal of and the interest on said bonds as the same become due.

Source: Laws 1929, c. 132, § 4, p. 485; C.S.1929, § 31-474.

31-375 Drainage district; dissolution; procedure; election; notice; effect; funds; distribution.

There being no outstanding indebtedness, the board of supervisors of any drainage district organized under sections 31-301 to 31-305 may, on its own motion or on the filing of a written request signed by fifteen electors of the district, order an election to be held to vote on the question of the dissolution of any such district. The secretary of any such drainage district shall file a certified copy of such action by the board with the clerk of the district court of the county wherein the original petition for the incorporation of any such drainage district was filed, whereupon the clerk of the district court shall call an election and give notice to all persons interested in and owning land within

the drainage district three successive weeks next preceding the election in a legal newspaper printed and published in the county wherein the district was originally incorporated. If no legal newspaper is printed and published in such county, such notice shall be placed in a legal newspaper of general circulation in the county wherein the district was originally incorporated. It shall be sufficient if the notice of such election shall be directed to all persons interested in the drainage district, identifying the same as it is referred to in the original petition for incorporation. The notice shall specify the day, hour, and place at which the election shall be held. The election shall be held in some public place in the county in which the district was organized. At such election every acre of land shall represent one share, and each owner shall be entitled to one vote for every acre of land owned by him or her in such district. If at the election a majority of the votes cast shall favor the dissolution, then such district shall stand dissolved, and the clerk of the district court shall certify such result and dissolution to the county clerk of each county wherein any portion of the lands of the drainage district lies. When any drainage district is dissolved as provided in this section, any remaining funds of the district shall be distributed to the counties in which the district is situated in the same proportion as the area of the district in each county bears to the total area of the district and shall be deposited in the general fund of the respective counties.

Source: Laws 1933, c. 51, § 1, p. 268; C.S.Supp.,1941, § 31-475; R.S. 1943, § 31-375; Laws 1967, c. 187, § 1, p. 512; Laws 1986, LB 960, § 23.

It is a condition to the right of dissolution that there be no outstanding indebtedness. Ritter v. Drainage Dist. No. 1 of Otoe and Johnson Counties, 137 Neb. 866, 291 N.W. 718 (1940).

31-376 Drainage district; located in more than one county; inactive for five years; county board; dissolve; procedure.

When any drainage district organized under the provisions of sections 31-301 to 31-305 is comprised of territory located in more than one county and is inactive for a period of at least five years, as determined by resolution of the county board of the county in which such district was organized, the county board may initiate action for dissolution of the district by filing a copy of its resolution with the clerk of the district court of the county in which the original petition for incorporation of such district was filed. After the filing of such resolution, the procedure for dissolution and distribution of any remaining funds shall be the same as that provided in section 31-375.

Source: Laws 1967, c. 187, § 2, p. 513.

31-377 Drainage district; comprised of territory in one county; inactive for five years; county board; dissolve; funds; transfer to county general fund.

When any drainage district organized under the provisions of sections 31-301 to 31-305 or 31-401 to 31-408 is comprised of territory solely within one county and is inactive for a period of at least five years, as determined by resolution of the county board, the county board may order the district dissolved. The county board shall file copies of such order of dissolution with the county clerk and the county treasurer. Upon receipt of such order, the county treasurer shall transfer any remaining funds of the dissolved drainage district to the general fund of the county.

Source: Laws 1967, c. 187, § 4, p. 513.

31-378 Repealed. Laws 1999, LB 4, § 1.

ARTICLE 4

DRAINAGE DISTRICTS ORGANIZED BY VOTE OF LANDOWNERS

Cross References

Sales tax exemption, see section 77-2704.15.

Section
31-401. Drainage district organized by vote of landowners; when formed.
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31-406. Formation; election; form of ballot.
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31-411.02. Board of directors; plans; adoption; budget; notice; publication; contents; levy; limitation; map; county treasurer; compute tax; additional funds; election.
31-412. Apportionment; complaint; bond; conditions; transcript; filing; hearing.
31-413. Repealed. Laws 1969, c. 245, § 13.
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31-414.01. Tax funds; held by county treasurer; use; financial operation; publish annually.
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31-420. Deficit; assessment; apportionment.
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31-422. Borrowing money; interest; purposes; term of loan; provisions for payment; record.
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31-425. Rules and regulations; powers of board; amendments; record.
31-426. Employees; contracts for construction and repair; estimates; letting; purchase of machinery; personal interest in contracts prohibited; effect.
31-427. Directors; compensation.
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31-429. Draining lands into district ditches; requirements.
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Section
31-432. Director conveying or losing interest in land; vacancy created.
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31-434. Elections; voting by proxies; when permitted.
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31-436. Drainage district; dissolution; procedure; distribution of funds; city of the metropolitan or first class; county; assume operation and maintenance; authorization; conditions.
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31-437. Sections construed; limitation on powers.
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31-441. Changing voting place from county seat; procedure.
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31-446. Repealed. Laws 2001, LB 420, § 38.
31-447. Special assessment liens; vendor and purchaser; apportionment; filing with county clerk.
31-448. Assessment of benefits to highways and public property; payment.
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31-450. Future districts; election; when held; notice; publication; limit of indebtedness; changing plans; abandonment.
31-451. Repealed. Laws 1969, c. 138, § 28.

31-401 Drainage district organized by vote of landowners; when formed.

Whenever it will be conducive to the public health, convenience or welfare, to drain any wet land, to drain any land subject to overflow by water, or any land which will be improved by drainage, to build or construct any dike or levee to prevent overflow by water, to construct, straighten, widen, deepen or alter any ditch, drain, stream or watercourse, to riprap or otherwise protect the bank of any stream or ditch, to construct, enlarge, extend, improve or maintain any system of drainage, to construct, enlarge, extend, improve or maintain any system of control of surface water or running water, or to do any two or more of said things jointly, then a drainage district may be formed and may proceed, as hereinafter provided, for the purpose of inaugurating, constructing, controlling and maintaining said work or works of public improvement.

Source: Laws 1907, c. 153, § 1, p. 474; R.S.1913, § 1866; C.S.1922, § 1813; C.S.1929, § 31-501.

District has no duty to maintain and keep in repair its works unless plans and specifications so provide. McGree v. Stanton-Pilger Drainage Dist., 164 Neb. 552, 82 N.W.2d 798 (1957).

Legal existence of drainage district may be litigated in proceedings for assessment of benefits. Prucka v. Eastern Sarpy Drainage Dist., 157 Neb. 284, 59 N.W.2d 761 (1953).

Plans must be in accordance with this section, but an estimate of cost of work is not required. Chicago & N. W. Ry. Co. v. Payne Creek Drainage Dist., 148 Neb. 139, 26 N.W.2d 607 (1947).

A drainage district has a special right to have its drainage channel kept free from obstruction or interference. Drainage District No. 1 v. Suburban Irr. Dist., 139 Neb. 333, 297 N.W. 645 (1941).

A drainage district organized under this article is liable for damages caused by the negligent construction of its works. Compton v. Elkhorn Valley Drainage District, 120 Neb. 94, 231 N.W. 685 (1930).

Damming of drainage channel to detriment of drainage district may be enjoined. Flader v. Central Realty & Investment Co., 114 Neb. 161, 206 N.W. 965 (1925).

Drainage district is liable for damages caused by its negligence in the construction of its works, and action accrues when damage occurs. Bunting v. Oak Creek Drainage District, 99 Neb. 843, 157 N.W. 1028 (1916).

Constitutionality of act sustained, and general construction of act outlined. White v. Papillion Drainage District, 96 Neb. 241, 147 N.W. 218 (1914).

Act is constitutional. O'Brien v. Schneider, 88 Neb. 479, 129 N.W. 1002 (1911); State ex rel. Harris v. Hanson, 80 Neb. 724, 115 N.W. 294 (1908).

31-401.01 Drainage district formation; prohibited after June 30, 1972.

After June 30, 1972, no new drainage districts shall be organized under the provisions of sections 31-401 to 31-450. Attempted formations of drainage districts under sections 31-401 to 31-450 which have not been completed before July 1, 1972, shall be null, void and of no effect for the purpose of organizing such district. All drainage districts having valid corporate existence before July 1, 1972, shall enjoy all rights, duties, powers and authorities conferred by sections 31-401 to 31-450 and shall not be affected by this section, nor shall the legality of formation, organization, or operation of any such district be subject to any legal action based on this section.

Source: Laws 1969, c. 9, § 62, p. 135; Laws 1971, LB 544, § 8.

31-402 Formation; petition; contents.

When the district proposed contains real estate owned by less than twenty persons or corporations, one-fourth of said number shall be sufficient to petition for the formation of such district. When there are more than twenty such owners, ten or more owners of real estate therein may sign a petition for the formation of such district, and file said petition with the county clerk of the county having the largest body of land within the proposed district. The petition shall suggest the boundaries of the district, the number of directors that the district shall have if formed, and the amount of bond each shall give.

Source: Laws 1907, c. 153, § 2, p. 474; R.S.1913, § 1867; C.S.1922, § 1814; C.S.1929, § 31-502.

Number of signers is not required to be designated in the petition. Chicago & N. W. Ry. Co. v. Payne Creek Drainage Dist., 148 Neb. 139, 26 N.W.2d 607 (1947).

Description in petition for formation of public highways of county named is sufficient. Scottsbluff Drainage District v. Scotts Bluff County, 113 Neb. 187, 202 N.W. 455 (1925).

Petition sustained as sufficient against collateral attack. O'Brien v. Schneider, 88 Neb. 479, 129 N.W. 1002 (1911).

Districts may cover portions of two counties and may overlap. State ex rel. Sheffer v. Fuller, 83 Neb. 784, 120 N.W. 495 (1909).

31-403 Formation; bond for expenses.

At the time of filing the petition the petitioners shall also file a bond, with surety or sureties to be approved by the county clerk, which bond shall run to the county and be conditioned to pay all expenses of the county by reason of such proceedings in case the district be not formed.

Source: Laws 1907, c. 153, § 3, p. 475; R.S.1913, § 1868; C.S.1922, § 1815; C.S.1929, § 31-503.

Bond signed by surety who was also a petitioner was sufficient. Prucka v. Eastern Sarpy Drainage Dist., 157 Neb. 284, 59 N.W.2d 761 (1953).

Bond is valid, though conditioned to become void if the district be organized, or if petitioners pay costs. O'Brien v. Schneider, 88 Neb. 479, 129 N.W. 1002 (1911).

31-404 Formation; boundaries of district; hearings; directors; number; bond.

Thereupon the county board of such county shall take to its assistance the county surveyor of the county and shall determine whether or not the boundaries of the proposed district are reasonable and proper, and if the board finds that the boundary line of the district should be changed, it shall change the same and fix the boundary line where the same, in the judgment of the board, should be fixed with a view to promoting the interest of the drainage district, if formed, and with a view to doing justice and equity to all persons. Anyone asking shall be given a hearing as to the boundary. The board shall also determine the number of directors that the district shall have, if formed, and

the amount of the bond to be given by each, and shall make a record of its action.

Source: Laws 1907, c. 153, § 4, p. 475; R.S.1913, § 1869; C.S.1922, § 1816; C.S.1929, § 31-504.

Board is required to determine that boundaries of district are reasonable and proper. Chicago & N. W. Ry. Co. v. Payne Creek Drainage Dist., 148 Neb. 139, 26 N.W.2d 607 (1947).

Fact that all of petitioners did not sign bond is immaterial. O'Brien v. Schneider, 88 Neb. 479, 129 N.W. 1002 (1911).

County commissioners at any time before the rights of third parties have accrued may alter boundaries, but must give notice and describe boundaries. State ex rel. Sheffer v. Fuller, 83 Neb. 784, 120 N.W. 495 (1909).

In fixing boundaries, the board is required to determine the same with a view to promoting the interest of the district, and justice and equity to all persons. State ex rel. Harris v. Hanson, 80 Neb. 724, 115 N.W. 294 (1908).

31-405 Formation; notice of election; publication; contents; posting.

Thereupon the county clerk shall publish one notice once each week for three weeks in a newspaper published in the proposed district, and if the district embraces land in more than one county, then said notice shall be published in a legal newspaper published in the proposed district in each county. If no legal newspaper is published in the proposed district then the notice shall be published in a legal newspaper published in each of the counties having land within the proposed district. The notice shall state the filing of the petition; that it is filed under the provisions of sections 31-401 to 31-450, giving the title thereof in full; the boundaries of the proposed district as fixed by the county board; that an election will be held at a certain place in the proposed district, which place shall be named in said notice, between the hours of 8 a.m. and 6 p.m., on a day named therein; that at said election the question of the formation of the proposed district shall be determined, and a board of directors elected, giving the number of such board, such board to take office contingently on the formation of the district; *Provided*, that if there is no newspaper published within the district or within the county, the county clerk shall prepare a copy of such notice, and cause it to be posted in three conspicuous and suitable places in the district.

Source: Laws 1907, c. 153, § 5, p. 475; R.S.1913, § 1870; C.S.1922, § 1817; Laws 1925, c. 87, § 1, p. 265; C.S.1929, § 31-505.

Notice of formation of district was properly published. Prucka v. Eastern Sarpy Drainage Dist., 157 Neb. 284, 59 N.W.2d 761 (1953).

Where notice sets forth boundaries in detail as described in petition for organization of district, it is sufficient to meet requirements of this section as setting forth description. Chicago & N. W. Ry. Co. v. Payne Creek Drainage Dist., 148 Neb. 139, 26 N.W.2d 607 (1947).

Notice should be given of change of boundaries. State ex rel. Sheffer v. Fuller, 83 Neb. 784, 120 N.W. 495 (1909).

First publication may be less than three weeks before election. State ex rel. Harris v. Hanson, 80 Neb. 724, 115 N.W. 294 (1908).

31-406 Formation; election; form of ballot.

Such election shall be by ballot which shall be signed by the voter, and shall have thereon a list of the land and lots which the voter claims the right to vote. The ballot shall be in the following form, and ballots at annual elections shall be in similar form.

List of Property on Which Vote is Based.

Description	Section or Lot	Town or Block	Range or City	Number of Acres or Lots
....	....	....	....	....
....	....	....	....	....
....	....	....	....	....

Total number of votes claimed on same ....
Nature of title to or interest in above ....
For formation of district ....

☐ Yes
☐ No
Vote for ....

For board of directors if proposed district is formed.	Number of Votes
....	....
....	....
....	....
....	....
....	....
....	....

....
Signature of Voter

Source: Laws 1907, c. 153, § 6, p. 476; R.S.1913, § 1871; C.S.1922, § 1818; C.S.1929, § 31-506.

Mere fact that voter writes on the ballot the nature of the instrument by which he acquired title does not invalidate the ballot. Chicago & N. W. Ry. Co. v. Payne Creek Drainage Dist., 148 Neb. 139, 26 N.W.2d 607 (1947).

31-407 Formation; election; eligibility to vote; manner of voting; canvassing board.

At all the elections the county clerk, or the county clerk of the county in which the greater portion of the land in such district is situated, and such assistants as he shall choose, shall constitute the election board and the canvassing board. Any person may cast one vote on each proposition to be voted on for each acre of land or fraction thereof, and for each platted lot which he may own or have an easement in, as shown by the official records of the county where the land or lots may be. Any corporation, public, private or municipal, owning or having an easement in any land or lot, may vote at such election, the same as an individual may. The executor, administrator, guardian or trustee of any person or estate interested shall have the same right to vote. Should two or more persons or officials claim the right to vote on the same tract, the election board shall determine the party entitled to vote, and shall have the power to reject any ballot not cast by a person authorized to vote the same, which rejection may be made at the time such ballot is offered, or at the time of the canvass of the election. The board shall have the right to refer to the official records of the counties where the real estate may be, for information as to who are entitled to vote. The board shall sign a statement giving the result of the election, and the same shall be recorded in the office of the county clerk. At all elections following the election by which the district is organized, each voter shall have one vote for each unit of benefit then apportioned against the land owned by the voter.

Source: Laws 1907, c. 153, § 7, p. 477; R.S.1913, § 1872; C.S.1922, § 1819; Laws 1925, c. 87, § 2, p. 266; C.S.1929, § 31-507; R.S.1943, § 31-407; Laws 1951, c. 96, § 1, p. 265.

When canvassing board certifies a true and correct exhibit of votes cast for formation of drainage district, naming the place of election and the date thereof, and the ballots are on file in county clerk's office, there is a sufficient compliance with this section. Chicago & N. W. Ry. Co. v. Payne Creek Drainage Dist., 148 Neb. 139, 26 N.W.2d 607 (1947).

Corporation having an easement in district may vote. State ex rel Gantz v. Drainage District No. 1 of Merrick County, 100 Neb. 625, 160 N.W. 997 (1916).

In determining whether a district is organized, any person may cast one vote for each acre of land and each platted lot, which he may own or have an easement in. Bunting v. Oak Creek Drainage District, 99 Neb. 843, 157 N.W. 1028 (1916).

Permitting corporations and nonresidents, etc., to vote is constitutional. State ex rel. Harris v. Hanson, 80 Neb. 738, 117 N.W. 412 (1908).

31-408 Formation; election; affirmative vote; effect; preservation of records; transcript; filing.

If a majority of the votes cast at the election shall be in favor of the formation of the district it shall be conclusive that the formation of the district, and the work that may be done under the supervision of the board of directors, will be for the public health, convenience and welfare. The county clerk shall thereupon file and preserve in his office all of the ballots, and record in his office all other records and proceedings in the matter, and the district shall thereupon be fully organized. If the district is in more than one county, the county clerk of the county in which the greater portion of the land in such district is situated, shall thereupon make a certified transcript of all record proceedings, and the board of directors of such district shall cause the transcript to be recorded in the office of the county clerk of each other county having land in the district.

Source: Laws 1907, c. 153, § 8, p. 478; R.S.1913, § 1873; C.S.1922, § 1820; Laws 1925, c. 87, § 3, p. 266; C.S.1929, § 31-508.

31-409 Directors; qualification; officers; annual election; vacancies; term.

A majority of the directors shall be residents of the county or counties in which the district is located. Except as provided in section 31-409.03, any person or the officer or representative of any corporation owning or controlling any land assessed for benefits may be a director. The person elected a director receiving the least number of votes shall hold office for one year, the next higher for two years, and so on, and the term of each shall be adjusted so as to make the term of one director expire each year. The officers, consisting of a president, a treasurer, and a secretary, shall be chosen by the directors from their own number and for a term of one year. Unless the directors choose by February fifteenth of a given year to use the procedures provided in section 31-409.01, annual elections of directors shall be held from 8 a.m. until 6 p.m., on the second Tuesday of April each year, at the county courthouse or such other place designated by the board pursuant to section 31-409.03, but the annual election shall be omitted if such date occurs less than nine months after the first election. Vacancies in the office of directors may be filled by the remaining directors until the next election. All directors and officers shall hold office until their successors are elected and qualified.

Source: Laws 1907, c. 153, § 9, p. 478; R.S.1913, § 1874; Laws 1921, c. 275, § 1, p. 905; C.S.1922, § 1821; C.S.1929, § 31-509; R.S. 1943, § 31-409; Laws 1951, c. 96, § 2, p. 265; Laws 1983, LB 191, § 1; Laws 1988, LB 1078, § 1.

Remaining duly elected and qualified directors may fill vacancy by appointment of director who fails to qualify. Chicago & N. W. Ry. Co. v. Payne Creek Drainage Dist., 148 Neb. 139, 26 N.W.2d 607 (1947).

31-409.01 Election by mail; procedure.

The directors may choose to hold the annual election required by section 31-409 by sealed mail ballot in accordance with this section. If the option authorized by this section is not exercised by February fifteenth of a given year, the procedure provided by section 31-409 shall be followed.

The secretary of the board shall, at least fifteen days prior to the election, mail to the last-known post office address of each person entitled to vote, a ballot which shall list the names and addresses of the candidates, allow room for write-in votes, and give instructions on how to vote and return the ballot.

Source: Laws 1983, LB 191, § 2.

31-409.02 Annual election; notice; contents.

Notice of an annual election held pursuant to section 31-409, 31-409.01, or 31-409.03 shall be published once each week for two consecutive weeks in a newspaper of general circulation in the district, or the precinct if the district has been divided into voting precincts as provided in section 31-409.03, designated by the district. The last publication shall not be less than thirty days prior to the election. The notice shall include the date of the election, the number of directors to be elected, the names of those whose terms will expire, and the procedure for filing as a candidate.

Source: Laws 1983, LB 191, § 3; Laws 1988, LB 1078, § 2.

31-409.03 Voting precincts; authorized; directors; how elected.

(1) The board of directors may divide the district into two or more voting precincts for the purpose of electing directors of the district. The precincts shall be established to include, as nearly as possible, equal acreage if the district levies taxes based on valuation or equal units of benefit if the district taxes on the basis of apportionment of benefits. Upon completion of the division the board shall prepare a subdivision plat and file the plat with the county clerk of each county containing affected land. The board shall provide for the phasing in of precinct voting for all elections subsequent to the decision to subdivide the district beginning with the first such election. After the board has divided the district pursuant to this subsection, the board shall not divide the district again or change the divisions until precinct voting is completely phased in and an election has been held for the directors to be elected in each precinct.

(2) When a district has been divided into two or more voting precincts, an equal number of directors shall be elected in each precinct and the remaining directors, if any, shall be elected at large. Each director elected by precinct shall own land assessed for benefits in the precinct from which he or she is elected. Precinct elections shall be held at a location within the precinct designated by the board or as provided in section 31-409.01.

Source: Laws 1988, LB 1078, § 3; Laws 1990, LB 81, § 2.

31-410 Directors; bond; conditions; recording.

Each member of the board of directors shall give bond in such amount as shall have been fixed by the county board of the county, conditioned to faithfully perform the duties of a director, and of such further office as he may be elected to, and to account for all funds or property coming into his hands. All of such bonds shall run to the district, shall be signed by a surety or sureties to be approved by the county clerk, and shall be filed and recorded in his office. When so filed such person so elected shall take and hold office until his successor is elected and qualified.

Source: Laws 1907, c. 153, § 10, p. 478; R.S.1913, § 1875; C.S.1922, § 1822; C.S.1929, § 31-510.

Where bond is filed, director is to be considered as public officer. Prucka v. Eastern Sarpy Drainage Dist., 157 Neb. 284, 59 N.W.2d 761 (1953).

31-410.01 Board of directors; plans; notice; hearing.

The board of directors, having first, with the aid of such engineer, surveyor, and other assistants as it may have chosen, made detailed plans of the public works to be done in accordance with section 31-401, shall cause a notice to be inserted at least once in a newspaper of general circulation in the district stating the time and place where the directors shall meet for the purpose of conducting a public hearing on the proposed public works and the method of financing such works. All parties interested in the proposed public works may appear at such public hearing in person or by counsel or may file written objections thereto. The directors shall then proceed to hear and consider the same and determine whether to adopt the public works in accordance with the detailed plans presented at such hearing and whether to finance such works by benefits accruing to the several tracts of land within the district or by a tax levy upon the taxable value of the taxable property in the district. The hearing may be continued from time to time upon notice given by publication at least once in a newspaper of general circulation in the district stating the time and place of such continuance.

Source: Laws 1969, c. 245, § 1, p. 896; Laws 1979, LB 187, § 129; Laws 1984, LB 897, § 1; Laws 1992, LB 1063, § 25; Laws 1992, Second Spec. Sess., LB 1, § 25.

31-411 Directors; duties; plans; apportionment of benefits; area method of allocation, authorized.

The board of directors having adopted the plans of public works and apportionment of benefits method of financing, shall apportion the benefits thereof accruing to the several tracts of land within the district which will be benefited thereby, on a system of units. The land least benefited shall be apportioned one unit of assessment, and each tract receiving a greater benefit shall be apportioned a greater number of units or fraction thereof, according to the benefits received. Nothing contained herein shall prevent the district from establishing separate areas within the district so as to permit future allocation of costs for particular portions of the work to specific areas. This area method of allocation shall not be used in any district which has heretofore made a final apportionment of units of benefits and shall not thereafter be changed except by compliance with the procedure prescribed in sections 31-411 to 31-412.

Source: Laws 1907, c. 153, § 11, p. 479; R.S.1913, § 1876; C.S.1922, § 1823; C.S.1929, § 31-511; R.S.1943, § 31-411; Laws 1961, c. 139, § 1, p. 403; Laws 1969, c. 245, § 2, p. 897; Laws 1972, LB 1053, § 5.

Adoption of detailed plans is a jurisdictional requirement. Prucka v. Eastern Sarpy Drainage Dist., 157 Neb. 284, 59 N.W.2d 761 (1953).

Assessing of one-half units not out of line proportionately with assessment of benefits for tract involved is not a jurisdictional defect. Chicago & N. W. Ry. Co. v. Payne Creek Drainage Dist., 148 Neb. 139, 26 N.W.2d 607 (1947).

Compliance with requirement of first making detailed plans of the work to be done is a condition precedent to the apportionment of benefits to lands within a drainage district. Haecke v. Eastern Sarpy County Drainage Dist., 141 Neb. 628, 4 N.W.2d 744 (1942).

Special taxes should not be levied in excess of benefits conferred. Scottsbluff Drainage District v. Scotts Bluff County, 113 Neb. 187, 202 N.W. 455 (1925).

Apportionment was unequal where lands were charged on the basis of one-fifth of their value, and railroad and county on total value of losses saved. Chicago B. & Q. R. Co. v. Platte Valley Drainage District, 113 Neb. 49, 201 N.W. 648 (1924).

Section is constitutional, though it does not require notice before adopting plan of drainage, or that apportionment pre-

cede construction of improvements, etc. O'Brien v. Schneider, 88 Neb. 479, 129 N.W. 1002 (1911).

Section sustained as constitutional against claim of taking property without due process of law. State ex rel. Harris v. Hanson, 80 Neb. 738, 117 N.W. 412 (1908).

31-411.01 Apportionment of benefits; report; filing; notice; publication.

The directors, having adopted the apportionment method of financing and having completed the apportionment of benefits, shall make a detailed report of the same and file such report with the county clerk. Thereupon the board of directors shall cause to be published, once each week for three consecutive weeks, in a newspaper of general circulation in the district, a copy of the apportionment and a statement of the total number of units of benefit in the district.

Source: Laws 1969, c. 245, § 3, p. 897.

31-411.02 Board of directors; plans; adoption; budget; notice; publication; contents; levy; limitation; map; county treasurer; compute tax; additional funds; election.

The board of directors having adopted the plans of public works and the tax levy method of financing shall prepare an itemized budget of funds necessary to carry out the authorities granted under sections 31-401 to 31-450 and transmit such budget to the county board of the county or counties involved. Thereupon the board of directors shall cause to be published, once each week for three consecutive weeks in a newspaper of general circulation in the district, a copy of the itemized budget of funds necessary to carry out the authorities granted under such sections and a statement of the total taxable value of the taxable property in the drainage district. If portions of the drainage district are in more than one county, the county assessors involved shall ratably apportion such amounts of the total budget requested between the counties based on the total taxable value of the taxable property within the drainage district and transmit and certify the prorated portion to the respective county boards of each county involved. The county board may levy a tax sufficient to raise the amount of funds requested but not to exceed ten and five-tenths cents on each one hundred dollars upon the taxable value of the taxable property in the drainage district. Such levy shall be subject to section 77-3443. The tax so levied shall be collected in the same manner as other property taxes, and the proceeds therefrom shall be kept in a separate account identified by the official name of the drainage district. The county treasurer shall transfer such funds to the drainage district as requested by the board of directors.

The board of directors shall provide a legal description and map of the boundaries of the district and transmit such information to the county assessor of the county or counties involved who shall indicate for the use of the county treasurer such information on the tax rolls. The county assessor shall also provide the county treasurer with the taxable value of the taxable personal property of each property owner within the drainage district which shall also be taxed at the same rate as real property.

When the property tax rolls and the taxable value of the taxable personal property of each taxpayer are received by the county treasurer from the county assessor as required by sections 31-401 to 31-450, the county treasurer shall compute the tax due the drainage district from each taxpayer in accordance with the rate required to meet the budget request but not to exceed a levy of ten and five-tenths cents on each one hundred dollars upon the taxable value of the

taxable property of the district. If a drainage district needs additional funds to pay outstanding warrants issued under section 31-416, the property owners within such district may, by majority vote of those voting in an election authorized by the board of directors of such district and conducted according to section 31-407, approve the issuance of bonds which shall be paid by an additional levy.

Source: Laws 1969, c. 245, § 4, p. 898; Laws 1971, LB 723, § 1; Laws 1972, LB 1195, § 1; Laws 1979, LB 187, § 130; Laws 1992, LB 1063, § 26; Laws 1992, Second Spec. Sess., LB 1, § 26; Laws 1996, LB 1114, § 52.

31-412 Apportionment; complaint; bond; conditions; transcript; filing; hearing.

Any person claiming to be aggrieved by such plan of public works or method of financing, or both, may file complaint with the county clerk within twenty days after the publication of the plan of public works and method of financing provided for by section 31-410.01, together with a bond running to the district, with surety or sureties to be approved by the county clerk, conditioned to pay all costs that may be adjudged against such complaint, if the appeal be not sustained. Thereupon the county clerk shall make a transcript of the objections and of the report of adoption of the plan of public works or method of financing, or both, and such appellant shall, within ten days thereafter, file such transcript, in the district court of the county, and such court shall hear and determine all such objections in a summary manner as in a case in equity. All objections that may be filed shall be heard and determined by the court as one proceeding, and only one transcript of the adoption of the plan of public works shall be required.

Source: Laws 1907, c. 153, § 11, p. 479; R.S.1913, § 1877; C.S.1922, § 1824; C.S.1929, § 31-512; R.S.1943, § 31-412; Laws 1969, c. 245, § 5, p. 899.

There is no requirement that the notice shall be signed by the board of directors. Chicago & N. W. Ry. Co. v. Payne Creek Drainage Dist., 148 Neb. 139, 26 N.W.2d 607 (1947).

Detailed plans are essential to give landowner an intelligent basis upon which objection can be made to apportionment of benefits. Haecke v. Eastern Sarpy County Drainage Dist., 141 Neb. 628, 4 N.W.2d 744 (1942).

Notice must be published during an entire week immediately before time specified for hearing. Bancroft Drainage District v. Chicago, St. P., M. & O. Ry. Co., 102 Neb. 455, 167 N.W. 731 (1918).

31-413 Repealed. Laws 1969, c. 245, § 13.

31-414 Assessments and levies; basis; change of plans; enlargement or extension; new apportionment.

The apportionment, when finally adjusted, shall continue as the basis of all levies of special assessments to pay all expenditures for organization, construction, improvement, enlargement, extension, damages, costs, maintenance, bonds and interest thereon, and all other expenses; *Provided*, if (1) there is such a change of plans or enlargement or extension of the work of the district, (2) some of the tracts of land within the district are increased in value since the time of the original apportionment of benefits by the addition of improvements or otherwise, such as in either case to make a different apportionment necessary or desirable, then the board of directors as to the future expenditures shall make a new apportionment of benefits, in which event all the procedure prescribed in sections 31-411 to 31-412 for the original apportionment shall

apply, or (3) the board of directors elects to use the tax levy method of financing, all expenditures for organization, construction, improvement, enlargement, extension, damages, costs, maintenance, bonds and interest thereon, and all other expenses shall be paid out of such levies.

Source: Laws 1907, c. 153, § 13, p. 480; R.S.1913, § 1879; C.S.1922, § 1826; C.S.1929, § 31-514; R.S.1943, § 31-414; Laws 1963, c. 169, § 1, p. 584; Laws 1969, c. 245, § 6, p. 899; Laws 1972, LB 1053, § 6; Laws 1979, LB 187, § 131.

Provision for change of plans so that board may make new apportionment shows legislative intent of necessity for original detailed plan. Haecke v. Eastern Sarpy County Drainage Dist., 141 Neb. 628, 4 N.W.2d 744 (1942).

Board may, upon change of plans or enlargement of work, make a new apportionment of benefits. Sandy v. Western Sarpy Drainage District, 102 Neb. 713, 169 N.W. 268 (1918).

31-414.01 Tax funds; held by county treasurer; use; financial operation; publish annually.

Tax funds transferred to and held by the treasurer of the drainage district shall be used for the specific purposes as listed in section 31-401. All expenditure of such funds shall be made by the board of directors upon the order of the board. The secretary of the drainage district shall once each year have published in a newspaper of general circulation in the drainage area a brief statement of the past year's financial operation of the district. Such statement shall be based on an annual audit of the district accounts.

Source: Laws 1969, c. 245, § 7, p. 900.

31-415 Real estate or easement; acquisition; eminent domain; procedure; release by guardian or conservator of person under disability.

The drainage district shall have power to purchase such real estate or easement therein as it may need, and if it cannot agree on the purchase price of any needed real estate or easement therein, it shall have power to condemn the same whether the property be within the limits of such district or outside its boundaries. The exercise of the right of eminent domain on areas outside the boundaries of the district shall be limited only to those projects which have been approved by the Department of Natural Resources. This limitation shall not apply to any drainage district subject to the supervision of the United States Army Corps of Engineers. The procedure to condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724. If such drainage district finds it expedient or necessary for the maintenance of any part of its improvement already constructed to add thereto further construction in the nature of a settling basin into which waters will be permitted to flow for the purpose of dropping silt before finding their outlet into any part of the main or lateral ditches of such drainage district improvement, such drainage district, if not able to agree with the landowner on the yearly cash rental of any premises taken and used for such purpose, shall have the right to condemn for the purpose of fixing the yearly rental for the land so taken. If such drainage district takes or damages any real estate of any minor or protected person, the guardian or conservator of such minor or protected person may agree and settle with the drainage district for all damages or claims by reason of taking such real estate or easement and may give valid releases and discharges therefor.

Source: Laws 1907, c. 153, § 14, p. 480; R.S.1913, § 1880; C.S.1922, § 1827; C.S.1929, § 31-515; Laws 1937, c. 76, § 1, p. 266;

C.S.Supp.,1941, § 31-515; R.S.1943, § 31-415; Laws 1951, c. 101, § 74, p. 480; Laws 1969, c. 245, § 8, p. 900; Laws 1975, LB 481, § 20; Laws 2000, LB 900, § 70.

Drainage district has power of eminent domain. Quest v. East Omaha Drainage Dist., 155 Neb. 538, 52 N.W.2d 417 (1952).

Condemnation by right of eminent domain is not allowed except so far as it is necessary for the proper construction and use of the improvement for which it is taken. Bunting v. Oak Creek Drainage District, 99 Neb. 843, 157 N.W. 1028 (1916).

31-416 Claims; payment; warrants; registration; interest; use in payment of taxes.

All claims against drainage districts created by landowners shall be paid by warrants or orders, duly drawn on the treasurer of such drainage district, signed by the president of such district and countersigned by its clerk or secretary. When such warrants or orders have been issued and delivered, the same may be presented to the treasurer of the drainage district, and, if such be the fact, endorsed not paid for want of funds. Such orders or warrants shall be registered by the treasurer of the district, in the order of presentation, shall draw interest from the date of registration thereof, and shall be received by the county treasurer in payment of drainage district taxes due the general fund of such district.

Source: Laws 1921, c. 275, § 2, p. 905; C.S.1922, § 1828; C.S.1929, § 31-516; R.S.1943, § 31-416; Laws 1969, c. 51, § 90, p. 331.

31-417 Bonds; interest; issuance; requirements.

Whenever the drainage district shall need the sum of five thousand dollars or more, either for the purpose of paying outstanding warrants issued under section 31-416, or to refund bonds issued for the purpose of paying or providing funds for the payment of work done under the provisions of sections 31-401 to 31-450, the board of directors may issue negotiable bonds for such sums as may be needed, not, however, exceeding the amount that the engineer of the district shall certify as being required in the case of an original issue of bonds, nor exceeding the amount of outstanding bonds in the case of refunding bonds. Such bonds shall be signed by the president, secretary and treasurer, under the corporate seal, with coupons attached, and shall be payable in not to exceed twenty annual installments. They shall be sold at not less than par.

Source: Laws 1907, c. 153, § 15, p. 481; Laws 1911, c. 145, § 1, p. 484; R.S.1913, § 1881; C.S.1922, § 1829; C.S.1929, § 31-517; Laws 1933, c. 23, § 1, p. 194; C.S.Supp.,1941, § 31-517; R.S.1943, § 31-417; Laws 1969, c. 51, § 91, p. 331.

Bonds may not be issued in excess of amount that engineer certifies as being required. Haecke v. Eastern Sarpy County Drainage Dist., 141 Neb. 628, 4 N.W.2d 744 (1942).

Section does not apply to drainage districts organized before its enactment. Sandy v. Western Sarpy Drainage District, 102 Neb. 713, 169 N.W. 268 (1918).

31-418 Bonds; notice of issuance; publication; contents.

The board of directors shall give notice by publication once each week for three consecutive weeks of the proposed issue of bonds and the amount thereof.

Source: Laws 1907, c. 153, § 15, p. 481; Laws 1911, c. 145, § 1, p. 485; R.S.1913, § 1882; C.S.1922, § 1830; C.S.1929, § 31-518.

31-419 Repealed. Laws 1969, c. 245, § 13.

31-420 Deficit; assessment; apportionment.

If a deficit is caused by an appeal from the assessment of benefits and a charge thereon, or by reason of any assessment being uncollectible, or in any other manner whatsoever, then such deficit shall be a charge upon all the lands assessed according to the apportionment of benefits, the same as any other liability of the district.

Source: Laws 1911, c. 145, § 1, p. 485; R.S.1913, § 1884; C.S.1922, § 1832; C.S.1929, § 31-520.

31-421 Bond issue; duties of treasurer; filing and recording.

The treasurer shall at the time of signing the bonds, and before the issue thereof, make a statement in writing and under oath of the same, giving the date, amount, maturity, rate of interest, and place of payment. Such statement shall be filed and recorded in the office of the county clerk.

Source: Laws 1907, c. 153, § 15, p. 481; Laws 1911, c. 145, § 1, p. 485; R.S.1913, § 1885; C.S.1922, § 1833; C.S.1929, § 31-521; R.S. 1943, § 31-421; Laws 1969, c. 245, § 9, p. 901.

Noncompliance with above section is an irregularity not affecting jurisdiction. Scotts Bluff Drainage District v. Scotts Bluff County, 113 Neb. 187, 202 N.W. 455 (1925).

31-422 Borrowing money; interest; purposes; term of loan; provisions for payment; record.

The president, secretary and treasurer, when duly authorized by the board of directors, may borrow money, for not to exceed five years, on the note of the district signed by them, negotiable at not less than par and drawing interest, to pay the costs and expenses of organizing the district, and such further amounts, on the same terms, as may be necessary for the purpose of carrying on the objects and purposes of such organization, not exceeding, however, the cost of the drainage improvement as estimated by the engineer. The board of directors shall make suitable provision for the payment of such borrowed money, with interest thereon, within five years from the time of borrowing the same. The treasurer shall at the time of signing any such note and before the issue thereof, make a statement in writing and under oath of the same, giving the date, amount, maturity, rate of interest, payee, and time and place of payment. Such statement shall be filed and recorded in the office of the county clerk.

Source: Laws 1907, c. 153, § 16, p. 481; Laws 1909, c. 150, § 1, p. 530; R.S.1913, § 1886; C.S.1922, § 1834; C.S.1929, § 31-522; R.S. 1943, § 31-422; Laws 1969, c. 51, § 92, p. 332.

District may not borrow money in excess of the cost of improvement as estimated by the engineer. Haecke v. Eastern Sarpy County Drainage Dist., 141 Neb. 628, 4 N.W.2d 744 (1942).

31-423 Preliminary expenses; payment.

The board of directors shall, out of the first money on hand, pay all the expenses of organization, of the county surveyor and county clerk, and other expenses.

Source: Laws 1907, c. 153, § 17, p. 482; R.S.1913, § 1887; C.S.1922, § 1835; C.S.1929, § 31-523.

31-424 Bond principal and interest; apportionment of assessments; lien; interest; collection.

The board of directors shall each year determine the amount of money necessary to be raised to pay bonds and interest thereon under the apportionment method of financing, and shall apportion the same in dollars and cents against the tracts of land remaining charged therewith. The board of directors shall also annually determine the amount of money necessary to be raised by taxation during the coming year for other purposes, and shall apportion the same in dollars and cents to each tract benefited, according to the units of assessment as determined in accordance with section 31-411. The president and secretary shall thereupon return lists of such tracts, with the amounts of money chargeable to each, keeping the assessments to pay bonds and interest thereon separate in each case, to the county clerk of each county where lands are located, who shall place the same on the duplicate tax lists against the lands and lots so assessed. Such assessments shall be collected and accounted for by the county treasurer, at the same time as general realty taxes, and such assessments shall be and remain a perpetual lien against such real estate until paid, and shall draw interest at the rate of nine percent per annum from the date of delinquency until paid. All the provisions of law for the sale, redemption, and foreclosure in ordinary tax matters shall apply to these special assessments. The drainage district may file a claim against any county, city, village, railroad company, or other corporation, private or public, for the share of any annual apportionment to be paid by any such subdivision or corporation, and if the same is not paid, it may be recovered by action in court. The county treasurer shall on demand pay all funds in his hands to the credit of the drainage district, to the treasurer thereof.

Source: Laws 1907, c. 153, § 18, p. 482; R.S.1913, § 1888; C.S.1922, § 1836; C.S.1929, § 31-524; Laws 1933, c. 136, § 25, p. 537; C.S.Supp.,1941, § 31-524; R.S.1943, § 31-424; Laws 1969, c. 245, § 10, p. 901.

Under former law interest at ten percent was computable on each assessment from first day of May following levy. Scotts Bluff Drainage District v. Scotts Bluff County, 113 Neb. 187, 202 N.W. 455 (1925).

Requirement that a list of lands assessed shall be returned to county clerk, enables district to fix a lien upon lands of district generally and collect tax. Bancroft Drainage District v. Chicago, St. P., M. & O. Ry. Co., 102 Neb. 455, 167 N.W. 731 (1918).

Rules for assessments and apportionment of benefits in general set out. White v. Papillion Drainage District, 96 Neb. 241, 147 N.W. 218 (1914).

A public highway is an easement which may be benefited by the construction of a drainage ditch, and county assessed therefor. Cuming County v. Bancroft Drainage District, 90 Neb. 81, 132 N.W. 927 (1911).

31-424.01 Budget; levy; collection; lien.

The board of directors shall each year determine the amount of money necessary to be raised to pay bonds and interest thereon and the amount of money necessary to be raised by taxation during the coming year for other purposes, and shall include such amount in the budget submitted under section 31-411.02 if the board of directors elects the tax levy method of financing. Such levies shall be collected and accounted for by the county treasurer, at the same time as general realty taxes, and such assessments shall be and remain a perpetual lien against such real estate until paid, and shall draw interest at the rate of nine percent per annum from the date of delinquency until paid. All the provisions of law for the sale, redemption, and foreclosure in ordinary tax matters shall apply to these special assessments. The drainage district may file a claim against any county, city, village, railroad company, or other corporation, private or public, for the share of any annual apportionment to be paid by any such subdivision or corporation, and if the same is not paid, it may be recovered by action in court. The county treasurer shall on demand pay all

funds in his hands to the credit of the drainage district, to the treasurer thereof.

Source: Laws 1969, c. 245, § 11, p. 902; Laws 1979, LB 187, § 132.

31-425 Rules and regulations; powers of board; amendments; record.

The board of directors shall adopt and have recorded with the county clerk such rules and regulations as may be reasonable and proper for the work in hand, and such rules shall provide what officers the district shall have. The rules may be changed from time to time but all amendments shall be duly recorded with the county clerk.

Source: Laws 1907, c. 153, § 19, p. 482; R.S.1913, § 1889; C.S.1922, § 1837; C.S.1929, § 31-525.

31-426 Employees; contracts for construction and repair; estimates; letting; purchase of machinery; personal interest in contracts prohibited; effect.

The board of directors shall employ such engineer, surveyor, and other help, as it may deem necessary and proper, and shall proceed according to its best judgment to carry out such work of the character provided for by sections 31-401 to 31-450 as it deems advisable for the public health, convenience and welfare. The board of directors shall in its discretion, from time to time, determine whether the necessary work shall be done by hiring by the day, or by contract. Before any contract shall be let, estimates of the cost thereof shall be made, and the contract price shall not exceed the estimate. No officer or director shall be in any way interested in any such contract, and any such contract shall be void if any officer or director is interested therein, and no recovery shall be had thereon; *Provided, however,* that nothing in this section shall be construed to prevent the board of directors from hiring one of its members by the day to superintend maintenance work within the district. The board of directors shall likewise, when in its judgment it is for the best interest of the district, be empowered to purchase all necessary machinery and equipment for the purpose of maintaining, cleaning out or reconstructing existing ditches, or for the purpose of constructing new ditches within the district, and for such work may hire by the day, week or month, all necessary help.

Source: Laws 1907, c. 153, § 20, p. 483; R.S.1913, § 1890; Laws 1921, c. 280, § 1, p. 924; C.S.1922, § 1838; C.S.1929, § 31-526.

This section indicates necessity of first, with aid of engineer, making detailed plans of the public work to be done. Haecke v. Eastern Sarpy County Drainage Dist., 141 Neb. 628, 4 N.W.2d 744 (1942).

District, through its officers, is given discretion to adopt and carry out plans for drainage, without ordinarily being required to preserve ditches in perpetuity after once constructed. Compton v. Elkhorn Valley Drainage Dist., 120 Neb. 94, 231 N.W. 685 (1930).

31-427 Directors; compensation.

The board of directors shall receive two dollars per day compensation for time actually employed in the business of the district, not exceeding one hundred dollars each per year, but reasonable allowance shall be made for necessary clerical work and assistance.

Source: Laws 1907, c. 153, § 21, p. 483; R.S.1913, § 1891; C.S.1922, § 1839; C.S.1929, § 31-527.

31-428 Repealed. Laws 1983, LB 191, § 5.

31-429 Draining lands into district ditches; requirements.

Lands within the drainage district which have been assessed for benefits may, under general rules and regulations to be made by the board of directors applicable to all similarly situated, be drained by the owners thereof by tiling or otherwise into the main or lateral drains. Owners of land within the district not assessed, or without the district, may drain such lands into the main or lateral drains of the drainage district upon contracting with the board of directors for the privilege, and paying therefor, but not otherwise.

Source: Laws 1907, c. 153, § 23, p. 483; R.S.1913, § 1893; C.S.1922, § 1841; C.S.1929, § 31-529.

31-430 Power to cross highways and railroads.

The district may dig ditches and drains under and across railroads and public highways.

Source: Laws 1907, c. 153, § 24, p. 484; R.S.1913, § 1894; C.S.1922, § 1842; C.S.1929, § 31-530.

Section is constitutional and the county can impose no conditions. Douglas County v. Papillion Drainage District, 92 Neb. 771, 139 N.W. 718 (1913).

31-431 Records; filing; fees of county clerk.

The originals of all contracts of every kind in writing, made by or with the board of directors or officers, with reference to the construction or use of such public work, or the rights or obligations of the drainage district therein, shall be filed and recorded with the county clerk, who shall receive for all services the fees allowed by law for similar services.

Source: Laws 1907, c. 153, § 25, p. 484; R.S.1913, § 1895; C.S.1922, § 1843; C.S.1929, § 31-531.

31-432 Director conveying or losing interest in land; vacancy created.

If any director shall sell and convey his assessed realty and not be an officer of a company interested, he shall no longer serve as director or officer.

Source: Laws 1907, c. 153, § 26, p. 484; R.S.1913, § 1896; C.S.1922, § 1844; C.S.1929, § 31-532.

31-433 Appeal; time; effect.

Any appeal to the Court of Appeals on any matter under sections 31-401 to 31-450 shall be taken within thirty days after the entry of the judgment, decree, or final order or within thirty days after the entry of the order overruling a motion for a new trial in such cause. Any such appeal shall not operate to stay proceedings.

Source: Laws 1907, c. 153, § 27, p. 484; R.S.1913, § 1897; C.S.1922, § 1845; C.S.1929, § 31-533; R.S.1943, § 31-433; Laws 1961, c. 138, § 4, p. 398; Laws 1987, LB 33, § 7; Laws 1991, LB 732, § 90; Laws 1999, LB 43, § 19.

31-434 Elections; voting by proxies; when permitted.

At all elections any person living outside the different counties owning or controlling assessed real estate may vote by proxy duly authorized in writing on file with the county clerk.

Source: Laws 1907, c. 153, § 28, p. 484; R.S.1913, § 1898; C.S.1922, § 1846; C.S.1929, § 31-534.

31-435 Accounts; treasurer's annual report; neglect by officers; penalty.

The officers of the district shall keep good, complete and business like records of all receipts and disbursements, and the purpose thereof and of all business transacted, and all books, papers and vouchers shall at all times be subject to public inspection. The treasurer shall annually make detailed report in writing of all receipts and disbursements, which report shall contain a statement of the funds on hand belonging to the district, together with the amount if any in the hands of the county treasurer, and all money received during the preceding year from all sources, and shall show all items of disbursement, the person or persons to whom, and the object for which the same has been paid out, including all compensation paid to officers of said district, and all other expenses of administration. The statement shall be verified under oath, and a copy of the same shall be filed with the county clerk of each county having land within said district, April 1 of each year, and the treasurer shall have such report subject to inspection at each annual meeting. If any such treasurer shall fail or neglect to make out such report or to file the same with the county clerk, or if any officer of such drainage district shall neglect or refuse to submit for inspection any records or papers of said district upon demand of any person interested, or shall otherwise neglect to perform any duties imposed upon him by this section, he shall be guilty of a Class V misdemeanor.

Source: Laws 1907, c. 153, § 29, p. 484; R.S.1913, § 1899; Laws 1915, c. 28, § 1, p. 90; C.S.1922, § 1847; C.S.1929, § 31-535; R.S. 1943, § 31-435; Laws 1977, LB 40, § 117.

31-436 Drainage district; dissolution; procedure; distribution of funds; city of the metropolitan or first class; county; assume operation and maintenance; authorization; conditions.

(1) If there are no debts outstanding, the board of directors may, on its own motion or on the request in writing of ten electors, submit the question of dissolution of the district after due notice thereof is given by publication as provided in section 31-418. If three-fifths of the votes cast on the question at such election are in favor of such dissolution, the officers thereof shall cause a record of such election and the vote thereon to be made in the office of the county clerk of the proper county, and the drainage district shall thereupon stand dissolved.

(2) In case a drainage district is dissolved, as authorized in subsection (1) of this section, the funds on hand or to be collected shall be held by the treasurer until the distribution thereof is approved. The directors of the district shall petition the district court, of the county in which the petition to form the district was filed, for an order approving the distribution of such funds to the landowners as a dividend on the same basis as collected.

(3) Whenever the governing body of a metropolitan- or first-class city or a county shall find and determine by resolution that it is in the best interest of such city or county to assume the operation and maintenance of a drainage district, such drainage district shall transfer and convey its rights-of-way, real and personal property, and all of its assets to the city or county and the city or county shall assume the responsibilities and obligations of such district. Upon the adoption of such a resolution, the board of directors of the district shall pay all of the outstanding obligations of the district, close out all of its affairs, and

file a notice of dissolution of the district with the county clerk. Notwithstanding the provisions of subsection (2) of this section, all of the funds remaining after the obligations of the district are fully paid shall be transferred to the general fund of the metropolitan- or first-class city or the flood control levy fund of the county or city which has assumed the obligations and responsibilities of the district, and no dividends shall be paid to landowners upon such transfer of the assets, rights-of-way, and responsibilities of the district to a metropolitan- or first-class city or county as provided in this section.

(4) In the event that a transfer and conveyance of the real and personal property, assets, obligations, and responsibilities of the district is made to a metropolitan- or first-class city or a county or, as the case may be, to a city and a county, taxes shall no longer be collected by the district for the maintenance of the improvements of the district. The cost of maintaining the improvements shall be borne as a general obligation, or an obligation of the flood control fund, of the metropolitan- or first-class city or county, as the governing body of the city or county may determine or, if the improvements shall have been transferred to both a city and county and the city and county shall have entered into a contract as provided in subsection (5) of this section, the cost of maintaining the improvements shall be borne as provided in such contract.

(5) Notwithstanding the provisions of subsections (2) and (3) of this section, if both the governing body of a metropolitan- or first-class city and the governing body of the county shall find and determine by resolution that it is in the best interest of the city and the county, respectively, to assume the operation and maintenance of the same drainage district, and shall cause the city and county to enter into a contract between themselves concerning the responsibilities and obligations of the district to be assumed, and the rights-of-way, real and personal property, and all other assets of the district to be received, by the city and county, respectively, the board of directors of the district shall pay all of the outstanding obligations of the district, close out all of its affairs, file a notice of dissolution of the district with the county clerk, and transfer to the city and county, respectively, in accordance with the terms of such contract, the rights-of-way, real and personal property, and all other assets of the district, including, but not limited to, all funds remaining after the obligations of the district are fully paid. The city and county in such contract shall specify whether the funds thus to be transferred shall be transferred by the district to the general fund or the flood control fund of the city and county, respectively. No dividends shall be paid to landowners upon such transfer of the assets, rights-of-way, and responsibilities of the district as provided in this subsection.

Source: Laws 1907, c. 153, § 30, p. 484; Laws 1909, c. 150, § 1, p. 531; R.S.1913, § 1900; C.S.1922, § 1848; C.S.1929, § 31-536; R.S. 1943, § 31-436; Laws 1953, c. 99, § 1, p. 276; Laws 1971, LB 186, § 1; Laws 1980, LB 645, § 1.

District is not ordinarily required to preserve ditches in perpetuity after once constructed. Compton v. Elkhorn Valley Drainage Dist., 120 Neb. 94, 231 N.W. 685 (1930).

31-436.01 Drainage district; located in more than one county; inactive for five years; county board; dissolve; procedure; funds; distribution.

When any drainage district organized under the provisions of sections 31-401 to 31-408 is comprised of territory located in more than one county and is inactive for a period of at least five years, as determined by resolution of the

county board of the county in which such district was organized, the county board may initiate action for dissolution of the district in the manner provided in subsection (1) of section 31-436. When any drainage district is dissolved as authorized in this section, any remaining funds of the district shall be distributed to the counties in which the district is situated in the same proportion as the area of the district in each county bears to the total area of the district, and shall be deposited in the general fund of the respective counties.

Source: Laws 1967, c. 187, § 3, p. 513.

31-437 Sections construed; limitation on powers.

None of the provisions of sections 31-401 to 31-450 shall be construed as repealing or in anywise modifying the provisions of any other act relating to the subject of drainage. Nothing therein contained shall be deemed to authorize any drainage district to divert the waters of any river, creek, stream, canal or ditch from its channel to the detriment of any person or persons having any interest in such river, creek, stream, canal or ditch or the waters therein, unless proper compensation be ascertained and paid therefor under the laws of this state relating to the taking of private property for public use. No change of the channel or location of any river or stream dividing counties shall operate to relieve either county from contribution to the building and repairing of any bridge over such river or stream, but said liability shall continue, notwithstanding work done under said sections may remove any river or stream from the boundary line between counties.

Source: Laws 1907, c. 153, § 31, p. 485; R.S.1913, § 1901; C.S.1922, § 1849; C.S.1929, § 31-537.

Right of landowner to recover compensation for taking of private property for public use is recognized. Armbruster v. Stanton-Pilger Drainage Dist., 169 Neb. 594, 100 N.W.2d 781 (1960).

31-438 Enlarging district; procedure.

When it is deemed advisable by the board of directors of district to enlarge the boundaries thereof and the conditions mentioned in section 31-401 apply to such enlarged territory, a petition for the enlargement of the district, signed by a majority of the board of directors of the district and by ten owners of land within the territory proposed to be added to the district or, if there are less than twenty such owners, then by at least one-fourth of such owners, may be filed with the county clerk of the county where the original petition was filed. Upon the filing of a petition for the enlargement of a district, the county board, county surveyor, and county clerk of the county shall proceed in all respects as provided in sections 31-402 to 31-408, so far as applicable. The board of directors of the district, at the time of filing such petition for enlargement with the county clerk, may prescribe the conditions on which the additional territory is to be added, which conditions shall be based upon the work previously done by the district and with a view to equalizing assessments according to benefits, and such conditions shall be binding on the enlarged district if formed. Any person may appeal to the district court from the imposing of such conditions in the manner provided for appeals by section 31-412. The appeal shall be taken within thirty days from the time of completing the canvass of the votes of such election. The additional territory shall be deemed added to the district only if a majority of the votes voted thereon in the original district and a majority of the votes voted thereon in the proposed new territory shall each be in favor of such

enlarged district. The board of directors of the original district shall constitute the board of directors of the enlarged district.

Source: Laws 1909, c. 150, § 1, p. 531; R.S.1913, § 1902; C.S.1922, § 1850; C.S.1929, § 31-538; R.S.1943, § 31-438; Laws 1989, LB 26, § 2.

31-439 Detaching territory; procedure.

Whenever the board of directors of any district deems it advisable to detach any portion of the district, which portion shall not have been apportioned for benefits, or having been apportioned, the amount having all been paid, the board of directors may submit at any annual election of the district the proposition of detaching such portion. If a majority of the votes cast on that question are in favor of the proposition to detach, the same shall be deemed carried, and the territory shall thereupon cease to be within the drainage district, and shall stand in the same plight as if never attached. The officers of the district shall certify the same to the county clerk, who shall make a record thereof.

Source: Laws 1909, c. 150, § 1, p. 532; R.S.1913, § 1903; C.S.1922, § 1851; C.S.1929, § 31-539.

31-440 Overlapping districts; assessments, how determined.

Two or more districts formed under the provisions of sections 31-401 to 31-408, or any district formed under the provisions of said sections, and any district formed under any other law of this state, may overlap each other. In such event any land in more than one district shall be assessable by each district for its equitable proportion of the benefits received from the improvements by such district.

Source: Laws 1909, c. 150, § 1, p. 533; R.S.1913, § 1904; C.S.1922, § 1852; C.S.1929, § 31-540.

31-441 Changing voting place from county seat; procedure.

When a district has been formed, the board of directors shall have power by a three-fifths vote to declare the county seat an inconvenient place for holding elections, and shall certify the same to the proper county clerk. Thereupon all elections of the district other than those for enlarging the boundaries and those annual elections held pursuant to section 31-409.01 shall be held at a place to be designated each year by the board of directors and within the district, and the county clerk of the county previously having charge of the matter shall each year appoint three resident freeholders of the district to act as an election and canvassing board, and the parties so appointed, or if they fail to appear, any other parties chosen by electors present at the election, shall constitute the election and canvassing board, with the same powers given to the county clerk and his or her assistants by section 31-407.

Source: Laws 1909, c. 150, § 1, p. 533; R.S.1913, § 1905; C.S.1922, § 1853; C.S.1929, § 31-541; R.S.1943, § 31-441; Laws 1983, LB 191, § 4.

31-442 Fixing boundaries; procedure; petition; hearing.

Upon filing the petition mentioned in section 31-402, the county clerk shall designate and endorse thereon a day for the hearing and determination of said petition by the county board which shall not be less than fourteen days subsequent to the filing of the petition, and the county board may pass on the petition and fix the boundaries at any time on or after the date fixed by the county clerk.

Source: Laws 1909, c. 150, § 1, p. 533; R.S.1913, § 1906; C.S.1922, § 1854; C.S.1929, § 31-542.

31-443 Repealed. Laws 1951, c. 101, § 127.

31-444 Ditches; outlets beyond district boundaries; acquisition; procedure.

The drainage district may go beyond the limits of its district for an outlet to its drainage system, or for the purpose of conducting its main ditch or ditches, and may purchase, acquire, or condemn any needed real estate therefor. The procedure to condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724.

Source: Laws 1909, c. 150, § 1, p. 534; R.S.1913, § 1908; C.S.1922, § 1856; C.S.1929, § 31-544; R.S.1943, § 31-444; Laws 1951, c. 101, § 75, p. 481.

31-445 Obstructing ditch, drain, or watercourse; penalty.

It shall be unlawful to obstruct in any manner the flow of water in any ditch, drain or watercourse constructed, improved or used by such drainage district, or to injure or disturb in any manner any dike, levee, or other work constructed in whole or in part, or owned by any drainage district. Any person violating any provision of this section shall be guilty of a misdemeanor, and shall upon conviction be punished by a fine not exceeding one hundred dollars, or by imprisonment in the county jail not exceeding six months, and shall stand committed until the fine and costs are paid. He shall also be liable to the drainage district and to any person injured for all damages sustained by reason of such violation.

Source: Laws 1909, c. 150, § 1, p. 534; R.S.1913, § 1909; C.S.1922, § 1857; C.S.1929, § 31-545.

31-446 Repealed. Laws 2001, LB 420, § 38.

31-447 Special assessment liens; vendor and purchaser; apportionment; filing with county clerk.

All special assessments provided for under sections 31-401 to 31-450 shall, as between vendor and purchaser, be a lien upon the real property involved from and upon the filing with the county clerk of the lists of the tracts, with the amount of money chargeable to each, as provided for in section 31-424, or if the board of directors has elected the tax levy method of financing, all special assessments provided for under sections 31-401 to 31-450 shall, as between vendor and purchaser, be a lien upon the real property involved from and upon the filing with the county clerk of the property tax rolls and the taxable value of

the taxable personal property of each taxpayer as provided for in section 31-411.02.

Source: Laws 1911, c. 145, § 1, p. 486; R.S.1913, § 1911; C.S.1922, § 1859; C.S.1929, § 31-547; R.S.1943, § 31-447; Laws 1969, c. 245, § 12, p. 903; Laws 1979, LB 187, § 133; Laws 1992, LB 1063, § 27; Laws 1992, Second Spec. Sess., LB 1, § 27.

31-448 Assessment of benefits to highways and public property; payment.

The assessment for benefits to public highways and streets and other public property that may have been benefited, shall be paid out of such fund of the county, city, village or other public corporation involved, as the officers thereof may deem most available for such purpose.

Source: Laws 1911, c. 145, § 1, p. 486; R.S.1913, § 1912; C.S.1922, § 1860; C.S.1929, § 31-548.

31-449 Invalid assessment; reapportionment; relevy; how made.

If for any reason any apportionment of benefits or levy heretofore or hereafter made is or shall be invalid, a reapportionment of benefits and relevy shall be made, but no such reapportionment shall be made until at least ten days' notice by publication in a newspaper in each county involved shall be given of a hearing on such reapportionment, and notice shall be given of the same when made, and appeals may be taken therefrom as provided in the original apportionment. Such reapportionment and relevy shall be made on such terms and in such a manner as to do justice and equity to all persons and interests, having due regard to payments made, if any, under such invalid apportionment or levy.

Source: Laws 1911, c. 145, § 1, p. 486; R.S.1913, § 1913; C.S.1922, § 1861; C.S.1929, § 31-549.

Reassessment of benefits is provided for when original assessment is invalid. Shanahan v. Johnson, 170 Neb. 399, 102 N.W.2d 858 (1960).

Notice to landowners is required upon reapportionment of benefits. Prucka v. Eastern Sarpy Drainage Dist., 157 Neb. 284, 59 N.W.2d 761 (1953).

31-450 Future districts; election; when held; notice; publication; limit of indebtedness; changing plans; abandonment.

In all districts hereafter organized, the board of directors, having first adopted detailed plans and specifications of the work proposed to be done, having made an estimate of the total cost of such contemplated improvement, and having filed such plans, specifications, and estimated cost with the clerk of the county having the largest area of land, shall then publish a notice once each week for three consecutive weeks in a newspaper in each county of an election to vote on the question of proceeding with such work and incurring the necessary liability in all cases in which the estimate of the contemplated work equals seven percent of the taxable value of the lands assessed for such improvement. The election shall be held in all respects as other elections provided for in sections 31-401 to 31-450. If a majority of the votes cast at such election are in favor of proceeding with the work and incurring the necessary liability, then the board, in proceeding therein, shall not incur indebtedness in a total sum in excess of the estimated cost so filed and published. No changes in such plans and specifications shall be made thereafter by the board which cost in the aggregate more than fifteen percent above such estimated cost. If a

majority of the votes at such election vote against proceeding and incurring the liability, then the board shall abandon the work and shall thereupon certify to the county clerks a tax levy on all the tracts in the district by valuation sufficient to pay all the liabilities of the district, and the levy shall be entered and collected as other general taxes and used to pay the liabilities.

Source: Laws 1911, c. 145, § 1, p. 487; R.S.1913, § 1914; Laws 1921, c. 280, § 1, p. 924; C.S.1922, § 1862; C.S.1929, § 31-550; R.S. 1943, § 31-450; Laws 1979, LB 187, § 134; Laws 1992, LB 719A, § 122.

This section applies only when cost of contemplated work equals or exceeds twenty percent of the assessed value of the lands. Chicago & N. W. Ry. Co. v. Payne Creek Drainage Dist., 148 Neb. 139, 26 N.W.2d 607 (1947).

This section indicates the necessity of first having adopted plans and specifications of the work proposed to be done and an estimate of the cost. Haecke v. Eastern Sarpy County Drainage Dist., 141 Neb. 628, 4 N.W.2d 744 (1942).

One appealing from levy of assessment for alleged benefits by drainage district waives right to insist that no apportionment of benefits was made. Rudersdorf Drainage District v. Chicago, R. I. & P. Ry. Co., 118 Neb. 43, 223 N.W. 639 (1929).

This section does not apply to drainage districts organized before its enactment. Sandy v. Western Sarpy Drainage District, 102 Neb. 713, 169 N.W. 268 (1918).

Section is constitutional. State ex rel. Gantz v. Drainage District No. 1 of Merrick County, 100 Neb. 625, 160 N.W. 997 (1916).

31-451 Repealed. Laws 1969, c. 138, § 28.

ARTICLE 5

SANITARY DRAINAGE DISTRICTS IN MUNICIPALITIES

Section

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31-544. Repealed. Laws 1989, LB 31, § 1.
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31-501 Sanitary drainage district in municipality; organization; petition for election.

Whenever one or more municipal corporation or corporations may be situated upon or near a stream which is bordered by lands subject to overflow from natural causes, or which is obstructed by dams or artificial obstructions so that the natural flow of waters is impeded so that drainage or the improvement of the channel of the stream will conduce to the preservation of public health, such municipal corporation or corporations and the surrounding lands deleteriously affected by the conditions of the stream, may be incorporated as a sanitary drainage district under sections 31-501 to 31-523 in the manner

following: Any one hundred legal voters, freeholders resident within the limits of such proposed sanitary drainage district, may petition the county board of the county wherein they reside to cause the question to be submitted to the legal voters within the limits of such proposed sanitary drainage district whether they will organize as a sanitary drainage district under said sections; *Provided,* that in the case of municipal corporations of less than one thousand population, as determined by the last preceding census, two-thirds of the legal voters, freeholders resident within the limits of such proposed sanitary drainage district, may petition the county board of the county wherein they reside to cause the question to be submitted to the legal voters within the limits of such proposed sanitary drainage district whether they will organize as a sanitary drainage district under said sections, and if a majority of those voting on the question are in favor of the proposition the district shall be organized.

Source: Laws 1891, c. 36, § 1, p. 287; R.S.1913, § 1922; Laws 1919, c. 142, § 1, p. 320; C.S.1922, § 1863; C.S.1929, § 31-601.

Sanitary District Act sustained as constitutional. Whedon v. Wells, 95 Neb. 517, 145 N.W. 1007 (1914).

31-502 Organization; petition; contents; territory included.

Such petition shall contain a definite description of the territory intended to be embraced in such district according to government survey, and the name of the proposed district; but no lands not included within any municipal corporation, or within three miles thereof, shall be included in any sanitary district, nor shall any lands not within an incorporated town be included within any sanitary district, unless the same be within three miles of the channel of such stream or of the area of lands subject to its overflow.

Source: Laws 1891, c. 36, § 1, p. 287; R.S.1913, § 1923; C.S.1922, § 1864; C.S.1929, § 31-602.

31-503 Organization; hearing on petition; notice; publication; boundaries of district.

Upon the filing of such petition in the office of the county board it shall give notice in one or more newspapers daily, if there be a daily paper in said county, during twenty days prior to such meeting, of the time and place where the petition will be heard. At the time so fixed the board shall meet, and all persons in such proposed sanitary district shall have opportunity to be heard touching the location and boundary of the proposed district. Thereupon the county board shall by an order determine the boundaries of such district, whether described in such petition or otherwise.

Source: Laws 1891, c. 36, § 1, p. 288; R.S.1913, § 1924; C.S.1922, § 1865; C.S.1929, § 31-603.

31-504 Organization; election; notice; publication; form of ballot; canvass; returns; vote required.

After such determination by the county board, or a majority thereof, it shall call a special election and submit to the legal voters of the proposed sanitary district the question of the organization of such district, and notice in a daily paper, if there be one, shall be given of such election twenty days prior thereto. At such election each legal voter resident within the proposed sanitary district shall have a right to cast a ballot with the words thereon, For sanitary district,

or Against sanitary district, and the ballots cast shall be received, returned and canvassed in the same manner as upon county elections. The result shall be entered of record, and if a majority of the votes cast be in favor of the proposed district, such proposed district shall be deemed an organized sanitary district under sections 31-501 to 31-523.

Source: Laws 1891, c. 36, § 1, p. 288; R.S.1913, § 1925; C.S.1922, § 1866; C.S.1929, § 31-604.

31-505 Sanitary district trustees; election; organization; officers; corporate powers.

Upon the organization of any such sanitary district the county board shall call an election for the election of trustees, who shall hold their offices until their successors are elected and qualified. Where such sanitary district does not contain a city of more than forty thousand inhabitants there shall be three trustees and where such sanitary district contains a city of more than forty thousand inhabitants there shall be five trustees. In districts having three trustees, at the first general state election held in November after the organization of the district, there shall be elected one trustee for a term of two years and two trustees for a term of four years, and thereafter their respective successors shall be elected for a term of four years at the general state election held in November immediately prior to the expiration of their respective terms. In districts having five trustees, at the first general state election held in November after the organization of the district, there shall be elected two trustees for a term of two years and three trustees for a term of four years, and thereafter their respective successors shall be elected for a term of four years at the general state election held in November immediately prior to the expiration of their respective terms. At the first meeting after election of one or more members, the board shall elect one of their number president and, in case they fail to elect, then the member who at his election received the highest number of votes shall be president of such board. Such district shall be a body corporate and politic by name of Sanitary District of ...., with power to sue, be sued, contract, acquire and hold property, and adopt a common seal.

Source: Laws 1891, c. 36, § 2, p. 288; R.S.1913, § 1926; C.S.1922, § 1867; C.S.1929, § 31-605; Laws 1943, c. 75, § 3, p. 259; R.S.1943, § 31-505; Laws 1949, c. 81, § 1, p. 214.

31-506 Trustees; general powers; clerk; engineer; publication of proceedings.

The board of trustees shall elect one of their members clerk and have the power to appoint, employ and pay an engineer, who shall be removable at pleasure. The clerk may be paid not to exceed three hundred dollars per year by said board. The board shall have power to pass all necessary ordinances, orders, rules and regulations for the necessary conduct of its business and to carry into effect the objects for which such sanitary district is formed. Immediately after each regular and special meeting of said board, it shall cause to be published, in one newspaper of general circulation in the district, a brief statement of its proceedings, including an itemized list of bills and claims allowed, specifying the amount of each, to whom paid and for what purpose;

Provided, no publication shall be required unless the same can be done at an expense not exceeding one-third of the legal rate for advertising notices.

Source: Laws 1891, c. 36, § 3, p. 289; R.S.1913, § 1927; C.S.1922, § 1868; C.S.1929, § 31-606; Laws 1943, c. 76, § 1, p. 261.

Cross References

For legal rate for publishing notices, see section 33-141.

31-507 Trustees; drainage powers.

The board of trustees of any sanitary district organized under sections 31-501 to 31-523 shall have power to provide for the drainage of such district by laying out, establishing, maintaining and constructing one or more channels, drains or ditches for carrying off and disposing of the drainage and sewage of such district in a satisfactory manner, and for such purpose to straighten, widen, or deepen the channel of any stream, or remove any dam, so as to quicken and improve the flow of any stream, or effect satisfactory and efficient drainage.

Source: Laws 1891, c. 36, § 4, p. 289; R.S.1913, § 1928; C.S.1922, § 1869; Laws 1927, c. 144, § 1, p. 390; C.S.1929, § 31-607.

31-507.01 Connection with sanitary sewer; permit required; violation; penalty.

It shall be unlawful for any person to connect any property to a sanitary sewer, maintained by any sanitary drainage district or which has been or may hereafter be acquired from such district by the municipality located within such district and which is being maintained by such municipality, without first having applied for and obtained a permit from such district or municipality to establish such connection. The issuance of such a permit may be conditioned upon the payment of a deferred assessment as provided in section 31-514. Each day that a connection made unlawful by this section continues shall be a separate violation of this section. Any person violating the provisions of this section shall be guilty of a misdemeanor and shall, upon conviction thereof, be fined not less than twenty-five dollars nor more than one hundred dollars for each violation.

Source: Laws 1957, c. 115, § 1, p. 395.

31-508 Ditches constructed from cities of 100,000 to 300,000 population; improvement beyond the district; plan and estimate; duty of Department of Natural Resources.

If a sanitary drainage district has constructed one or more channels, drains, or ditches from a city having a population of more than one hundred thousand and less than three hundred thousand inhabitants to or beyond the boundaries of the district downstream and there remains from the lower terminus of such improvement a portion or continuation of the watercourse unimproved, the Department of Natural Resources shall investigate the conditions of such watercourse, and if the department determines that further improvement in such watercourse downstream is for the interest of lands adjacent to such watercourse below the point of the improvement, the department shall file a plan of such improvement in the office of the county clerk of each of the counties in which any of the lands to be benefited are situated and in which any portion of the watercourse to be improved is located. Such plan shall describe

the boundaries of the district to be benefited and shall contain an estimate of the benefits that would accrue to the sanitary district by reason of such improvement as well as the cost thereof and an estimate of the special benefits that would accrue to lands adjacent to the watercourse by reason of improved drainage, such estimate being detailed as to the various tracts of land under separate ownership as shown by the records of the county in which such lands are situated.

Source: Laws 1927, c. 144, § 1, p. 390; C.S.1929, § 31-607; R.S.1943, § 31-508; Laws 1949, c. 81, § 2, p. 214; Laws 1969, c. 248, § 1, p. 906; Laws 2000, LB 900, § 71.

31-509 Ditches constructed from cities of 100,000 to 300,000 population; improvement beyond the district; publication of notices; election; vote required; effect of negative vote.

Whenever the Department of Natural Resources files a report and estimate, the county clerk of such county shall publish a notice once each week for three weeks in a newspaper published in the county seat of each of the counties having land within the sanitary drainage district, which notice shall state the filing of the report and estimate, the boundaries of the district to be benefited, that an election will be held at the office of the county clerk between the hours of 8 a.m. and 6 p.m. on a day named in the notice, and that at the election the question of the formation of a sanitary drainage district to include the area described in the report will be determined. The election shall be held in accordance with sections 31-406 to 31-408, except that no directors shall be elected. If a majority vote for the creation of a district based on acreage represented, the sanitary drainage district shall have jurisdiction to make the improvements recommended by the Department of Natural Resources and to assess the special benefits thereof to the lands specially benefited. If a majority vote against the creation of a district, the work shall not be done.

Source: Laws 1927, c. 144, § 1, p. 390; C.S.1929, § 31-607; R.S.1943, § 31-509; Laws 1961, c. 138, § 5, p. 399; Laws 2000, LB 900, § 72.

Under former law, that part of statute precluding recovery of claim for damages is unconstitutional. Cooper v. Sanitary Dist. No. 1, 146 Neb. 412, 19 N.W.2d 619 (1945).

31-510 Borrowing money; bonds; interest; limit of indebtedness.

Such district may borrow money for corporate purposes and issue bonds therefor, but it shall not become indebted in any manner or for any purpose to an amount in the aggregate in excess of one and four-tenths percent of the taxable valuation of property in the district for county purposes.

Source: Laws 1891, c. 36, § 6, p. 290; R.S.1913, § 1929; C.S.1922, § 1870; C.S.1929, § 31-608; R.S.1943, § 31-510; Laws 1969, c. 51, § 93, p. 332; Laws 1979, LB 187, § 135; Laws 1992, LB 719A, § 123.

Sanitary districts may borrow money for corporate purposes. Lang v. Sanitary District of Norfolk, 160 Neb. 754, 71 N.W.2d 608 (1955).

31-511 Bonded indebtedness; election required; manner of submission.

At the time of or before incurring any bonded indebtedness the question shall be submitted to the people in the manner provided by law in cases of borrowing money for internal improvements.

Source: Laws 1891, c. 36, § 7, p. 290; R.S.1913, § 1930; C.S.1922, § 1871; C.S.1929, § 31-609.

To carry bond issue, favorable vote of two-thirds of electors was required. Lang v. Sanitary District of Norfolk, 160 Neb. 754, 71 N.W.2d 608 (1955).

31-512 Contracts for work; how let; notice; rejection of bids.

All contracts for work to be done, the expense of which is more than fifteen hundred dollars, shall be let to the lowest responsible bidder, upon notice, of not less than twenty days, of the terms and conditions of the contract to be let. The board of trustees shall have power to reject any and all bids and readvertise for the letting of such work.

Source: Laws 1891, c. 36, § 8, p. 290; R.S.1913, § 1931; C.S.1922, § 1872; C.S.1929, § 31-610; R.S.1943, § 31-512; Laws 1959, c. 128, § 1, p. 464.

31-513 Annual tax levy; limit; certification to county clerk; collection; disbursement of funds.

(1) The board of trustees may levy and collect annually taxes for corporate purposes upon property within the limits of such sanitary district to the amount of not more than three and five-tenths cents on each one hundred dollars upon the taxable value of the taxable property of such district.

(2) The board of trustees shall, on or before September 20 of each year, certify the amount of tax to be levied to the county clerk who shall place the proper levy upon the county tax list, and the tax shall be collected by the county treasurer in the same manner as county taxes.

(3) The tax money collected by the levy shall be used exclusively for the purpose or purposes set forth in subsection (1) of this section. The county treasurer shall disburse the taxes on warrants of the board of trustees, and in respect to such fund, the county treasurer shall be ex officio treasurer of the sanitary district.

Source: Laws 1891, c. 36, § 9, p. 290; R.S.1913, § 1932; C.S.1922, § 1873; C.S.1929, § 31-611; Laws 1943, c. 73, § 1, p. 255; R.S.1943, § 31-513; Laws 1947, c. 113, § 1, p. 308; Laws 1951, c. 97, § 1, p. 266; Laws 1953, c. 287, § 51, p. 960; Laws 1955, c. 114, § 1, p. 305; Laws 1969, c. 248, § 2, p. 907; Laws 1969, c. 145, § 32, p. 692; Laws 1979, LB 187, § 136; Laws 1992, LB 1063, § 28; Laws 1992, Second Spec. Sess., LB 1, § 28; Laws 1993, LB 734, § 36; Laws 1995, LB 452, § 9.

31-514 Special assessments; power of board of trustees; limit; improvement out of district; deferred assessment; charges; payment.

The board of trustees shall have the power to defray the expenses of any improvement made by it in the execution of the powers hereby granted, by special assessment, by general taxation, or partly by special assessment and partly by general taxation, as it may determine by order. It shall constitute no defense to any tax or special assessment that the improvement, for which the

same is imposed, lies partly outside of the limits of such district. No property shall be specially assessed more than it is benefited by the improvement for which the assessment is levied; *Provided*, that a deferred assessment, not exceeding the pro rata cost of the construction of sanitary sewers, may be made and collected solely in the form of a connection charge, if and when property not specially benefited is later connected to such sewer. The amount of such charge shall be fixed by the board of trustees at the same time such special assessments are made. Such deferred assessments shall not constitute a lien. The board of trustees shall make a detailed report of said deferred assessments and file such report with the county clerk in the county where the property is located.

Source: Laws 1891, c. 36, § 10, p. 291; R.S.1913, § 1933; C.S.1922, § 1874; Laws 1927, c. 144, § 2, p. 391; C.S.1929, § 31-612; Laws 1933, c. 136, § 26, p. 538; C.S.Supp.,1941, § 31-612; R.S.1943, § 31-514; Laws 1955, c. 115, § 1, p. 307.

31-515 Special assessments; levy; procedure; improvements recommended by Department of Natural Resources.

The proceedings for imposing of special assessment by the board of trustees shall be, as nearly as may be, according to those for special assessments by the mayor and council under the law governing cities of the first class. If improvements are recommended by the Department of Natural Resources and a sanitary drainage district is formed adjacent to a watercourse previously improved above such district pursuant to sections 31-508 and 31-509, the board of trustees shall advertise for bids for the construction of such improvements as are recommended by the department and in accordance with plans recommended by the department.

Source: Laws 1891, c. 36, § 10, p. 291; R.S.1913, § 1933; C.S.1922, § 1874; Laws 1927, c. 144, § 2, p. 391; C.S.1929, § 31-612; Laws 1933, c. 136, § 26, p. 538; C.S.Supp.,1941, § 31-612; R.S.1943, § 31-515; Laws 2000, LB 900, § 73.

Cross References

Special assessments in cities of the first class, see section 16-666.

31-516 Improvements recommended by Department of Natural Resources; board of trustees as board of equalization; notice of meeting; appeal.

Upon the completion of the improvement, notice shall be given that the trustees will sit as a board of equalization, at a day and hour in such notice stated, for the purpose of equalizing the assessments of such portion of the cost of such improvement as the report of the Department of Natural Resources finds to represent the special benefits of the land the drainage of which such improvements would improve. At such hearing such board of equalization shall hear all complaints with reference to the assessments proposed under the findings of the department. The trustees sitting as a board of equalization shall have power to increase or decrease such special assessments to the end that the property shall be assessed its equitable portion of the cost of such improvement, but not exceeding in the aggregate the percentage of the total cost recommended by the department to be assessed against such property and not exceeding in any case the actual special benefits accruing to such land. Notice of such meeting of the board of equalization shall be given by publishing a

notice thereof in a paper, published in the county seat in each of the counties where any of the lands to be assessed are situated, once each week for three consecutive weeks. Appeals from the findings of such board of equalization may be taken in the manner provided for appeals from assessments of drainage districts organized under sections 31-401 to 31-450.

Source: Laws 1927, c. 144, § 2, p. 392; C.S.1929, § 31-612; Laws 1933, c. 136, § 26, p. 539; C.S.Supp.,1941, § 31-612; R.S.1943, § 31-516; Laws 2000, LB 900, § 74.

Cross References

Appeals, see section 31-412.

31-517 Improvements; costs borne by district.

All costs of the improvement other than the costs to be covered by special assessments as finally determined shall be borne by the sanitary district.

Source: Laws 1927, c. 144, § 2, p. 392; C.S.1929, § 31-612; Laws 1933, c. 136, § 26, p. 539; C.S.Supp.,1941, § 31-612.

31-518 Delinquent assessments; interest; limit.

No special assessment levied for the purpose aforesaid shall draw interest at a rate exceeding nine percent per annum from the date of delinquency until paid.

Source: Laws 1927, c. 144, § 2, p. 392; C.S.1929, § 31-612; Laws 1933, c. 136, § 26, p. 539; C.S.Supp.,1941, § 31-612.

31-519 Special assessments; payment; collection.

Where any special assessment is made under sections 31-501 to 31-523, the order making such assessment may provide that it be divided into equal annual installments, not more than twenty in number with interest at seven percent, payable on the whole amount unpaid annually with the installment that year falling due, and in such case the several installments of principal and interest shall be collected and payment enforced in the same manner as delinquent taxes, and sale of the land for a delinquent installment shall not be a discharge of the premises from installments subsequently to fall due; *Provided, however*, in case of special assessments, the owner of the premises may pay the entire assessment imposed at any time within ninety days after such special assessment is made.

Source: Laws 1891, c. 36, § 11, p. 291; R.S.1913, § 1934; C.S.1922, § 1875; C.S.1929, § 31-613.

Cross References

Collection of delinquent real estate taxes, see Chapter 77, articles 17 and 18.

31-520 Property; right-of-way; how procured.

Such sanitary district may acquire by purchase, condemnation, or otherwise, real or personal property, right-of-way, and privilege, within or without its corporate limits, necessary for its corporate purposes.

Source: Laws 1891, c. 36, § 5, p. 290; R.S.1913, § 1935; C.S.1922, § 1876; C.S.1929, § 31-614.

31-521 Power of eminent domain; procedure.

Whenever the board of trustees of any sanitary district shall by order determine to make any public improvement under sections 31-501 to 31-523 which shall require that private property be taken or damaged, the district may exercise the power of eminent domain for that purpose. The procedure to condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724.

Source: Laws 1891, c. 36, § 12, p. 292; R.S.1913, § 1936; C.S.1922, § 1877; C.S.1929, § 31-615; R.S.1943, § 31-521; Laws 1951, c. 101, § 76, p. 481.

31-522 Repealed. Laws 1951, c. 101, § 127.

31-523 Right-of-way; cost; assessment; annulment; reassessment.

In the making of any special assessment for any improvement which requires the taking or damage of property, the cost of acquiring the right to take or to damage such property may be estimated and included in the assessment as a part of the cost of making such improvement. In the event that any tax or assessment levied by such trustees is by any court annulled for informality or irregularity, the same may be reassessed and reimposed by the board of trustees upon the same property, or other property, as may be equitable.

Source: Laws 1891, c. 36, § 14, p. 292; R.S.1913, § 1938; C.S.1922, § 1879; C.S.1929, § 31-617.

Reassessment of benefits is provided for when original assessment is invalid. Shanahan v. Johnson, 170 Neb. 399, 102 N.W.2d 858 (1960).

31-524 Municipalities adjacent to district; power of trustees; survey; report to county board.

Whenever a sanitary drainage district shall have been formed under sections 31-501 to 31-523, and trustees thereof have been elected, if such trustees find that municipalities, including cities of the second class and villages, in whole or in part outside of the boundaries of such sanitary district and depending upon the same watercourse or its tributaries for drainage, are inadequately supplied with sewage systems or sewage disposal plants, and that the absence thereof is detrimental to the sanitary conditions of the district or to such municipalities within the same watershed or lands adjacent thereto, the trustees may by resolution determine the existence of such conditions and shall thereupon cause a survey to be made of the territory affected by said conditions and the boundaries of such territory. The trustees shall thereupon file with the county board of the county wherein such district is situated a definite description of the territory affected by said conditions and the boundaries thereof.

Source: Laws 1919, c. 240, § 1, p. 1000; C.S.1922, § 1880; C.S.1929, § 31-618.

31-525 Municipalities adjacent to district; inclusion; election; effect of affirmative vote.

Upon the filing of such description and boundaries with the county board, the county board shall call an election within the entire area and submit to the qualified voters therein the question of the enlargement of such district to

include all the territory within the proposed new boundaries. If at such election a majority of the combined and total vote cast by the qualified voters residing within the original territory of such sanitary drainage district, and the territory proposed to be added thereto, shall be in favor of such enlargement, such district as so enlarged shall be deemed an organized sanitary drainage district and the trustees of such original district shall be the trustees of such enlarged district until their successors are duly elected and qualified.

Source: Laws 1919, c. 240, § 2, p. 1001; C.S.1922, § 1881; C.S.1929, § 31-619.

31-526 Municipalities adjacent to district; inclusion; election; how conducted.

Such election shall be held in the same manner as elections for the original organization of a sanitary drainage district under sections 31-501 to 31-523.

Source: Laws 1919, c. 240, § 3, p. 1001; C.S.1922, § 1882; C.S.1929, § 31-620.

31-527 Powers of sanitary district trustees over enlarged district; flood control.

The enlarged district and the trustees thereof shall possess all the powers and perform all the duties throughout such enlarged territory previously vested in and imposed upon said district, and the trustees thereof within the original territory of said sanitary drainage district; and no proceedings taken under sections 31-525 and 31-526 for the enlargement of any sanitary drainage district shall be construed as impairing or suspending in any manner the powers and jurisdiction of any sanitary drainage district previously existing or of the trustees thereof. The trustees of such sanitary district shall have power by resolution to define the flood area of any stream or watercourse within said district and to exclude from such area the construction of buildings or other improvements which, if constructed, might interfere with the flow of flood waters. To determine such flood area the trustees shall cause a survey to be made of the watershed in the vicinity and highwater marks reached by floods in the past, and compute the volume of water flowing in the valley under flood conditions and, based thereon, together with such other engineering data as may be available, specify the area requisite for confining flood waters within reasonable dike embankments set back from the natural banks of the stream. Upon such area having been determined the district may acquire either a fee title to the property within such area or a perpetual easement therein for carrying flood waters and the construction of dikes, by purchase or condemnation proceedings. Any property within such flood area owned by the state or governmental subdivision of the state shall be available for the purpose of establishing and maintaining suitable control of flood waters without compensation for such use.

Source: Laws 1919, c. 240, § 4, p. 1001; C.S.1922, § 1883; Laws 1925, c. 129, § 1, p. 341; C.S.1929, § 31-621.

31-528 Enlarged district; power to maintain adequate sewerage facilities; damages; payment to municipalities.

In addition to the powers of said district and of the trustees thereof as originally vested, such enlarged district and the trustees thereof shall have

power and jurisdiction to provide and maintain adequate and suitable sewerage systems for the entire district; to provide and maintain sewage disposal or reduction plants; to enter upon any street, alley or public place in any municipality, city or village, within the limits of such enlarged district for the laying of sewers and the construction of sewerage systems. The district shall pay to such municipality, city or village, upon claim being filed therefor, the amount of any damage to any pavement or any public improvement. Such municipality, city or village shall not be entitled to any compensation for the use of its streets, alleys or public places except for damage to such public improvements.

Source: Laws 1919, c. 240, § 5, p. 1002; C.S.1922, § 1884; C.S.1929, § 31-622.

31-529 Enlarged district; power to contract with cities for use of city sewers.

Such enlarged sanitary drainage district shall have power to enter into contracts with any or all municipalities wholly or partly within its territorial boundaries for the use in whole or in part of any sewerage system or sewerage mains in operation in said municipality or to be constructed or operated by such municipality.

Source: Laws 1919, c. 240, § 6, p. 1002; C.S.1922, § 1885; C.S.1929, § 31-623.

31-530 Enlarged district; power to alter city sewers connecting with drainage district sewers.

Such enlarged sanitary drainage district shall have power to take charge of, reconstruct, divert, alter or disconnect any main line sewer in any municipality, city or village, or unite the same with the sewerage system of the district, or to use any appropriate means deemed necessary by the trustees of the district to establish and maintain proper and adequate sanitary and sewerage systems for the district.

Source: Laws 1919, c. 240, § 7, p. 1002; C.S.1922, § 1886; C.S.1929, § 31-624.

31-531 Enlarged district; eminent domain; borrowing money; bonds; interest; issuance; election.

Such enlarged district shall have the power of eminent domain under the same conditions as the original sanitary drainage district. Such enlarged district may borrow money for corporate purposes and issue bonds therefor, but it shall not become indebted in any manner to an amount exceeding one and four-tenths percent of the taxable valuation of the property in the district for county purposes. Before incurring any indebtedness, the question shall be submitted to the certified voters of the district in the manner provided by law for submitting the question of bond issue by the county for internal improvements.

Source: Laws 1919, c. 240, § 8, p. 1002; C.S.1922, § 1887; C.S.1929, § 31-625; R.S.1943, § 31-531; Laws 1969, c. 51, § 94, p. 332; Laws 1979, LB 187, § 137; Laws 1992, LB 719A, § 124; Laws 2001, LB 420, § 25.

Cross References

Issuance of bonds by county for internal improvements, see section 10-401 et seq.

31-532 Enlarged district; procedure for apportioning benefits.

Such enlarged sanitary drainage district shall have power to defray the expenses of any improvement made by it and to defray the expenses of carrying into execution the powers hereby granted by general taxation or by special assessment or partly by special assessment and partly by general taxation as the trustees may by order determine. It shall constitute no defense to any tax or special assessment that the improvements for which the same is imposed lies partly or wholly outside the limits of such district. No property shall be assessed more than it is benefited by the improvement for which the assessment is levied. The proceedings for apportioning the benefits and imposing a special assessment by the trustees of such enlarged district shall be the same as those for apportioning benefits and levying of special assessments in sanitary drainage districts organized under sections 31-401 to 31-449.

Source: Laws 1919, c. 240, § 9, p. 1003; C.S.1922, § 1888; C.S.1929, § 31-626.

31-533 Enlarged district; trustees; salary.

The trustees shall each receive as his salary the sum of seven hundred dollars per annum, payable quarterly.

Source: Laws 1919, c. 240, § 10, p. 1003; Laws 1921, c. 108, § 1, p. 382; C.S.1922, § 1889; C.S.1929, § 31-627; R.S.1943, § 31-533; Laws 1953, c. 100, § 1, p. 277.

31-533.01 Repealed. Laws 1961, c. 286, § 1.

31-534 Trustees; bond; amount; conditions; payment of premium.

Each trustee of any such district shall, prior to entering upon his office, execute and file with the county clerk of the county in which said district, or the greater portion of the area thereof, is located, his bond, with one or more sureties, to be approved by the county clerk, running to the State of Nebraska, in the penal sum of five thousand dollars, conditioned for the faithful performance by said trustee of his official duties and the faithful accounting by him for all funds and property of the district that shall come into his possession or control during his term of office. The premium, if any, on any such bond shall be paid out of the funds of the district. Suit may be brought on said bond by any person, firm or corporation that has sustained loss or damage in consequence of the breach thereof.

Source: Laws 1921, c. 108, § 2, p. 383; C.S.1922, § 1890; C.S.1929, § 31-628.

31-535 Repealed. Laws 1981, LB 497, § 1.

31-536 Sanitary district; activities; discontinuance; election.

Any sanitary district organized under the provisions of sections 31-501 to 31-534, may discontinue its activities and work as an independent governmental subdivision of the state whenever the question of such discontinuance shall be submitted to and ratified by the electors of said district. The county board of commissioners or supervisors of a county in which a sanitary drainage district

is located shall submit the question of discontinuance to the electors of the district any time after January 1, 1946, when there is filed with them either a resolution, by a majority of the district trustees, or a petition, by qualified electors of the district equal in number to five percent of the votes cast for Governor in the district at the last preceding general election, asking for such submission.

Source: Laws 1941, c. 56, § 1, p. 255; C.S.Supp.,1941, § 31-630; Laws 1943, c. 75, § 1, p. 258.

31-537 Sanitary district; activities; discontinuance; election; notice; form of ballot.

Upon filing such a resolution of the trustees or such a petition of the qualified electors with it, it shall be the duty of the county board, at least twenty days prior to the next state election, either primary or general, to submit at such election, after having published a notice of such submission, the question of the discontinuance of the activities and work of such sanitary district to the electors of such sanitary district in the following form: Shall Sanitary Drainage District No. .... discontinue its activities and work in order that the same shall be carried on by other governmental subdivisions, wholly or partly within the district, as provided by law? The ballots shall be prepared, the election conducted, and the vote canvassed as in county elections.

Source: Laws 1941, c. 56, § 2, p. 255; C.S.Supp.,1941, § 31-631; Laws 1943, c. 75, § 2, p. 258.

31-538 Sanitary district; activities; discontinuance; effect on powers of trustees and property rights.

The result of such election shall be certified to the county board of the county in which such district is located, and if at such election a majority of the qualified electors actually voting in such sanitary district shall vote in favor of the discontinuance of the activities and work of the district, the trustees of such district shall thereupon cease the performance of their duties as such trustees, and the county board of the county in which such district is located shall thereupon act as trustees ex officio of the district and shall have all the powers, rights and authority previously vested by law in the trustees of the district, but without additional compensation; *Provided*, all tangible property within the territorial limits of any city or village within such district, and any tangible property serving a particular city or village, such as a sanitary sewage treatment plant, and which could be operated and maintained by the particular city or village so served, shall be transferred and assigned to such city or village which shall, upon an acceptance of such transfer or assignment by its council or board of trustees or other local governing body, be thereafter wholly operated and maintained out of funds appropriated and levied by such city or village.

Source: Laws 1941, c. 56, § 3, p. 256; C.S.Supp.,1941, § 31-632.

31-539 Sanitary district; activities; discontinuance; effect on contract rights.

All lawful claims, rights and demands against such a district, and all contractual obligations of such a district, existing in any person at the time of discontinuance of the activities and work of such district, shall continue to

subsist in such person and shall remain the charge and obligation of the sanitary district; and all claims and demands in favor of such district at the time of the discontinuance of its activities and work, shall subsist in its favor and may be collected in the same manner as might have been theretofore done by the district.

Source: Laws 1941, c. 56, § 4, p. 256; C.S.Supp.,1941, § 31-633.

31-540 Sanitary district; activities; discontinuance; effect on power to levy taxes.

For the purpose of discharging obligations of such district incurred prior to the discontinuance of its activities and work as provided in sections 31-501 to 31-534, such district shall continue to have the power to levy taxes as provided in such sections, and thereafter the district shall have the power to levy and collect general taxes in an amount not to exceed one and seven-tenths cents on each one hundred dollars upon the taxable value of all the taxable property in such district and shall have the power to levy special assessments in the manner and to the extent previously vested in such district.

Source: Laws 1941, c. 56, § 5, p. 256; C.S.Supp.,1941, § 31-634; R.S. 1943, § 31-540; Laws 1953, c. 287, § 52, p. 961; Laws 1979, LB 187, § 138; Laws 1992, LB 719A, § 125.

31-541 Sanitary district; activities; discontinuance; powers of county board; succession.

The county board of the county within which such district is located shall take possession of all rights and personal property, books, papers and records of such district, and shall discharge the duties within the territorial limits of such district imposed by law upon the district. For the discharge of such services the county board may employ such officers, servants and agents as may be necessary in the manner provided by law.

Source: Laws 1941, c. 56, § 6, p. 257; C.S.Supp.,1941, § 31-635.

In case of discontinuance of district, county board discharges duties of district. Lang v. Sanitary District of Norfolk, 160 Neb. 754, 71 N.W.2d 608 (1955).

31-542 Sanitary district; activities; discontinuance; trustees subsequently elected; powers and duties.

Trustees elected subsequent to the adoption of the resolution or the petition provided for in section 31-536 shall be bound thereby, and shall surrender their office as provided for in section 31-538.

Source: Laws 1941, c. 56, § 7, p. 257; C.S.Supp.,1941, § 31-636.

31-542.01 Sanitary district; discontinuance; contract with city or village; public hearing; notice.

(1) Notwithstanding any of the provisions of Chapter 31, article 5, the board of trustees of any sanitary district heretofore or hereafter organized under any of such sections, which includes within its boundaries any incorporated city or village, shall have full power without further authorization to contract with any such city or village for said district to discontinue the operation of any sanitary sewer system located within or serving such city or village, including any and all sewage treatment works or plants, and to convey, sell or otherwise transfer

all of the properties used or useful for that purpose to any such city or village upon such terms and conditions as may be agreed upon between such city or village and such sanitary district. The sanitary district shall thereafter cease to have the authority to maintain, operate, construct, or assume jurisdiction of any sanitary sewers or treatment works within such city or village and the area served by such sanitary sewer system; *Provided*, that nothing contained in this section shall be construed as prohibiting such sanitary district from constructing, maintaining, and operating a sanitary sewer system or any part thereof in the area outside of the corporate limits of such city or village, pursuant to the provisions of Chapter 31, article 5.

(2) Before exercising any of the powers contained in subsection (1) of this section, the board of trustees of any such sanitary district shall hold a public hearing. At such public hearing it shall hear any and all persons interested with respect to: (a) Whether the proposed transfer of property and jurisdiction will eliminate duplication and promote efficiency in the collection and treatment of sewage in the area to be served by the existing sewerage system of such city or village and the sewage facilities which it is proposed be transferred to such city or village; (b) whether such city or village is capable of operating, maintaining, improving, financing, and otherwise providing for sewage collection and treatment in the geographic area in question; and (c) any other matters relating to the merits of the proposed transfer as they will affect the health and welfare of the inhabitants of the area to be served. Notice of such public hearing of the board of trustees shall be given by publication in a newspaper of general circulation in said district at least ten days prior to such hearing.

Source: Laws 1957, c. 114, § 1, p. 393; Laws 1961, c. 138, § 6, p. 399.

31-543 Repealed. Laws 1989, LB 31, § 1.

31-544 Repealed. Laws 1989, LB 31, § 1.

31-545 Repealed. Laws 1989, LB 31, § 1.

31-546 Repealed. Laws 1989, LB 31, § 1.

31-547 Repealed. Laws 1989, LB 31, § 1.

31-548 Repealed. Laws 1989, LB 31, § 1.

31-549 Sanitary district; extend beyond boundaries of municipality; inclusion by resolution of trustees.

Whenever a sanitary drainage district shall have been formed under sections 31-501 to 31-523, and trustees thereof have been elected, if such trustees find that a municipality formerly within the boundaries of such sanitary district has grown and enlarged its corporate limits beyond the boundaries of such sanitary district, the board of trustees may by resolution include the whole of the corporate area of such municipality within its boundaries by enlarging same.

Source: Laws 1955, c. 116, § 1, p. 308.

31-550 Sanitary district; enlarged district; resolution; file with county clerk.

The board of trustees shall cause a description of such enlarged district together with a certified copy of the resolution adopted to be filed with the

county board of the county wherein such district is situated, and such district as so enlarged shall be deemed an organized sanitary drainage district and the trustees of such original district shall be the trustees of such enlarged district until their successors are duly elected and qualified.

Source: Laws 1955, c. 116, § 2, p. 309.

31-551 Sanitary districts; natural resources district; contract for services; transfer of assets; assignment of obligations.

Notwithstanding any of the provisions of Chapter 31, article 5, the board of trustees of any sanitary district heretofore or hereafter organized under any of such sections which includes within its boundary or partially within its boundary a natural resources district, shall have full power without further authorization to contract with such natural resources district, for said sanitary district to discontinue all its activities, including the operation of any and all drainage systems located within or serving such sanitary district and including the right to construct sewers lying outside the limits of any corporate city or village, all as is provided for in said Chapter 31, article 5. Said contract may also authorize the transfer of all properties and assets used or useful by said sanitary district, and the assignment of all obligations and liabilities of said sanitary district, to such natural resources district upon such terms and conditions as may be agreed upon between such natural resources district and such sanitary district.

Source: Laws 1961, c. 140, § 1, p. 405.

31-552 Sanitary districts; transfer of assets; hearing; notice.

Before exercising any of the powers contained in section 31-551, the board of trustees of any such sanitary district shall hold a public hearing. At such public hearing it shall hear any and all persons interested with respect to:

(1) Whether the proposed transfer of property and jurisdiction will eliminate duplication and promote efficiency in the drainage in the area served by said sanitary district;

(2) Whether such natural resources district is capable of operating, maintaining, improving, financing and otherwise providing for drainage in said area; and

(3) Any other matters relating to the merits of the proposed transfer as they will affect the health and welfare of the inhabitants of the area to be served.

Notice of such public hearing of the board of trustees shall be given by publication in a newspaper of general circulation in said district at least ten days prior to such hearing.

Source: Laws 1961, c. 140, § 2, p. 405.

31-553 Sanitary districts; contract with natural resources district; dissolution of sanitary district; resolution; file with county clerk.

In event such contract, as provided in section 31-551, is entered into and in event all activities, liabilities, obligations and assets then possessed by said sanitary district are assigned and transferred to said natural resources district so that there are no further functions, activities or liabilities of said sanitary district existing then and in that event said sanitary district may be dissolved by a three-fourths vote of its board of trustees in which event a certified copy of

said resolution of dissolution shall be filed in the office of the county clerk of the county in which said sanitary district is organized.

Source: Laws 1961, c. 140, § 3, p. 406.

ARTICLE 6

DRAINAGE ASSESSMENTS ON PUBLIC LANDS

Section
31-601. Drainage districts; when public lands included; assessment.
31-602. Assessments paid by state; subrogation; collection.

31-601 Drainage districts; when public lands included; assessment.

Whenever any drainage district organized or incorporated in accordance with the laws of this state, whether heretofore or hereafter organized, shall include within its boundaries any school or university lands, or other public land, the title to which is in the State of Nebraska, the lands shall be subject to assessment for special benefits, which shall be apportioned to the land to the same extent and in the same manner as the private lands included in the district, and the proceedings to include such school, university, or other state lands in such drainage district, and to apportion and assess the benefits thereto, shall be the same in all respects as is provided by law for the including of private lands and the apportionment and assessment of the benefits thereto. The assessments apportioned and levied against any school, university, or public lands, the title of which is in the state, shall be and remain a perpetual lien against such real estate; and the leasehold interest of any lessee thereof, or his or her assigns, may be sold for taxes, and the assessments shall draw the same rate of interest as delinquent taxes, and all the provisions of law for the sale, redemption, and foreclosure of tax liens which apply to individual landowners within the drainage district shall apply to lessees of school, university, and other public lands. It is further provided that in the event any levies or assessments against the school, university, or other state lands are not paid when due and delinquent, the drainage district may file claims with the Director of Administrative Services for the share of any apportionment to be paid by the lands; and it shall be the duty of the director to draw warrants to be paid from such funds of the state as are available for the payment of such warrants and transmit the same to the treasurer of such drainage district; and the State Treasurer is hereby authorized and directed to pay the warrants for the purposes herein set forth.

Source: Laws 1925, c. 17, § 2, p. 86; C.S.1929, § 31-701; R.S.1943, § 31-601; Laws 1999, LB 779, § 1.

31-602 Assessments paid by state; subrogation; collection.

In the event the apportionment and assessments so levied have been paid by the state, the state or the fund from which payments have been made shall be subrogated to all the rights and remedies of the drainage district for the collection of the assessments and levies against lessees or their heirs or assigns.

Source: Laws 1925, c. 17, § 3, p. 87; C.S.1929, § 31-702; R.S.1943, § 31-602; Laws 1999, LB 779, § 2.

ARTICLE 7

SANITARY AND IMPROVEMENT DISTRICTS

(a) DISTRICTS FORMED UNDER ACT OF 1947

Section
31-701. Repealed. Laws 1996, LB 1321, § 6.
31-702. Repealed. Laws 1996, LB 1321, § 6.
31-703. Repealed. Laws 1996, LB 1321, § 6.
31-704. Repealed. Laws 1996, LB 1321, § 6.
31-705. Repealed. Laws 1996, LB 1321, § 6.
31-705.01. Repealed. Laws 1996, LB 1321, § 6.
31-706. Repealed. Laws 1996, LB 1321, § 6.
31-707. Repealed. Laws 1996, LB 1321, § 6.
31-708. Repealed. Laws 1996, LB 1321, § 6.
31-709. Repealed. Laws 1996, LB 1321, § 6.
31-709.01. Repealed. Laws 1996, LB 1321, § 6.
31-710. Repealed. Laws 1996, LB 1321, § 6.
31-711. Repealed. Laws 1996, LB 1321, § 6.
31-711.01. Repealed. Laws 1996, LB 1321, § 6.
31-711.02. Repealed. Laws 1996, LB 1321, § 6.
31-711.03. Repealed. Laws 1996, LB 1321, § 6.
31-711.04. Repealed. Laws 1996, LB 1321, § 6.
31-711.05. Repealed. Laws 1996, LB 1321, § 6.
31-711.06. Repealed. Laws 1996, LB 1321, § 6.
31-711.07. Repealed. Laws 1996, LB 1321, § 6.
31-712. Repealed. Laws 1996, LB 1321, § 6.
31-713. Repealed. Laws 1996, LB 1321, § 6.
31-714. Repealed. Laws 1996, LB 1321, § 6.
31-715. Repealed. Laws 1996, LB 1321, § 6.
31-716. Repealed. Laws 1959, c. 130, § 5.
31-717. Repealed. Laws 1996, LB 1321, § 6.
31-718. Repealed. Laws 1996, LB 1321, § 6.
31-719. Repealed. Laws 1996, LB 1321, § 6.
31-720. Repealed. Laws 1996, LB 1321, § 6.
31-721. Repealed. Laws 1996, LB 1321, § 6.
31-722. Repealed. Laws 1996, LB 1321, § 6.
31-723. Repealed. Laws 1996, LB 1321, § 6.
31-724. Repealed. Laws 1996, LB 1321, § 6.
31-725. Repealed. Laws 1996, LB 1321, § 6.
31-726. Repealed. Laws 1996, LB 1321, § 6.
31-726.01. Repealed. Laws 1996, LB 1321, § 6.

(b) DISTRICTS FORMED UNDER ACT OF 1949

31-727. Sanitary and improvement district; organized by proceedings in district court; purposes; powers; articles of association; contents; filing; real estate; conditions; terms, defined.
31-727.01. District; filing requirements.
31-727.02. District; board of trustees; notice of meetings; minutes; clerk or administrator of district; duties.
31-727.03. District; statements; filed; contents; late filing; fee; duties of real estate broker, salesperson, or owner; remedy.
31-728. District; summons; notice to landowners, counties, and cities affected; contents.
31-729. District; formation; objections.
31-730. Petition; objection; hearing; order creating.
31-731. District; formation; articles; filing and recording.
31-732. District; body corporate; powers.
31-733. District; trustees; board; powers and duties; appointment of administrator; powers; duties; compensation.
31-734. District; chairperson, clerk, administrator; bond; premium.
31-735. District; trustees; election; procedure; term; notice; qualified voters.

Section
31-735.01. Election of trustees; ballots; election board; duties.
31-735.02. Election of trustees; certification of results.
31-735.03. Election contests; Election Act applicable.
31-735.04. District; location; basis for determination.
31-735.05. Election; when held; costs; election commissioner or county clerk; duties.
31-735.06. Appointment of administrator; election of trustees; special election; when held.
31-736. District; acquisition of property; conditions.
31-737. District; eminent domain; procedure.
31-738. District; state or public lands; right of eminent domain.
31-739. District; bonds; interest; tax levies; restrictions; treasurer; duties; collection of charges other than taxes; disbursement of funds.
31-740. District; trustees or administrator; powers; plans or contracts; approval required; hearing; contracts authorized; audit; failure to perform audit; effect; connection with city sewerage system; rental or use charge; levy; special assessment.
31-740.01. District; additional powers; amendment to articles of association; notice; objections; determination by district court.
31-741. Contracts; bidding requirements.
31-742. Rules and regulations; service charges; recovery.
31-743. District; septic tanks; discontinue use; when.
31-744. District; trustees or administrator; improvements and facilities authorized; resolution; construction; acquisition; contracting; approval; cost; assessment.
31-745. Resolution; notice; hearing.
31-746. Resolution; objections; effect.
31-747. District; resolution; improvements authorized.
31-748. Improvements; contract; notice; bids.
31-748.01. Completion of contract; notice to district; objections; final payment; interest.
31-749. Improvements; engineer; certificate of acceptance; cost; statement; assessment; notices; hearing; appeal; hearing in district court.
31-750. Assessments; hearings; adjustment.
31-751. Special assessments; equalization; levy; certified; manner; collection.
31-752. Improvements; assessment of benefits; exempt property; cost; interest; rate.
31-753. Special assessments; installment payment; interest; delinquent; collection.
31-754. Special assessments; sinking fund; transfer of funds.
31-755. Improvements; bonds; warrants; procedure; issuance; negotiability; extension of due date; hearing; interest; levy; sinking fund; tax.
31-756. Bonds; petition; contents.
31-757. Bonds; petition; notice; hearing.
31-758. Bonds; petition; answer; rules of procedure.
31-759. Bonds; proceedings; jurisdiction of court; statement.
31-760. Repealed. Laws 1959, c. 130, § 5.
31-761. District; change in boundary; petition; notice; hearing; order; effect.
31-762. Sections; supplementary to existing law.
31-762.01. District located near solid waste disposal site; improvements or facilities; approval requirements.

(c) DISTRICT BOUNDARIES

31-763. Annexation of territory by a city or village.
31-764. Annexation; trustees; administrator; accounting; effect; special assessments prohibited.
31-765. Annexation; when effective; trustees; administrator; duties; special assessments prohibited.
31-766. Annexation; obligations and assessments; agreement to divide; approval; special assessments prohibited.
31-767. Dissolution of districts; resolution; notice; outstanding indebtedness, effect; hearing; filing.

Section
31-768. Dissolution and merger of districts; resolution; notice; hearing; restrictions; filing; effect.
31-769. District; detachment of property; resolution; notice; hearing; outstanding indebtedness, effect; isolated property; detachment; filing.
31-770. Real estate in two districts; detachment from one district; approval.

(d) APPOINTMENT OF AN ADMINISTRATOR

31-771. Appointment of an administrator; petition; conditions.
31-772. Appointment of an administrator; petition; hearing; notice.
31-773. Appointment of an administrator; petition; contents.
31-774. Appointment of an administrator; petition; interested person; rights; procedure applicable.
31-775. Court; order; findings; relief granted; costs.
31-776. Auditor of Public Accounts; appoint administrator; file certificate.
31-777. Board of trustees; power suspended; administrator; assume powers.
31-778. Board of trustees or administrator; negotiate indebtedness; issue new bonds or warrants; procedure.
31-779. Administrator; levy; administration tax; use; administrator; fee; expenses.
31-780. Administrator; period of authority; termination.

(e) ANNEXATION BY PETITION

31-781. Petition requesting annexation; meeting; vote.
31-782. Petition; filed with clerk; response.
31-783. Petition; review; vote; when.
31-784. Petition denial; report.
31-785. Compliance; not required.

(f) RECALL OF TRUSTEES

31-786. Terms, defined.
31-787. Trustee; removal by recall; petition; procedure.
31-788. Secretary of State; petition papers; requirements.
31-789. Signature verification; effect.
31-790. Notification to trustee; resignation; recall election; how conducted.
31-791. Official ballot; form.
31-792. Election results; effect; vacancy; special election.
31-793. Recall petition; filing limitation.

(a) DISTRICTS FORMED UNDER ACT OF 1947

31-701 Repealed. Laws 1996, LB 1321, § 6.

31-702 Repealed. Laws 1996, LB 1321, § 6.

31-703 Repealed. Laws 1996, LB 1321, § 6.

31-704 Repealed. Laws 1996, LB 1321, § 6.

31-705 Repealed. Laws 1996, LB 1321, § 6.

31-705.01 Repealed. Laws 1996, LB 1321, § 6.

31-706 Repealed. Laws 1996, LB 1321, § 6.

31-707 Repealed. Laws 1996, LB 1321, § 6.

31-708 Repealed. Laws 1996, LB 1321, § 6.

31-709 Repealed. Laws 1996, LB 1321, § 6.

31-709.01 Repealed. Laws 1996, LB 1321, § 6.

31-710 Repealed. Laws 1996, LB 1321, § 6.

31-711 Repealed. Laws 1996, LB 1321, § 6.

31-711.01 Repealed. Laws 1996, LB 1321, § 6.

31-711.02 Repealed. Laws 1996, LB 1321, § 6.

31-711.03 Repealed. Laws 1996, LB 1321, § 6.

31-711.04 Repealed. Laws 1996, LB 1321, § 6.

31-711.05 Repealed. Laws 1996, LB 1321, § 6.

31-711.06 Repealed. Laws 1996, LB 1321, § 6.

31-711.07 Repealed. Laws 1996, LB 1321, § 6.

31-712 Repealed. Laws 1996, LB 1321, § 6.

31-713 Repealed. Laws 1996, LB 1321, § 6.

31-714 Repealed. Laws 1996, LB 1321, § 6.

31-715 Repealed. Laws 1996, LB 1321, § 6.

31-716 Repealed. Laws 1959, c. 130, § 5.

31-717 Repealed. Laws 1996, LB 1321, § 6.

31-718 Repealed. Laws 1996, LB 1321, § 6.

31-719 Repealed. Laws 1996, LB 1321, § 6.

31-720 Repealed. Laws 1996, LB 1321, § 6.

31-721 Repealed. Laws 1996, LB 1321, § 6.

31-722 Repealed. Laws 1996, LB 1321, § 6.

31-723 Repealed. Laws 1996, LB 1321, § 6.

31-724 Repealed. Laws 1996, LB 1321, § 6.

31-725 Repealed. Laws 1996, LB 1321, § 6.

31-726 Repealed. Laws 1996, LB 1321, § 6.

31-726.01 Repealed. Laws 1996, LB 1321, § 6.

(b) DISTRICTS FORMED UNDER ACT OF 1949

31-727 Sanitary and improvement district; organized by proceedings in district court; purposes; powers; articles of association; contents; filing; real estate; conditions; terms, defined.

(1)(a) A majority of the owners having an interest in the real property within the limits of a proposed sanitary and improvement district, situated in one or more counties in this state, may form a sanitary and improvement district for the purposes of installing electric service lines and conduits, a sewer system, a

water system, an emergency management warning system, a system of sidewalks, public roads, streets, and highways, public waterways, docks, or wharfs, and related appurtenances, contracting for water for fire protection and for resale to residents of the district, contracting for police protection and security services, contracting for access to the facilities and use of the services of the library system of one or more neighboring cities or villages, and contracting for gas and for electricity for street lighting for the public streets and highways within such proposed district, constructing and contracting for the construction of dikes and levees for flood protection for the district, and acquiring, improving, and operating public parks, playgrounds, and recreational facilities.

(b) The sanitary and improvement district may also contract with a county within which all or a portion of such sanitary and improvement district is located or a city within whose zoning jurisdiction such sanitary and improvement district is located for any public purpose specifically authorized in this section.

(c) Sanitary and improvement districts located in any county which has a city of the metropolitan class within its boundaries or in any adjacent county which has adopted a comprehensive plan may contract with other sanitary and improvement districts to acquire, build, improve, and operate public parks, playgrounds, and recreational facilities for the joint use of the residents of the contracting districts.

(d) Nothing in this section shall authorize districts to purchase electric service and resell the same.

(e) The district, in lieu of establishing its own water system, may contract with any utilities district, municipality, or corporation for the installation of a water system and for the provision of water service for fire protection and for the use of the residents of the district.

(f) For the purposes listed in this section, such majority of the owners may make and sign articles of association in which shall be stated (i) the name of the district, (ii) that the district will have perpetual existence, (iii) the limits of the district, (iv) the names and places of residence of the owners of the land in the proposed district, (v) the description of the several tracts of land situated in the district owned by those who may organize the district, (vi) the name or names and the description of the real estate owned by such owners as do not join in the organization of the district but who will be benefited thereby, and (vii) whether the purpose of the corporation is installing gas and electric service lines and conduits, installing a sewer system, installing a water system, installing a system of public roads, streets, and highways, public waterways, docks, or wharfs, and related appurtenances, contracting for water for fire protection and for resale to residents of the district, contracting for police protection and security services, contracting for access to the facilities and use of the services of the library system of one or more neighboring cities or villages, contracting for street lighting for the public streets and highways within the proposed district, constructing or contracting for the construction of dikes and levees for flood protection of the proposed district, acquiring, improving, and operating public parks, playgrounds, and recreational facilities, or, when permitted by this section, contracting with other sanitary and improvement districts to acquire, build, improve, and operate public parks, playgrounds, and recreational facilities for the joint use of the residents of the contracting districts, contracting for any public purpose specifically authorized in this section, or

combination of any one or more of such purposes, or all of such purposes. Such owners of real estate as are unknown may also be set out in the articles as such.

(g) No sanitary and improvement district may own or hold land in excess of ten acres, unless such land so owned and held by such district is actually used for a public purpose, as provided in this section, within three years of its acquisition. Any sanitary and improvement district which has acquired land in excess of ten acres in area and has not devoted the same to a public purpose, as set forth in this section, within three years of the date of its acquisition, shall devote the same to a use set forth in this section or shall divest itself of such land. When a district divests itself of land pursuant to this section, it shall do so by sale at public auction to the highest bidder after notice of such sale has been given by publication at least three times for three consecutive weeks prior to the date of sale in a legal newspaper of general circulation within the area of the district.

(2) The articles of association shall further state that the owners of real estate so forming the district for such purposes are willing and obligate themselves to pay the tax or taxes which may be levied against all the property in the district and special assessments against the real property benefited which may be assessed against them to pay the expenses that may be necessary to install a sewer or water system or both a sewer and water system, the cost of water for fire protection, the cost of grading, changing grade, paving, repairing, graveling, regraveling, widening, or narrowing sidewalks and roads, resurfacing or relaying existing pavement, or otherwise improving any public roads, streets, or highways within the district, including protecting existing sidewalks, streets, highways, and roads from floods or erosion which has moved within fifteen feet from the edge of such sidewalks, streets, highways, or roads, regardless of whether such flooding or erosion is of natural or artificial origin, the cost of constructing public waterways, docks, or wharfs, and related appurtenances, the cost of constructing or contracting for the construction of dikes and levees for flood protection for the district, the cost of contracting for water for fire protection and for resale to residents of the district, the cost of contracting for police protection and security services, the cost of contracting for access to the facilities and use of the services of the library system of one or more neighboring cities or villages, the cost of electricity for street lighting for the public streets and highways within the district, the cost of installing gas and electric service lines and conduits, the cost of acquiring, improving, and operating public parks, playgrounds, and recreational facilities, and, when permitted by this section, the cost of contracting for building, acquiring, improving, and operating public parks, playgrounds, and recreational facilities, and the cost of contracting for any public purpose specifically authorized in this section, as provided by law.

(3) The articles shall propose the names of five or more trustees who are (a) owners of real estate located in the proposed district or (b) designees of the owners if the real estate is owned by a limited partnership, a general partnership, a limited liability company, a public, private, or municipal corporation, an estate, or a trust. These five trustees shall serve as a board of trustees until their successors are elected and qualified if such district is organized. No corporation formed or hereafter formed shall perform any new functions, other than those for which the corporation was formed, without amending its articles of association to include the new function or functions.

(4) After the articles are signed, the same shall be filed in the office of the clerk of the district court of the county in which such sanitary and improvement district is located or, if such sanitary and improvement district is composed of tracts or parcels of land in two or more different counties, in the office of the clerk of the district court for the county in which the greater portion of such proposed sanitary and improvement district is located, together with a petition praying that the same may be declared a sanitary and improvement district under sections 31-727 to 31-762.

(5) Notwithstanding the repeal of sections 31-701 to 31-726.01 by Laws 1996, LB 1321:

(a) Any sanitary and improvement district organized pursuant to such sections and in existence on July 19, 1996, shall, after August 31, 2003, be treated for all purposes as if formed and organized pursuant to sections 31-727 to 31-762;

(b) Any act or proceeding performed or conducted by a sanitary and improvement district organized pursuant to such repealed sections shall be deemed lawful and within the authority of such sanitary and improvement district to perform or conduct after August 31, 2003; and

(c) Any trustees of a sanitary and improvement district organized pursuant to such repealed sections and lawfully elected pursuant to such repealed sections or in conformity with the provisions of sections 31-727 to 31-762 shall be deemed for all purposes, on and after August 31, 2003, to be lawful trustees of such sanitary and improvement district for the term provided by such sections. Upon the expiration of the term of office of a trustee or at such time as there is a vacancy in the office of any such trustee prior to the expiration of his or her term, his or her successors or replacement shall be elected pursuant to sections 31-727 to 31-762.

(6) For the purposes of sections 31-727 to 31-762 and 31-771 to 31-780, unless the context otherwise requires:

(a) Public waterways means artificially created boat channels dedicated to public use and providing access to navigable rivers or streams;

(b) Operation and maintenance expenses means and includes, but is not limited to, salaries, cost of materials and supplies for operation and maintenance of the district's facilities, cost of ordinary repairs, replacements, and alterations, cost of surety bonds and insurance, cost of audits and other fees, and taxes;

(c) Capital outlay means expenditures for construction or reconstruction of major permanent facilities having an expected long life, including, but not limited to, street paving and curbs, storm and sanitary sewers, and other utilities;

(d) Warrant means an investment security under article 8, Uniform Commercial Code, in the form of a short-term, interest-bearing order payable on a specified date issued by the board of trustees or administrator of a sanitary and improvement district to be paid from funds expected to be received in the future, and includes, but is not limited to, property tax collections, special assessment collections, and proceeds of sale of general obligation bonds;

(e) General obligation bond means an investment security under article 8, Uniform Commercial Code, in the form of a long-term, written promise to pay a specified sum of money, referred to as the face value or principal amount, at a

specified maturity date or dates in the future, plus periodic interest at a specified rate; and

(f) Administrator means the person appointed by the Auditor of Public Accounts pursuant to section 31-771 to manage the affairs of a sanitary and improvement district and to exercise the powers of the board of trustees during the period of the appointment to the extent prescribed in sections 31-727 to 31-780.

Source: Laws 1949, c. 78, § 1, p. 194; Laws 1955, c. 117, § 1, p. 310; Laws 1961, c. 142, § 1, p. 409; Laws 1967, c. 189, § 1, p. 518; Laws 1969, c. 250, § 1, p. 909; Laws 1969, c. 251, § 1, p. 918; Laws 1973, LB 245, § 1; Laws 1974, LB 757, § 7; Laws 1976, LB 313, § 1; Laws 1977, LB 228, § 1; Laws 1982, LB 868, § 1; Laws 1985, LB 207, § 1; Laws 1994, LB 501, § 1; Laws 1996, LB 43, § 5; Laws 2003, LB 721, § 1; Laws 2008, LB768, § 1. Effective date July 18, 2008.

Five owners of an undivided two-fifths interest in a nonresidential lot within the sanitary improvement district satisfied the requirement in this section that five or more designated trustees be owners of real estate located in the proposed district. This section does not require that the trustees own a particular amount of land or a percentage of interest in such land, nor does it require the trustees to own developed land. Nothing in the record indicated that the qualifying interest was a sham or was obtained fraudulently. In re Petition of SID No. 1, 270 Neb. 856, 708 N.W.2d 809 (2006).

Initial trustees of a sanitary and improvement district must own real estate within the proposed district. In re Petition of SID No. 1, 270 Neb. 856, 708 N.W.2d 809 (2006).

Under subsection (1) of this section, owners representing a majority of the area within a proposed sanitary improvement district must sign the articles of association. In re Petition of SID No. 1, 270 Neb. 856, 708 N.W.2d 809 (2006).

A sanitary and improvement district is a political subdivision of the State of Nebraska. Sanitary and improvement districts have been termed quasi-municipal corporations. Taxpayer status is necessary in order to have standing to sue a sanitary and improvement district. Rexroad, Inc. v. S.I.D. No. 66, 222 Neb. 618, 386 N.W.2d 433 (1986).

S.I.D. warrants issued prior to effective date of Laws 1982, LB 868, are not by virtue of LB 868, investment securities. S.I.D. No. 32 v. Continental Western Corp., 215 Neb. 843, 343 N.W.2d 314 (1983).

One of the specific purposes for the organization of SID No. 1 was to provide for public streets and highways. The statute imposes an affirmative duty upon the SID to pay for the construction, improvement, and maintenance of roads in the district organized for SID purposes. SID No. 1 v. County of Adams, 209 Neb. 108, 306 N.W.2d 584 (1981).

Streets were actually constructed by improvement districts, and were subject to zoning powers of city. Jacobs v. City of Omaha, 181 Neb. 101, 147 N.W.2d 160 (1966).

Description in boundaries of district could be amended even in Supreme Court on appeal. Zwink v. Ahlman, 177 Neb. 15, 128 N.W.2d 121 (1964).

31-727.01 District; filing requirements.

Within thirty days after July 10, 1976, as to existing districts, and within thirty days after the creation of districts thereafter created, the clerk of each district shall file with the register of deeds, clerk, election commissioner, sheriff, and planning department of each county or counties in which the district is located and, if the district is located in whole or in part within the zoning jurisdiction of a city, with the planning department of such city a statement containing the following information: (1) The district number; (2) the outer boundaries of the district; (3) the purpose or purposes for which the district was formed; (4) a statement that the district has the power to levy an unlimited property tax to pay its debt and its expenses of operation and maintenance; (5) a statement that the district is required to levy special assessments on property in the district to the full extent of special benefits arising by reason of improvements installed by the district; (6) that the annual budget of the district is filed with the county clerk, which budget shows the anticipated revenue and expenses, tax levy, and indebtedness of the district; (7) that the actual current tax levy amount of the district may be obtained from the county clerk; and (8) that a copy of the annual financial audit of the district is on file with the clerk of the district and the Auditor of Public Accounts. Such

statement shall be supplemented and refiled to include any land added to the district after the original filing.

Source: Laws 1976, LB 313, § 10; Laws 1979, LB 187, § 141; Laws 1986, LB 484, § 1.

31-727.02 District; board of trustees; notice of meetings; minutes; clerk or administrator of district; duties.

(1) The clerk or administrator of each sanitary and improvement district shall notify any municipality or county within whose zoning jurisdiction such district is located of all meetings of the district board of trustees or called by the administrator by sending a notice of such meeting to the clerk of the municipality or county not less than seven days prior to the date set for any meeting. In the case of meetings called by the administrator, notice shall be provided to the clerk of the district not less than seven days prior to the date set for any meeting.

(2) Within thirty days after any meeting of a sanitary and improvement district board of trustees or called by the administrator, the clerk or administrator of the district shall transmit to the municipality or county within whose zoning jurisdiction the sanitary and improvement district is located a copy of the minutes of such meeting.

Source: Laws 1976, LB 313, § 11; Laws 1982, LB 868, § 2.

31-727.03 District; statements; filed; contents; late filing; fee; duties of real estate broker, salesperson, or owner; remedy.

On or before December 31 of each year, the clerk of each sanitary and improvement district shall file with the register of deeds or, if none, the county clerk of the county or counties in which the sanitary and improvement district is located a statement updated each December 31 containing the following information:

(1) The names of the members of the current board of trustees of the district;

(2) The names of the current attorney, accountant, and fiscal agent of the district;

(3) The warrant and the bond principal indebtedness of the district as of the preceding June 30. Such statement shall contain an acknowledgment that the warrant and indebtedness are reflective of such date; and

(4) The current bond tax levy and the current operating levy of the district, as described in section 31-739, as of December 31.

For any late filing of the statement, the sanitary and improvement district shall be assessed a late fee of ten dollars per day, not to exceed a total of three hundred dollars for each late filing.

The real estate broker or salesperson or, if none, the owner shall distribute the most recent statement filed in accordance with this section to any prospective purchaser of any real estate located within a sanitary and improvement district. The statement shall be distributed on or before the date on which the purchaser becomes obligated to purchase such real estate. The exclusive remedy for failure to provide such statements shall be an action for damages, and

any such failure shall not affect title to the real estate or the validity of the conveyance.

Source: Laws 1976, LB 313, § 12; Laws 1977, LB 267, § 1; Laws 1979, LB 252, § 1; Laws 1979, LB 187, § 142; Laws 1980, LB 599, § 9; Laws 1991, LB 128, § 1; Laws 1992, LB 764, § 1; Laws 1996, LB 1362, § 4.

31-728 District; summons; notice to landowners, counties, and cities affected; contents.

Immediately after the petition and articles of association shall have been filed, as provided for by subsection (4) of section 31-727, the clerk of the district court for the county where same are filed shall issue a summons, as now provided by law, returnable as any other summons in a civil action filed in said court, and directed to the several owners of real estate in the proposed district who may be alleged in such petition to be benefited thereby, but who have not signed the articles of association, which shall be served as summonses in civil cases. In case any owner or owners of real estate in the proposed district are unknown, or are nonresidents, they shall be notified in the same manner as nonresident defendants are now notified according to law in actions in the district courts of this state, setting forth in such notice (1) that the articles of association have been filed, (2) the purpose thereof, (3) that the real estate of such owner or owners situated in the district, describing the same, will be affected thereby and rendered liable to taxation and special assessment in accordance with law for the purpose of installing and maintaining such sewer or water system, or both, and maintaining the district, for constructing and maintaining a system of sidewalks, public roads, streets, and highways, public waterways, docks or wharfs, and related appurtenances, for the furnishing of water for fire protection, for contracting for gas and for electricity for street lighting for the public streets and highways within the district, for constructing or contracting for the construction of dikes and levees for flood protection for the district, for installing electric service lines and conduits, for the acquisition, improvement, and operation of public parks, playgrounds, and recreational facilities, and, where permitted by section 31-727, for the contracting with other sanitary and improvement districts for acquiring, building, improving, and operating public parks, playgrounds, and recreational facilities for the joint use of the residents of the contracting districts, (4) the names of the proposed trustees, and (5) that a petition has been made to have the district declared a sanitary and improvement district.

Within five days after the filing of the petition the clerk of the district court shall send notice of such petition to each county in which all or a portion of the proposed district lies and to each city in whose zoning jurisdiction all or a portion of the proposed district lies.

Source: Laws 1949, c. 78, § 2, p. 196; Laws 1955, c. 117, § 2, p. 312; Laws 1961, c. 142, § 2, p. 411; Laws 1967, c. 189, § 2, p. 520; Laws 1969, c. 250, § 2, p. 911; Laws 1973, LB 245, § 2; Laws 1974, LB 757, § 8; Laws 1980, LB 933, § 26.

Cross References

Methods of service, see sections 25-505.01, 25-506.01, and 25-540.
Return date of summons, see section 25-507.01.
Service on unknown defendants, see section 25-321.

31-729 District; formation; objections.

All owners of real estate situated in the proposed district who have not signed the articles of association and who may object to the organization of the district or to any one or more of the proposed trustees shall, on or before the time in which they are required to answer, file any such objection in writing, stating (1) why such sanitary and improvement district should not be organized and declared a public corporation in this state, (2) why their land will not be benefited by the installation of a sewer or water system, or both a sewer and water system, a system of sidewalks, public roads, streets, and highways, public waterways, docks or wharfs, and related appurtenances, gas and electricity for street lighting for the public streets and highways within the district, by the construction or contracting for the construction of dikes and levees for flood protection for the district, gas or electric service lines and conduits, and water for fire protection and the health and property of the owners protected, by the acquisition, improvement and operation of public parks, playgrounds, and recreational facilities, and, where permitted by section 31-727, by the contracting with other sanitary and improvement districts for the building, acquisition, improvement, and operation of public parks, playgrounds, and recreational facilities for the joint use of the residents of the contracting districts, (3) why their land should not be embraced in the limits of such district, and (4) their objections if any to any one or more of the proposed trustees.

Source: Laws 1949, c. 78, § 3, p. 196; Laws 1955, c. 117, § 3, p. 312; Laws 1961, c. 142, § 3, p. 412; Laws 1967, c. 189, § 3, p. 521; Laws 1969, c. 250, § 3, p. 912; Laws 1973, LB 245, § 3; Laws 1974, LB 757, § 9.

Landowner may object to inclusion of land within district. Zwink v. Ahlman, 177 Neb. 15, 128 N.W.2d 121 (1964).

31-730 Petition; objection; hearing; order creating.

Such petition, and objections if any, shall be heard by the court without any unnecessary delay and should the court determine that the formation of such district will be conducive to the public health, convenience, or welfare, the district court shall declare the sanitary and improvement district a public corporation of this state and shall declare five of the trustees nominated, or in case of objection thereto, other suitable trustees who shall be (1) owners of real estate located in the district or (2) designated to serve as a representative on the board of trustees if the real estate is owned by a limited partnership, a general partnership, a limited liability company, a public, private, or municipal corporation, an estate, or a trust, to be the board of trustees of such corporation to serve until their successors are elected and qualified. If any owner of real estate located in the proposed district satisfies the court that his or her real estate, or any part thereof, will not be benefited thereby, then the court may exclude such real estate as will not be benefited and declare the remainder a district as prayed for. No lands included within any municipal corporation shall be included in any sanitary and improvement district, and no tract of twenty acres or more which is outside any municipal corporation and is used primarily for industrial purposes shall be included in any sanitary and improvement district organized under sections 31-727 to 31-762 without the written consent of the owner of such tract.

Source: Laws 1949, c. 78, § 4, p. 197; Laws 2003, LB 721, § 2.

The hearing before a trial court provided for in this section concerning the organization of sanitary and improvement districts is one in equity. In re Petition of SID No. 1, 270 Neb. 856, 708 N.W.2d 809 (2006).

Under this section, petitioners need not prove that the formation of a sanitary improvement district to install a sanitary sewer system is the only, the cheapest, or even the best means of tackling their waste system problems; they must show only that the sanitary improvement district will benefit the public health, convenience, or welfare. In re Petition of SID No. 1, 270 Neb. 856, 708 N.W.2d 809 (2006).

No land within a municipality may be included in the formation of a sanitary and improvement district. Sanitary & Improvement Dist. v. City of Ralston, 182 Neb. 63, 152 N.W.2d 111 (1967).

The hearing before district court is treated as one in equity. Zwink v. Ahlman, 177 Neb. 15, 128 N.W.2d 121 (1964).

31-731 District; formation; articles; filing and recording.

Within twenty days after the district has been declared a corporation by the court, the clerk thereof shall transmit to the Secretary of State a certified copy of the record relating thereto, and the same shall be filed in his office in the same manner as articles of incorporation are required to be filed under the general law concerning corporations. A copy of such record, together with a plat of the district, shall also be filed in the office of the county clerk of the county or counties in which the district, or any part thereof, is situated.

Source: Laws 1949, c. 78, § 5, p. 197.

31-732 District; body corporate; powers.

Such district shall be a body corporate and politic by name of Sanitary and Improvement District Number .... of .... County and shall have the power and authority to take and hold real and personal property necessary for its use, to make contracts, to sue and be sued, to have and use a corporate seal, and to exercise any and all other powers, as a corporation, necessary to carry out the purposes of sections 31-727 to 31-762.

Source: Laws 1949, c. 78, § 6, p. 197.

A sanitary and improvement district, being a ''body corporate and politic,'' cannot be considered unincorporated. State ex rel. Scherer v. Madison Cty. Comrs., 247 Neb. 384, 527 N.W.2d 615 (1995).

The language ''to sue and be sued'' contained in this section should not be read so broadly as to confer standing on a sanitary and improvement district when common law standing requirements have not been met. SID No. 347 of Douglas County v. City of Omaha, 8 Neb. App. 78, 589 N.W.2d 160 (1999).

31-733 District; trustees; board; powers and duties; appointment of administrator; powers; duties; compensation.

Within thirty days after the district court has declared the district a public corporation, the trustees appointed by the court shall meet and elect one of their number chairperson and one of their number clerk of the district. Except as otherwise provided, the board shall (1) adopt a seal, bearing the name of the district, (2) keep a record of all of its proceedings which shall be open to inspection by all owners of real estate in the district, (3) have the power to pass all necessary ordinances, orders, rules, and regulations for the necessary conduct of its business and to carry into effect the objects for which the sanitary and improvement district was formed, and (4) have authority to appoint, employ, and pay an engineer or firm of engineers, an attorney, a fiscal agent, and such clerical help as may be needed, who shall each be removable at the pleasure of the board or administrator. The clerk of the board shall be paid a salary not to exceed twelve hundred dollars per year. Upon the appointment of an administrator for the district pursuant to sections 31-771 to 31-780, the authority of the trustees to exercise the powers granted in this section shall be suspended, except that the board shall continue in existence and the administrator shall periodically, but not less frequently than monthly, report to the

board in writing on all decisions and actions taken by the administrator in managing the affairs of the district. The administrator shall, during the period of his or her appointment, possess exclusive authority to exercise the powers and duties conferred in sections 31-727 to 31-770. Each trustee shall be paid fifteen dollars for each meeting of the board which he or she attends, except that each trustee shall be paid for no more than twelve meetings in each calendar year. Each trustee shall be allowed reimbursement for mileage as provided in section 81-1176.

Source: Laws 1949, c. 78, § 7, p. 198; Laws 1982, LB 868, § 3; Laws 1994, LB 501, § 2; Laws 1995, LB 470, § 3.

The board of trustees of a sanitary and improvement district has power to contract for fiscal and financial services in connection with the issuance and sale of its bonds and warrants. Hayes v. Sanitary & Improvement Dist. No. 194, 196 Neb. 653, 244 N.W.2d 505 (1976).

31-734 District; chairperson, clerk, administrator; bond; premium.

The chairperson and clerk or administrator of any such district shall, upon assuming his or her respective office, execute and file with the county clerk of the county in which such district, or the greater portion of the area thereof, is located, a bond, with one or more sureties, to be approved by the county clerk, running to the State of Nebraska in the penal sum of five thousand dollars for the chairperson, twenty thousand dollars for the clerk, and twenty thousand dollars for the administrator, conditioned for the faithful performance of their official duties and the faithful accounting by them for all funds and property of the district that shall come into their possession or control during their term of office. The premium, if any, on any such bond shall be paid out of the funds of the district. Suit may be brought on such bonds by any person, firm, or corporation that has sustained loss or damage in consequence of the breach thereof.

Source: Laws 1949, c. 78, § 8, p. 198; Laws 1976, LB 313, § 2; Laws 1979, LB 252, § 2; Laws 1982, LB 868, § 4.

31-735 District; trustees; election; procedure; term; notice; qualified voters.

(1) On the first Tuesday after the second Monday in September which is at least fifteen months after the judgment of the district court creating a sanitary and improvement district and on the first Tuesday after the second Monday in September each two years thereafter, the board of trustees shall cause a special election to be held, at which election a board of trustees of five in number shall be elected. Each member elected to the board of trustees shall be elected to a term of two years and shall hold office until such member's successor is elected and qualified. Any person desiring to file for the office of trustee may file for such office with the election commissioner, or county clerk in counties having no election commissioner, of the county in which the greater proportion in area of the district is located not later than fifty days before the election. If such person will serve on the board of trustees as a designated representative of a limited partnership, general partnership, limited liability company, public, private, or municipal corporation, estate, or trust which owns real estate in the district, the filing shall indicate that fact and shall include appropriate documentation evidencing such fact. No filing fee shall be required. A person filing for the office of trustee to be elected at the election held four years after the first election of trustees and each election thereafter shall designate whether he or

she is a candidate for election by the resident owners of such district or whether he or she is a candidate for election by all of the owners of real estate located in the district. If a person filing for the office of trustee is a designated representative of a limited partnership, general partnership, limited liability company, public, private, or municipal corporation, estate, or trust which owns real estate in the district, the name of such entity shall accompany the name of the candidate on the ballot in the following form: (Name of candidate) to represent (name of entity) as a member of the board. The name of each candidate shall appear on only one ballot.

The name of a person may be written in and voted for as a candidate for the office of trustee, and such write-in candidate may be elected to the office of trustee. A write-in candidate for the office of trustee who will serve as a designated representative of a limited partnership, general partnership, limited liability company, public, private, or municipal corporation, estate, or trust which owns real estate in the district shall not be elected to the office of trustee unless (a) each vote is accompanied by the name of the entity which the candidate will represent and (b) within ten days after the date of the election the candidate provides the county clerk or election commissioner with appropriate documentation evidencing his or her representation of the entity. Votes cast which do not carry such accompanying designation shall not be counted.

A trustee shall be an owner of real estate located in the district or shall be a person designated to serve as a representative on the board of trustees if the real estate is owned by a limited partnership, general partnership, limited liability company, public, private, or municipal corporation, estate, or trust. Notice of the date of the election shall be mailed by the clerk of the district not later than sixty-five days prior to the election to each person who is entitled to vote at the election for trustees whose property ownership or lease giving a right to vote is of record on the records of the register of deeds as of a date designated by the election commissioner or county clerk, which date shall be not more than seventy-five days prior to the election.

(2) For any sanitary and improvement district, persons whose ownership or right to vote becomes of record or is received after the date specified pursuant to subsection (1) of this section may vote when such person establishes their right to vote to the satisfaction of the election board. At the first election and at the election held two years after the first election, any person may cast one vote for each trustee for each acre of unplatted land or fraction thereof and one vote for each platted lot which he or she may own in the district. At the election held four years after the first election of trustees, two members of the board of trustees shall be elected by the legal property owners resident within such sanitary and improvement district and three members shall be elected by all of the owners of real estate located in the district pursuant to this section. Every resident property owner may cast one vote for a candidate for each office of trustee to be filled by election of resident property owners only. Such resident property owners may also each cast one vote for each acre of unplatted land or fraction thereof and for each platted lot owned within the district for a candidate for each office of trustee to be filled by election of all property owners. For each office of trustee to be filled by election of all property owners of the district, every legal property owner not resident within such sanitary and improvement district may cast one vote for each acre of unplatted land or fraction thereof and one vote for each platted lot which he or she owns in the district. At the election held eight years after the first election of trustees and at

each election thereafter, three members of the board of trustees shall be elected by the legal property owners resident within such sanitary and improvement district and two members shall be elected by all of the owners of real estate located in the district pursuant to this section, except that if more than fifty percent of the homes in any sanitary and improvement district are used as a second, seasonal, or recreational residence, the owners of such property shall be considered legal property owners resident within such district for purposes of electing trustees, and at the election held six years after the first election of trustees and at each election thereafter, three members of the board of trustees shall be elected by the legal property owners resident within such sanitary and improvement district and two members shall be elected by all of the owners of real estate located in the district pursuant to this section. If there are not any legal property owners resident within such district or if not less than ninety percent of the area of the district is owned for other than residential uses, the five members shall be elected by the legal property owners of all property within such district as provided in this section. Any public, private, or municipal corporation owning any land or lot in the district may vote at such election the same as an individual. For purposes of voting for trustees, each condominium apartment under a condominium property regime established prior to January 1, 1984, under the Condominium Property Act or established after January 1, 1984, under the Nebraska Condominium Act shall be deemed to be a platted lot and the lessee or the owner of the lessee's interest, under any lease for an initial term of not less than twenty years which requires the lessee to pay taxes and special assessments levied on the leased property, shall be deemed to be the owner of the property so leased and entitled to cast the vote of such property. When ownership of a platted lot or unplatted land is held jointly by two or more persons, whether as joint tenants, tenants in common, limited partners, members of a limited liability company, or any other form of joint ownership, only one person shall be entitled to cast the vote of such property. The executor, administrator, guardian, or trustee of any person or estate interested shall have the right to vote. No corporation, estate, or irrevocable trust shall be deemed to be a resident owner for purposes of voting for trustees. Should two or more persons or officials claim the right to vote on the same tract, the election board shall determine the party entitled to vote. Such board shall select one of their number chairperson and one of their number clerk. In case of a vacancy on such board, the remaining trustees shall fill the vacancy on such board until the next election.

(3) The election commissioner or county clerk shall hold any election required by subsection (1) of this section by sealed mail ballot by notifying the board of trustees on or before July 1 of a given year. The election commissioner or county clerk shall, at least twenty days prior to the election, mail a ballot and return envelope to each person who is entitled to vote at the election and whose property ownership or lease giving a right to vote is of record with the register of deeds as of the date designated by the election commissioner or county clerk, which date shall not be more than seventy-five days prior to the election. The ballot and return envelope shall include: (a) The names and addresses of the candidates; (b) room for write-in candidates; and (c) instructions on how to vote and return the ballot. Such ballots shall be returned to the election commissioner or county clerk no later than 10 a.m. of the first Thursday following the election.

Source: Laws 1949, c. 78, § 9, p. 198; Laws 1971, LB 188, § 3; Laws 1974, LB 757, § 10; Laws 1976, LB 313, § 14; Laws 1977, LB

228, § 2; Laws 1981, LB 37, § 1; Laws 1982, LB 359, § 1; Laws 1983, LB 433, § 71; Laws 1984, LB 1105, § 1; Laws 1986, LB 483, § 1; Laws 1987, LB 587, § 1; Laws 1987, LB 652, § 4; Laws 1992, LB 764, § 2; Laws 1993, LB 121, § 195; Laws 1997, LB 874, § 9; Laws 1999, LB 740, § 1; Laws 2005, LB 401, § 1.

Cross References

Condominium Property Act, see section 76-801.
Nebraska Condominium Act, see section 76-825.

31-735.01 Election of trustees; ballots; election board; duties.

At any election held to elect trustees of a sanitary and improvement district, the ballots shall be received, counted, and canvassed by an election board of two persons or more appointed by the election commissioner or the county clerk in counties having no election commissioner.

Source: Laws 1976, LB 313, § 15; Laws 1982, LB 359, § 2; Laws 1987, LB 652, § 5.

31-735.02 Election of trustees; certification of results.

For any sanitary and improvement district, the county clerk or election commissioner shall certify the results of the election to the district.

Source: Laws 1976, LB 313, § 16; Laws 1977, LB 228, § 3; Laws 1982, LB 359, § 3; Laws 1986, LB 483, § 2; Laws 1987, LB 652, § 6.

31-735.03 Election contests; Election Act applicable.

If an election is contested involving a sanitary and improvement district board of trustees, the Election Act shall apply.

Source: Laws 1976, LB 313, § 17; Laws 1994, LB 76, § 551.

Cross References

Election Act, see section 32-101.

31-735.04 District; location; basis for determination.

For purposes of sections 31-735 to 31-735.02 a sanitary and improvement district shall be deemed to be located in a county with a population of one hundred thousand or more if the greater proportion in area of the district is located in such county.

Source: Laws 1982, LB 359, § 4.

31-735.05 Election; when held; costs; election commissioner or county clerk; duties.

Not later than June first of each year, the election commissioner or county clerk shall determine which sanitary and improvement districts in the county are required to hold elections in such year and shall so notify the clerk of each such district on or before July first of such year. The entire costs of conducting the election shall be borne by the sanitary and improvement district holding the election, and such costs shall include all expenses such as procuring a list of the property owners of record in each such district, printing and mailing notices of the elections to such property owners, printing, preparing, and mailing ballots, paying compensation and mileage for the election boards conducting such

elections, and also indirect expenses, such as the pro rata amount of any additional clerical expense or other miscellaneous expenses to be incurred by the election commissioner or county clerk in conducting all of such elections to be held in such calendar year. Within sixty days after the elections have been held, each district shall be charged and billed for all of the actual expenses incurred by the election commissioner or county clerk attributable to such district. Payment of the total amount billed to the district shall be in currency and made by the attorney for the sanitary and improvement district to the election commissioner or county clerk within sixty days after receipt of such billing.

Source: Laws 1982, LB 359, § 5; Laws 1986, LB 483, § 3; Laws 1987, LB 652, § 7.

31-735.06 Appointment of administrator; election of trustees; special election; when held.

Notwithstanding the appointment of an administrator for any district pursuant to sections 31-771 to 31-780, special elections shall be held for the election of members of the board of trustees for such district in the same manner and at the same time as such elections would be held under sections 31-735 to 31-735.03. In a district for which such an administrator has been appointed when the board of trustees of such district is not functioning, the administrator shall cause a special election of trustees to be held within sixty days after the issuance of a certificate of appointment of such administrator, at which election a board of trustees of five in number shall be elected to a term of office which shall expire on the first Tuesday of the second September following the appointment of such administrator.

Source: Laws 1982, LB 868, § 5.

31-736 District; acquisition of property; conditions.

Such sanitary and improvement district may acquire by purchase, condemnation, or otherwise, real or personal property, right-of-way, and privilege, within or without its corporate limits, necessary for its corporate purposes. Such acquisition by the district may be effected only after approval by the municipality or county having zoning jurisdiction over such property. The approval of plans and specifications for the public improvement or project, or the approval of plans and exact costs for public parks, playgrounds, and recreational facilities, as required by section 31-740, shall be deemed to be approval for the acquisition by the district of such fee title, easements, or other interests in such property as may be required for the public improvement or project.

Source: Laws 1949, c. 78, § 10, p. 199; Laws 1978, LB 708, § 1.

31-737 District; eminent domain; procedure.

Whenever the board of trustees or administrator of any sanitary and improvement district shall by order determine to make any public improvement under the provisions of sections 31-727 to 31-762 and 31-771 to 31-780 which shall require that private property be taken or damaged, the district may exercise 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 1949, c. 78, § 11, p. 199; Laws 1951, c. 101, § 79, p. 482; Laws 1982, LB 868, § 6.

31-738 District; state or public lands; right of eminent domain.

Whenever it shall be necessary, in making any improvement under the provisions of sections 31-727 to 31-762, to enter upon or cross any state or public lands, the district shall have the right to acquire a right-of-way across the same by the exercise of the power of eminent domain.

Source: Laws 1949, c. 78, § 12, p. 199; Laws 1951, c. 101, § 80, p. 482.

31-739 District; bonds; interest; tax levies; restrictions; treasurer; duties; collection of charges other than taxes; disbursement of funds.

(1) The district may borrow money for corporate purposes and issue its general obligation bonds therefor and shall annually levy a tax on the taxable value of the taxable property in the district sufficient to pay the interest and principal on the bonds. Such levy shall be known as the bond tax levy of the district. The district shall also annually levy a tax on the taxable value of the taxable property in the district for the purpose of creating a sinking fund for the maintenance and repairing of any sewer or water system or electric lines and conduits in the district, for the payment of any hydrant rentals, for the maintenance and repairing of any sidewalks, public roads, streets, and highways, public waterways, docks, or wharfs, and related appurtenances in the district, for the cost of operating any street lighting system for the public streets and highways within the district, for the building, construction, improvement, or replacement of facilities or systems when necessary to remove or alleviate an existing threat to public health and safety affecting no more than one hundred existing homes, for the cost of building, acquiring, maintaining, and operating public parks, playgrounds, and recreational facilities, or, when permitted by section 31-727, for contracting with other sanitary and improvement districts for building, acquiring, maintaining, and operating public parks, playgrounds, and recreational facilities for the joint use of the residents of the contracting districts, or for the cost of any other services for which the district has contracted or to make up any deficiencies caused by the nonpayment of any special assessments. Such levy shall be known as the operating levy of the district. On or before September 20 of each year, the clerk of the board shall certify the tax to the county clerk of the counties in which such district is located in order that the tax may be extended upon the county tax list. Nothing contained in this section shall authorize any district which has been annexed by a city or village to levy any taxes within or upon the annexed area after the effective date of the annexation if the effective date of the annexation is prior to such levy certification date of the district for the year in which such annexation occurs.

(2) The county treasurer of the county in which the greater portion of the area of the district is located shall be ex officio treasurer of the sanitary and improvement district and shall be responsible for all funds of the district coming into his or her hands. He or she shall collect all taxes and special assessments levied by the district and deposit the same in a bond sinking fund for the payment of principal and interest on any bonds outstanding.

(3) Except as provided in subsection (5) of this section, the trustees or administrator of the district may authorize the clerk or appoint an independent agent to collect service charges and all items other than taxes, connection charges, special assessments, and funds from sale of bonds and warrants, but all funds so collected shall, at least once each month, be remitted to the

treasurer to be held in a fund, separate from the general fund or construction fund of the district, which shall be known as the service fee fund of the district. The trustees or administrator may direct the district's treasurer to disburse funds held in the service fee fund to maintain and operate any service for which the funds have been collected or to deposit such funds into the general fund of the district.

(4) The treasurer of the district shall not be responsible for such funds until they are received by him or her. The treasurer shall disburse the funds of the district only on warrants authorized by the trustees or the administrator and signed by the chairperson and clerk or the administrator.

(5) If the average weekly balance in the service fee fund of a district for a full budget year does not exceed five thousand dollars, the trustees or administrator of the district may authorize the clerk to establish an interest-bearing checking account in the name of the district to be maintained as the district service fee fund and the district's treasurer shall disburse the balance of funds held in the service fee fund of the district to the clerk for deposit into the district service fee fund. Following the creation of the district service fee fund, all funds required to be deposited into the service fee fund shall be deposited into the district service fee fund and all disbursements which may lawfully be made from the service fee fund may be made from the district service fee fund as directed or approved by the trustees or the administrator.

Source: Laws 1949, c. 78, § 13, p. 200; Laws 1955, c. 117, § 4, p. 313; Laws 1961, c. 142, § 4, p. 412; Laws 1967, c. 189, § 4, p. 521; Laws 1969, c. 252, § 1, p. 921; Laws 1969, c. 250, § 4, p. 913; Laws 1969, c. 51, § 98, p. 334; Laws 1973, LB 245, § 4; Laws 1974, LB 757, § 11; Laws 1979, LB 187, § 143; Laws 1982, LB 868, § 7; Laws 1985, LB 207, § 2; Laws 1992, LB 1063, § 30; Laws 1992, Second Spec. Sess., LB 1, § 30; Laws 1993, LB 734, § 38; Laws 1995, LB 452, § 11; Laws 1996, LB 1362, § 5; Laws 1997, LB 531, § 1; Laws 2003, LB 721, § 3.

31-740 District; trustees or administrator; powers; plans or contracts; approval required; hearing; contracts authorized; audit; failure to perform audit; effect; connection with city sewerage system; rental or use charge; levy; special assessment.

(1) The board of trustees or the administrator of any district organized under sections 31-727 to 31-762 shall have power to provide for establishing, maintaining, and constructing gas and electric service lines and conduits, an emergency management warning system, water mains, sewers, and disposal plants and disposing of drainage, waste, and sewage of such district in a satisfactory manner; for establishing, maintaining, and constructing sidewalks, public roads, streets, and highways, including grading, changing grade, paving, repaving, graveling, regraveling, widening, or narrowing roads, resurfacing or relaying existing pavement, or otherwise improving any road, street, or highway within the district, including protecting existing sidewalks, streets, highways, and roads from floods or erosion which has moved within fifteen feet from the edge of such sidewalks, streets, highways, or roads, regardless of whether such flooding or erosion is of natural or artificial origin; for establishing, maintaining, and constructing public waterways, docks, or wharfs, and

related appurtenances; and for constructing and contracting for the construction of dikes and levees for flood protection for the district.

(2) The board of trustees or the administrator of any district may contract for access to the facilities and use of the services of the library system of one or more neighboring cities or villages and for electricity for street lighting for the public streets and highways within the district and shall have power to provide for building, acquisition, improvement, maintenance, and operation of public parks, playgrounds, and recreational facilities, and, when permitted by section 31-727, for contracting with other sanitary and improvement districts for the building, acquisition, improvement, maintenance, and operation of public parks, playgrounds, and recreational facilities for the joint use of the residents of the contracting districts, and for contracting for any public purpose specifically authorized in this section. Power to construct clubhouses and similar facilities for the giving of private parties within the zoning jurisdiction of any city or village is not included in the powers granted in this section. Any sewer system established shall be approved by the Department of Health and Human Services.

(3) Prior to the installation of any of the improvements or services provided for in this section, the plans or contracts for such improvements or services, other than for public parks, playgrounds, and recreational facilities, whether a district acts separately or jointly with other districts as permitted by section 31-727, shall be approved by the public works department of any municipality when such improvements or any part thereof or services are within the area of the zoning jurisdiction of such municipality. If such improvements or services are without the area of the zoning jurisdiction of any municipality, plans for such improvements shall be approved by the county board of the county in which such improvements are located. Plans and exact costs for public parks, playgrounds, and recreational facilities shall be approved by resolution of the governing body of such municipality or county after a public hearing. Purchases of public parks, playgrounds, and recreational facilities so approved may be completed and shall be valid notwithstanding any interest of any trustee of the district in the transaction. Such approval shall relate to conformity with the master plan and the construction specifications and standards established by such municipality or county. When no master plan and construction specifications and standards have been established, such approval shall not be required. When such improvements are within the area of the zoning jurisdiction of more than one municipality, such approval shall be required only from the most populous municipality, except that when such improvements are furnished to the district by contract with a particular municipality, the necessary approval shall in all cases be given by such municipality. The municipality or county shall be required to approve plans for such improvements and shall enforce compliance with such plans by action in equity.

(4) The district may construct its sewage disposal plant and other sewerage or water improvements, or both, in whole or in part, inside or outside the boundaries of the district and may contract with corporations or municipalities for disposal of sewage and use of existing sewerage improvements and for a supply of water for fire protection and for resale to residents of the district. It may also contract with any corporation, public power district, electric membership or cooperative association, or municipality for access to the facilities and use of the services of the library system of one or more neighboring cities or villages, for the installation, maintenance, and cost of operating a system of

street lighting upon the public streets and highways within the district, for installation, maintenance, and operation of a water system, or for the installation, maintenance, and operation of electric service lines and conduits, and to provide water service for fire protection and use by the residents of the district. It may also contract with any corporation, municipality, or other sanitary and improvement district, as permitted by section 31-727, for building, acquiring, improving, and operating public parks, playgrounds, and recreational facilities for the joint use of the residents of the contracting parties. It may also contract with a county within which all or a portion of such sanitary and improvement district is located or a city within whose zoning jurisdiction the sanitary and improvement district is located for intersection and traffic control improvements, which improvements serve or benefit the district and which may be within or without the corporate boundaries of the district, and for any public purpose specifically authorized in this section.

(5) Each sanitary and improvement district shall have the books of account kept by the board of trustees of the district examined and audited by a certified public accountant or a public accountant for the year ending June 30 and shall file a copy of the audit with the office of the Auditor of Public Accounts by December 31 of the same year. Such audits may be waived by the Auditor of Public Accounts upon proper showing by the district that the audit is unnecessary. Such examination and audit shall show (a) the gross income of the district from all sources for the previous year, (b) the amount spent for access to the facilities and use of the services of the library system of one or more neighboring cities or villages, (c) the amount spent for sewage disposal, (d) the amount expended on water mains, (e) the gross amount of sewage processed in the district, (f) the cost per thousand gallons of processing sewage, (g) the amount expended each year for (i) maintenance and repairs, (ii) new equipment, (iii) new construction work, and (iv) property purchased, (h) a detailed statement of all items of expense, (i) the number of employees, (j) the salaries and fees paid employees, (k) the total amount of taxes levied upon the property within the district, and (l) all other facts necessary to give an accurate and comprehensive view of the cost of carrying on the activities and work of such sanitary and improvement district. The reports of all audits provided for in this section shall be and remain a part of the public records in the office of the Auditor of Public Accounts. The expense of such audits shall be paid out of the funds of the district. The Auditor of Public Accounts shall be given access to all books and papers, contracts, minutes, bonds, and other documents and memoranda of every kind and character of such district and be furnished all additional information possessed by any present or past officer or employee of any such district, or by any other person, that is essential to the making of a comprehensive and correct audit.

(6) If any sanitary and improvement district fails or refuses to cause such annual audit to be made of all of its functions, activities, and transactions for the fiscal year within a period of six months following the close of such fiscal year, unless such audit has been waived, the Auditor of Public Accounts shall, after due notice and a hearing to show cause by such district, appoint a certified public accountant or public accountant to conduct the annual audit of the district and the fee for such audit shall become a lien against the district.

(7) Whenever the sanitary sewer system or any part thereof of a sanitary and improvement district is directly or indirectly connected to the sewerage system of any city, such city, without enacting an ordinance or adopting any resolution

for such purpose, may collect such city's applicable rental or use charge from the users in the sanitary and improvement district and from the owners of the property served within the sanitary and improvement district. The charges of such city shall be charged to each property served by the city sewerage system, shall be a lien upon the property served, and may be collected from the owner or the person, firm, or corporation using the service. If the city's applicable rental or service charge is not paid when due, such sum may be recovered by the municipality in a civil action or it may be assessed against the premises served in the same manner as special taxes or assessments are assessed by such city and collected and returned in the same manner as other municipal special taxes or assessments are enforced and collected. When any such tax or assessment is levied, it shall be the duty of the city clerk to deliver a certified copy of the ordinance to the county treasurer of the county in which the premises assessed are located and such county treasurer shall collect the same as provided by law and return the same to the city treasurer. Funds of such city raised from such charges shall be used by it in accordance with laws applicable to its sewer service rental or charges. The governing body of any city may make all necessary rules and regulations governing the direct or indirect use of its sewerage system by any user and premises within any sanitary and improvement district and may establish just and equitable rates or charges to be paid to such city for use of any of its disposal plants and sewerage system. The board of trustees shall have power, in connection with the issuance of any warrants or bonds of the district, to agree to make a specified minimum levy on taxable property in the district to pay, or to provide a sinking fund to pay, principal and interest on warrants and bonds of the district for such number of years as the board may establish at the time of making such agreement and shall also have power to agree to enforce, by foreclosure or otherwise as permitted by applicable laws, the collection of special assessments levied by the district. Such agreements may contain provisions granting to creditors and others the right to enforce and carry out the agreements on behalf of the district and its creditors.

(8) The board of trustees or administrator shall have power to sell and convey real and personal property of the district on such terms as it or he or she shall determine, except that real estate shall be sold to the highest bidder at public auction after notice of the time and place of the sale has been published for three consecutive weeks prior to the sale in a newspaper of general circulation in the county. The board of trustees or administrator may reject such bids and negotiate a sale at a price higher than the highest bid at the public auction at such terms as may be agreed.

Source: Laws 1949, c. 78, § 14, p. 200; Laws 1955, c. 117, § 5, p. 314; Laws 1961, c. 142, § 5, p. 413; Laws 1963, c. 170, § 1, p. 585; Laws 1965, c. 158, § 1, p. 507; Laws 1967, c. 188, § 2, p. 515; Laws 1971, LB 188, § 4; Laws 1972, LB 1387, § 2; Laws 1973, LB 245, § 5; Laws 1974, LB 629, § 1; Laws 1974, LB 757, § 12; Laws 1976, LB 313, § 3; Laws 1979, LB 187, § 144; Laws 1982, LB 868, § 8; Laws 1985, LB 207, § 3; Laws 1994, LB 501, § 3; Laws 1996, LB 43, § 6; Laws 1996, LB 1044, § 92; Laws 1997, LB 589, § 1; Laws 1997, LB 874, § 10; Laws 2002, LB 176, § 2; Laws 2007, LB296, § 50; Laws 2008, LB768, § 2.
Effective date July 18, 2008.

Section 39-1402 and this section authorize concurrent authority in a county and a sanitary and improvement district to maintain and improve public roads within the boundaries of the

sanitary and improvement district. SID No. 2 of Stanton County v. County of Stanton, 252 Neb. 731, 567 N.W.2d 115 (1997).

The furnishing by a city of water or sewer services to persons outside the corporate limits of the city is contractual and permissive and not a duty imposed upon the city by statute. Bleick v. City of Papillion, 219 Neb. 574, 365 N.W.2d 405 (1985).

Under the provisions of this section, the authority of the city council, in the first instance, and the mayor thereafter to approve or disapprove proposals for the construction of a recreational facility to be built by a sanitary and improvement district is limited to a determination of whether or not the proposals conform to the municipality's master plan and construction specifications and standards. S.I.D. No. 95 v. City of Omaha, 219 Neb. 564, 365 N.W.2d 398 (1985).

31-740.01 District; additional powers; amendment to articles of association; notice; objections; determination by district court.

Whenever a majority of the board of trustees shall deem it advisable to amend the articles of association of the district to include additional powers authorized by law, they shall first propose a resolution declaring the advisability of such amendment and setting out verbatim the proposed amendment to the articles of association, and also setting out the time and place when the board of trustees shall meet to consider the adoption of such amendment. Notice of the time and place when such proposed amendment shall be considered shall be given the same day each week for two consecutive weeks in a newspaper of general circulation published in the county where the district was organized, which publication shall contain the entire wording of the proposed amendment. The last publication shall be not less than five days nor more than two weeks prior to the time set for hearing on objections to the passage of such resolution, at which hearing the owners of property within the district may appear and make objections to the proposed amendment. If the owners representing a majority of the front footage of real estate within the district fail to sign and present to the board, on or prior to the hearing date, a written petition opposing the resolution, then a majority of the board of trustees, may pass the resolution and thereby adopt the proposed amendment, or amend and then pass the amended resolution, and thereby adopt the amendment as altered. The clerk of the district shall thereupon file a certificate with the county clerk and with the Secretary of State certifying such amendment to the articles, and, upon such filing, the articles of association shall be deemed to have been duly amended and the district shall thereafter have all powers included within the articles of association as amended. If, however, a petition opposing such amendment is signed by property owners representing a majority of the front footage of real estate within the district and is presented to the board on or prior to the hearing date, then the board of trustees shall not adopt the amendments to the articles of association unless and until they have submitted the issue to and received the approval of the district court which had formed the district in a proceeding wherein the objecting parties are named as parties defendant and are given the statutory time to plead or answer as in civil cases. At the hearing, the court may (1) disapprove such amendments if the court finds that such amendments will not be conducive to the public health, convenience, or welfare, or (2) approve the proposed amendments as originally submitted or alter the same, if the court finds that such amendments will be conducive to the public health, convenience, or welfare. Proceedings before the court shall be conducted as in other civil cases, including the right of appeal.

Source: Laws 1961, c. 142, § 8, p. 416.

Cross References

Appeal, see sections 25-1901 to 25-1937.
Civil procedure, generally, see Chapter 25.

31-741 Contracts; bidding requirements.

All contracts for construction work to be done or materials or equipment purchased, the expense of which is more than twenty thousand dollars, shall be let to the lowest responsible bidder, upon notice of not less than twenty days, of the terms and conditions of the contract to be let. The board of trustees or the administrator shall have power to reject any and all bids and readvertise for the letting of such work or to negotiate any contract after an unsuccessful public letting.

Source: Laws 1949, c. 78, § 15, p. 201; Laws 1978, LB 634, § 2; Laws 1982, LB 868, § 9; Laws 1984, LB 910, § 2; Laws 2002, LB 176, § 3; Laws 2006, LB 1175, § 5.

31-742 Rules and regulations; service charges; recovery.

The board of trustees or the administrator may make all necessary rules and regulations governing the use of the installations and the operation and control thereof. The board or the administrator may establish an initial connection charge to be paid by any person, firm, or corporation connecting to the sewer or water system, or both, at the time of connection and establish just and equitable rates or charges to be paid to it for connections and the use of the water mains, disposal plant, and sewerage system by each person, firm, or corporation whose premises are served thereby. If the service or connection charge so established is not paid when due, such sum may be recovered by the district in a civil action, or it may be certified to the county assessor and assessed against the premises served, and collected or returned in the same manner as other district taxes are certified, assessed, collected, and returned. The district, through its board of trustees or the administrator, may make contracts or agreements whereby a person or corporation, public or private, furnishing water to the inhabitants of the district, shall turn off and refuse to sell water to any such water user who is delinquent in the payment of any sewer rental or service charges over forty-five days. Notice of such discontinuance of water service to such person or corporation and water user shall be given by certified or registered mail.

Source: Laws 1949, c. 78, § 16, p. 201; Laws 1955, c. 117, § 6, p. 315; Laws 1959, c. 129, § 2, p. 466; Laws 1982, LB 868, § 10.

31-743 District; septic tanks; discontinue use; when.

Whenever a sewer system has been established, and dwellings in the district shall connect therewith, all septic tanks shall be dispensed with. The board of trustees or the administrator shall have the authority to institute court proceedings in a court of competent jurisdiction to carry out the provisions of this section.

Source: Laws 1949, c. 78, § 17, p. 202; Laws 1982, LB 868, § 11.

31-744 District; trustees or administrator; improvements and facilities authorized; resolution; construction; acquisition; contracting; approval; cost; assessment.

Whenever the board of trustees or the administrator deems it advisable or necessary (1) to build, reconstruct, purchase, or otherwise acquire a water system, an emergency management warning system, a sanitary sewer system, a sanitary and storm sewer or sewage disposal plant, pumping stations, sewer outlets, gas or electric service lines and conduits constructed or to be construct-

ed in whole or in part inside or outside of the district, a system of sidewalks, public roads, streets, and highways wholly within the district, public waterways, docks, or wharfs, and related appurtenances, wholly within the district, or a public park or parks, playgrounds, and recreational facilities wholly within the district, (2) to contract as permitted by section 31-740 with the county or city within whose zoning jurisdiction the sanitary and improvement district is located for intersection and traffic control improvements which serve or benefit the district and are located within or without the corporate boundaries of the district, (3) to contract, as permitted by section 31-727, with other sanitary and improvement districts for acquiring, building, improving, and operating public parks, playgrounds, and recreational facilities for the joint use of the residents of the contracting districts, or (4) to contract for the installation and operation of a water system, the board of trustees shall declare the advisability and necessity therefor in a proposed resolution, which resolution, in the case of pipe sewer construction, shall state the kinds of pipe proposed to be used, shall include cement concrete pipe and vitrified clay pipe and any other material deemed suitable, 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 a water system, disposal plants, pumping stations, outlet sewers, gas or electric service lines and conduits, or a system of sidewalks, public roads, streets, or highways or public waterways, docks, or wharfs, to construct or contract for the construction of dikes and levees for flood protection for the district or public parks, playgrounds, or recreational facilities, or to contract, as permitted by section 31-727, with other sanitary and improvement districts for acquiring, building, improving, and operating public parks, playgrounds, and recreational facilities for the joint use of the residents of the contracting districts, the resolution shall refer to the plans and specifications thereof which have been made and filed before the publication of such resolution by the engineer employed for such purpose. If it is proposed to purchase or otherwise acquire a water system, a sanitary sewer system, a sanitary or storm water sewer, sewers, sewage disposal plant, pumping stations, sewer outlets, gas or electric service lines and conduits, or public parks, playgrounds, or recreational facilities or to contract, as permitted by section 31-727, with other sanitary and improvement districts for acquiring, building, improving, and operating public parks, playgrounds, and recreational facilities for the joint use of the residents of the contracting districts, the resolution shall state the price and conditions of the purchase or how such facility is being acquired. If it is proposed to contract for the installation and operation of a water system for fire protection and for the use of the residents of the district, to contract for the construction of dikes and levees for flood protection for the district or gas or electric service lines and conduits, to contract with a county within which all or a portion of such sanitary and improvement district is located or a city within whose zoning jurisdiction the sanitary and improvement district is located for any public purpose specifically authorized in this section, or to contract, as permitted by section 31-727, with other sanitary and improvement districts for acquiring, building, improving, and operating public parks, playgrounds, and recreational facilities for the joint use of the residents of the contracting districts, the resolution shall state the principal terms of the proposed agreement and how the cost thereof is to be paid. When gas or electric service lines and conduits are among the improvements that are proposed to be constructed, purchased, or otherwise acquired or contracted for, and no construction specifications and standards therefor have been established by the municipality

having zoning jurisdiction over the area where such improvements are to be located, or when such service lines and conduits are not to be located within any municipality's area of zoning jurisdiction, the plans and specifications for and the method of construction of such service lines and conduits shall be approved by the supplier of gas or electricity within whose service or customer area they are to be located. The 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 board of trustees or the administrator shall assess, to the extent of special benefits, the cost of such improvements upon properties specially benefited thereby, except that if the improvement consists of the replacement of an existing facility, system, or improvement that poses an existing threat to public health and safety affecting no more than one hundred existing homes, the cost of such improvements may be paid for by an issue of general obligation bonds under section 31-755. The resolution shall state the outer boundaries of the district or districts in which it is proposed to make special assessments.

Source: Laws 1949, c. 78, § 18, p. 202; Laws 1955, c. 117, § 7, p. 315; Laws 1961, c. 142, § 6, p. 414; Laws 1967, c. 189, § 5, p. 522; Laws 1969, c. 250, § 5, p. 914; Laws 1973, LB 245, § 6; Laws 1974, LB 757, § 13; Laws 1976, LB 313, § 4; Laws 1982, LB 868, § 12; Laws 1985, LB 207, § 4; Laws 1994, LB 501, § 4; Laws 1996, LB 43, § 7; Laws 1997, LB 531, § 2; Laws 1997, LB 589, § 2; Laws 1997, LB 874, § 11.

31-745 Resolution; notice; hearing.

Notice of the time and place, which place shall be in the county where the district is organized, when any such resolution shall be set for consideration before the board of trustees or the administrator, shall be given the same day each week two consecutive weeks in a newspaper of general circulation published in the county where the district was organized, which publication shall contain the entire wording of the resolution and be posted in three conspicuous places in the district. The last publication shall not be less than five days nor more than two weeks prior to the time set for hearing on objections to the adoption 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. Thereupon the resolution may be amended and adopted or adopted as proposed.

Source: Laws 1949, c. 78, § 19, p. 203; Laws 1982, LB 868, § 13.

31-746 Resolution; objections; effect.

If a petition opposing the resolution, signed by property owners representing a majority of the front footage which may become subject to assessment for the cost of any improvements as set forth by the resolution, is filed with the clerk of the district within three days before the date of the meeting for the hearing on such resolution, such resolution shall not be adopted.

Source: Laws 1949, c. 78, § 20, p. 203; Laws 1955, c. 117, § 8, p. 316; Laws 1982, LB 868, § 14.

31-747 District; resolution; improvements authorized.

Upon compliance with the provisions of sections 31-744 to 31-746, the board of trustees or the administrator may by resolution order the making, reconstruction, purchase, or otherwise acquiring of any of the improvements provided for in sections 31-727 to 31-762.

Source: Laws 1949, c. 78, § 21, p. 203; Laws 1982, LB 868, § 15.

31-748 Improvements; contract; notice; bids.

After ordering any such improvements, as provided in sections 31-727 to 31-762, the board of trustees or the administrator may enter into a contract for the construction of such improvement 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 of general circulation in the county where the district is organized. The notice shall be published the same day each week two consecutive weeks in such paper and shall generally state (1) the extent of the work, (2) the kinds of material to be bid upon, including in such notice all kinds of material mentioned in the resolution as provided in section 31-744, (3) the amount of the engineer's estimate of the cost of such improvements, (4) the time when bids will be received, and (5) the amount of the certified check or bid bond required to accompany the bids. Each bid shall be accompanied in a separate sealed envelope by certified check or bid bond in an amount to be named in the notice, which amount shall be not less than five percent of the engineer's total estimate of the cost, and shall be made payable to the treasurer of the district as security that the bidder to whom the contract may be awarded will enter into a contract to build the improvements in accordance with the notice to contractors and give bond in the sum named in such notice for the construction of such improvements as the notice required. Checks or bonds accompanying bids not accepted shall be returned to the bidders. The work provided for in this section 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 board of trustees or the administrator may reject any or all bids received and advertise for new bids in accordance with this section.

Source: Laws 1949, c. 78, § 22, p. 203; Laws 1979, LB 252, § 3; Laws 1982, LB 868, § 16.

31-748.01 Completion of contract; notice to district; objections; final payment; interest.

If the contractor has furnished the district all required records and reports, the district shall after July 10, 1984, pay the contractor interest at the rate specified in section 39-1349, as such rate may from time to time be adjusted by the Legislature, on any contract amount retained and the final payment due the contractor beginning twenty days after completion of the work covered by the contract under section 31-748. The contractor shall notify the district in writing that the work has been completed and the district, within twenty days after receipt of such notice, shall give written notice to the contractor of any objections by the district to acceptance of the work.

Source: Laws 1963, c. 168, § 1, p. 583; Laws 1969, c. 253, § 1, p. 923; Laws 1984, LB 734, § 1.

31-749 Improvements; engineer; certificate of acceptance; cost; statement; assessment; notices; hearing; appeal; hearing in district court.

After the completion of any such work or purchase or otherwise acquiring a sewer or water system, or both, or public parks, playgrounds, or recreational facilities, or contracting, as permitted by section 31-727, with other sanitary and improvement districts to acquire public parks, playgrounds, and recreational facilities for the joint use of the residents of the contracting districts, or gas or electric service lines or conduits or upon completion of the work on a system of sidewalks, public roads, streets, or highways, public waterways, docks or wharfs, and related appurtenances, or levees for flood protection for the district, the engineer shall file with the clerk of the district a certificate of acceptance, which acceptance shall be approved by the board of trustees or the administrator by resolution. The board of trustees or administrator shall then require the engineer to make a complete statement of all the costs of any such improvements, 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 statement, plat, and schedule shall be filed with the clerk of the district within sixty days after the date of acceptance of the work, purchase, or otherwise acquiring a sewer or water system, or both, or acceptance of the work on a system of sidewalks, public roads, streets, or highways, or public waterways, docks or wharfs, and related appurtenances, or dikes and levees for flood protection for the district, or, as permitted by section 31-727, public parks, playgrounds, and recreational facilities whether acquired separately or jointly with other districts. The board of trustees or administrator shall then order the clerk to give notice that such statement, 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 clerk of the district within twenty days after the first publication of such notice, shall be deemed to have been waived. Such notice shall be given by publication the same day each week two consecutive weeks in a newspaper of general circulation published in the county where the district was organized and by handbills posted along the line of the work. Such notice shall state the time and place where any objections, filed as provided in this section, shall be considered by the board of trustees or administrator. The cost of such improvements in the district which are within the area of the zoning jurisdiction of any municipality shall be assessed to the full extent of special benefits to the property, to the same extent as the costs of such improvements are assessed in such municipality. The complete statement of costs and the schedule of amounts proposed to be assessed for such improvements which are within the zoning jurisdiction of such municipality against each separate piece of property in districts located within the zoning jurisdiction of such municipality shall be given to such municipality within seven days after the first publication of notice of statement, plat, and schedules; *Provided*, that when such improvements are within the area of the zoning jurisdiction of more than one municipality, then such proposed assessments schedule and statement need be given only to the most populous municipality. Such municipality shall have the right to be heard, and it shall have the right of appeal from a final determination by the board of trustees or administrator against objections which such city has filed. Notice of the amount proposed to be assessed for such improvements against each separate piece of property shall be given to each owner of record thereof within five days after the first publication of notice of statement, plat, and schedules

and, within five days after the first publication of such notice, a copy thereof, along with statements of costs and schedules of proposed assessments, shall be given to each person or company who, pursuant to written contract with the district, has acted as underwriter or fiscal agent for the district in connection with the sale or placement of warrants or bonds issued by the district. Each owner shall have the right to be heard, and shall have the right of appeal from the final determination made by the board of trustees or administrator. Any person or any such municipality feeling aggrieved may appeal to the district court by petition within twenty days after such a final determination. The court shall hear and determine such appeal in a summary manner as in a case in equity and without a jury and shall increase or reduce the assessments as the same may be required to provide that the assessments shall be to the full extent of special benefits, and to make the apportionment of benefits equitable.

Source: Laws 1949, c. 78, § 23, p. 204; Laws 1955, c. 117, § 9, p. 317; Laws 1961, c. 142, § 7, p. 415; Laws 1965, c. 157, § 1, p. 504; Laws 1967, c. 190, § 1, p. 524; Laws 1971, LB 188, § 5; Laws 1973, LB 245, § 7; Laws 1974, LB 757, § 14; Laws 1976, LB 313, § 5; Laws 1979, LB 252, § 4; Laws 1982, LB 868, § 17.

A fiscal agent of a sanitary and improvement district has standing to appeal the decision of the district's board as a person feeling aggrieved. City of Omaha v. S.I.D. No. 287, 214 Neb. 371, 334 N.W.2d 429 (1983).

Review by a court of the decision of a sanitary and improvement district board is as in an equity action. The court may fully review the evidence and reach conclusions independent of that board. City of Omaha v. S.I.D. No. 287, 214 Neb. 371, 334 N.W.2d 429 (1983).

Assumed, for purposes of this case, sanitary and improvement district was required to notify city of Omaha of apportionment hearing. Pedersen v. Westroads, Inc., 189 Neb. 236, 202 N.W.2d 198 (1972).

31-750 Assessments; hearings; adjustment.

The hearing on the proposed assessment shall be held by the board of trustees or the administrator sitting as a board of adjustment and equalization at the time and place specified in such notice and not less than twenty days nor more than thirty days after the date of the first publication, unless such session be adjourned, with provisions for proper notice of such adjournment. At such meeting, the proposed assessments shall be adjusted and equalized with reference to benefits resulting from the improvement and shall not exceed such benefits.

Source: Laws 1949, c. 78, § 24, p. 205; Laws 1982, LB 868, § 18.

31-751 Special assessments; equalization; levy; certified; manner; collection.

After the equalization of such special assessments as required by sections 31-727 to 31-762, such special assessments shall be levied by the board of trustees or the administrator upon all lots or parcels of ground within the district which are benefited by reason of such improvement, such levy to be made within six months after acceptance of the improvement by the board of trustees or the administrator. All such special assessments shall be levied within eighteen months after commencement of construction. Failure to levy assessments within such six-month or eighteen-month period shall not invalidate assessments made after the six-month or eighteen-month period. Such special assessments may be relevied, if for any reason the levy thereof is void or not enforceable. Such levy shall be enforced as other special assessments and any payments thereof under previous levies shall be credited to the person or property making the same. Not less than eleven and not more than twenty days

after the levying of any special assessment, the clerk of the district shall certify such levy to the county treasurer and county clerk of the county. If a notice of appeal from such levy has been filed with the clerk, he or she shall note on the certificate of levy that an appeal has been commenced and that the amounts of the assessments are subject to redetermination pursuant to the appeal. All receipts given by the county treasurer for special assessments as to which an appeal is pending shall show thereon that the special assessment amount is subject to redetermination by the appeal. Upon termination of any appeal, the clerk of the district shall so certify to the county clerk and county treasurer. All assessments made for such purposes shall be collected in the same manner as general taxes and shall be subject to the same penalties or may be collected pursuant to section 77-1917.01.

Source: Laws 1949, c. 78, § 25, p. 205; Laws 1971, LB 188, § 6; Laws 1976, LB 313, § 6; Laws 1982, LB 868, § 19.

Cross References

Collection of taxes, see Chapter 77, article 17.

31-752 Improvements; assessment of benefits; exempt property; cost; interest; rate.

The board of trustees or the administrator shall not cause to be assessed for any of the improvements herein provided, property by law not assessable, or property not included within the district defined in the preliminary resolution, and shall not assess property not benefited; *Provided*, in cases when such exempt property has been specially benefited by the improvements, the owner of such property shall pay the district a sum equivalent to the amount the property has been specially benefited, which amount may be recovered by the district in an action against the property owner. If the parties do not agree as to the amount of the special benefits, the amount may be determined by the district court in an action brought by the district for such purpose. The board of trustees or the administrator may find that any part or all of such improvements made are of general benefit to the district except that the board or administrator shall levy special assessments on all lots, parcels, or pieces of real estate specially benefited to the extent of the special benefits to such property. The cost of such improvements shall be paid from the assessments levied against all the property in the district, in the manner provided by section 31-755, or may be paid from unappropriated money in its general fund. The cost of the improvements shall draw interest at the rate of six percent per annum from the date of acceptance thereof by the board or administrator until warrants are issued in payment of the contract price.

Source: Laws 1949, c. 78, § 26, p. 206; Laws 1955, c. 117, § 10, p. 317; Laws 1961, c. 138, § 9, p. 402; Laws 1961, c. 141, § 2, p. 407; Laws 1967, c. 191, § 1, p. 526; Laws 1982, LB 868, § 20.

31-753 Special assessments; installment payment; interest; delinquent; collection.

All special assessments provided for in section 31-739 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 on a per annum basis until delinquent at the greater of (1) the rate of interest accruing on construction fund warrants registered against such district sixty days prior to

the actual levy of the special assessments or (2) the average rate of interest accruing on the construction fund warrants issued to pay for the improvements for which the special assessments are to be levied adjusted to the next greater one-half percent. Such assessments shall become delinquent in equal annual installments over such periods of years, not exceeding twenty, as the board of trustees or the administrator may determine at the time of making the levy. Delinquent installments shall bear interest at the rate of two percent per annum above the rate set by the district on such installments before delinquency, except that no such rate shall exceed the rate specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature. If three or more installments shall be delinquent, the board of trustees or the administrator may declare all of the remaining installments to be at once delinquent and such installments declared delinquent 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 may be collected the same as other delinquent installments may be collected.

Source: Laws 1949, c. 78, § 27, p. 206; Laws 1961, c. 141, § 3, p. 408; Laws 1971, LB 188, § 7; Laws 1972, LB 1442, § 1; Laws 1976, LB 313, § 7; Laws 1980, LB 933, § 27; Laws 1981, LB 167, § 28; Laws 1982, LB 868, § 21; Laws 1997, LB 531, § 3; Laws 1999, LB 806, § 1.

31-754 Special assessments; sinking fund; transfer of funds.

All special assessments provided by sections 31-727 to 31-762 and all connection charges collected shall, when levied, constitute a sinking fund for the purpose of paying the cost of the improvements herein provided for with allowable interest thereon and shall be solely and strictly applied to such purpose to the extent required; but any excess thereof may be by the board or the administrator, after fully discharging the purposes for which levied, transferred to such other fund or funds as the board of trustees or the administrator may deem advisable.

Source: Laws 1949, c. 78, § 28, p. 206; Laws 1982, LB 868, § 22.

31-755 Improvements; bonds; warrants; procedure; issuance; negotiability; extension of due date; hearing; interest; levy; sinking fund; tax.

For the purpose of paying the cost of the improvements herein provided for, the board of trustees or the administrator, after such improvements have been completed and accepted, shall have the power to issue negotiable bonds of any such district, to be called sanitary and improvement district bonds, payable in not to exceed thirty years. Each issue of general obligation bonds shall mature or be subject to mandatory redemption so that the first principal repayment is made not more than five years after the date of issuance and so that at least twenty percent of the district's bonds then outstanding shall be repaid within ten years after the date of issuance. Such bonds shall bear interest payable annually or semiannually. Such bonds may either be sold by the district 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 board of trustees or the administrator 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 to exceed ninety-five percent of the cost thereof. Warrants issued prior to July 10, 1976, for capital outlays of the district shall become due and payable twelve months after April 21, 1982, and warrants issued on or after July 10, 1976, for capital outlays of the district shall become due and payable not later than five years from the date of issuance, except that such warrants need not be retired on such date or within such five-year period and shall not be in default if the district court of the county determines, upon application to it by the district, that the district does not have the funds to retire such warrants and either (1) the district is unable to sell its bonds in amount sufficient to retire such warrants or (2) an unreasonably high tax levy, as compared to the levy on other similar property in the county, would be required in order to cover the debt service requirements on bonds issued to retire such warrants. Such application may be filed either before or within ninety days after the due date of the warrants, and no warrant for which an extension application has been made to the district court and a hearing date set by the court shall be in default while such application is pending before the court. Notice of the filing of such application and the time and place of the hearing thereon shall be published in a newspaper of general circulation in the county the same day each week three consecutive weeks. Within five days after the first publication of such notice, the district shall cause to be mailed, by United States certified mail, a copy of such notice to each holder of warrants covered by the application whose name and post office address are known to the district. Prior to the hearing, proof of such mailing shall be made by affidavit of a trustee of the district or the administrator or the district's attorney that such mailing was made and further that the district, its trustees or administrator, and its attorney, after diligent investigation and inquiry, were unable to ascertain and do not know the name and post office address of any holder of such warrants other than those to whom notice has been mailed in writing or who have waived notice in writing or entered an appearance in the proceeding. Upon making such determination, the district court may make such orders concerning retirement of the warrants as it determines proper under the circumstances of the district including ordering an increase in the tax levy of the district to provide funds for warrant redemption, except that no court-ordered tax levy for redemption of warrants shall cause the total tax levy of the district to be unreasonably high as compared with the tax levy of other similar property in the county. Such warrants shall draw interest, at such rate as fixed by the board of trustees or the administrator and endorsed on the warrants, from the date of presentation for payment and shall be redeemed and paid from the proceeds of special assessments or from the sale of the bonds issued and sold as provided in this section or from any other funds available for that purpose. Bonds to redeem such warrants shall be issued as soon as economically feasible, and to the extent warrants are not redeemed from bond proceeds or other funds available for such purpose, the district shall make a tax levy to provide a sinking fund for warrant redemption, except that such obligation shall not require a total tax levy by the district which shall be unreasonably high as compared with the tax levy on other similar property in the county. The board of trustees or the administrator shall after August 26, 1983, pay to the contractor interest at the rate specified in section 39-1349, as such rate may from time to time be adjusted by the Legislature, on the amounts due on partial and final payments, beginning thirty days after the certification of the amounts due by the engineer in charge and approval by the board of trustees or the administrator and

running until the date that the warrant is tendered to the contractor. Warrants issued for operation and maintenance expenses of the district shall be issued not later than sixty days following the date upon which the district is in receipt of a bill for the amount of operation or maintenance expenses owed and such warrants shall become due and payable not later than three years from the date of issuance. If a warrant for operation or maintenance expenses is not issued within such sixty-day period, the amount owed by the district shall bear interest from the sixty-first day until the date upon which the warrant is issued at a rate equivalent to one and one-half times the rate specified in subsection (2) of section 45-104.02. The district shall agree to pay annual or semiannual interest on all capital outlay warrants issued by the district and shall issue warrants to pay such interest or shall issue its warrants in return for cash to pay such interest. Interest on capital outlay warrants shall be represented by coupons payable to bearer attached to each warrant, but coupons shall not be issued for interest accruing after the due date of such warrant. All coupons shall show on their face the number of the warrant to which they appertain and that the coupon shall not be valid for payment of any interest after the warrant has been called for redemption or redeemed. Warrant interest coupons not paid when due for lack of funds shall be registered, bear interest, and be paid the same as is provided in section 10-209 for bond coupons. Warrants issued to pay interest on capital outlay warrants shall become due and payable in the same time as capital outlay warrants. The district may, if determined appropriate by the board of trustees or the administrator, pay fees to fiscal agents in connection with the placement and registration of ownership of warrants issued by the district. The board of trustees or the administrator shall levy special assessments on all lots, parcels, or pieces of real estate benefited by the improvement to the extent of the benefits to such property. The special assessments when collected shall be set aside and constitute a sinking fund for the payment of the interest and principal of such bonds. In addition to the special assessments provided for in this section, there shall be levied annually a tax upon the taxable value of all the taxable property in such district which, together with such sinking fund derived from special assessments, shall be sufficient to meet payments of interest and principal on all bonds as such become due. Such tax levy shall be known as the sanitary and improvement district bond tax levy and shall be payable annually in money.

Source: Laws 1949, c. 78, § 29, p. 206; Laws 1955, c. 117, § 11, p. 318; Laws 1965, c. 157, § 2, p. 505; Laws 1965, c. 158, § 2, p. 509; Laws 1967, c. 192, § 1, p. 528; Laws 1971, LB 1, § 2; Laws 1975, LB 112, § 7; Laws 1976, LB 313, § 8; Laws 1978, LB 870, § 1; Laws 1979, LB 187, § 145; Laws 1982, LB 868, § 23; Laws 1983, LB 303, § 2; Laws 1992, LB 719A, § 127; Laws 1996, LB 1321, § 1; Laws 1996, LB 1362, § 6.

The Nebraska statutes governing sanitary and improvement districts grant a priority of payment in favor of bonds over warrants so as to require that bonds be fully paid according to their terms prior to utilizing revenues for payment of warrants when an S.I.D. is bankrupt. Hollstein v. First Nat. Bank of Aurora, 231 Neb. 711, 437 N.W.2d 512 (1989).

An application seeking an extension of time within which to retire warrants filed pursuant to this section is an equitable proceeding reviewed by the Nebraska Supreme Court de novo on the record. In re Application of S.I.D. No. 65, 219 Neb. 647, 365 N.W.2d 456 (1985).

Where a fiscal agent for sale of bonds of a sanitary and improvement district purchases the bonds privately at par, payment of a fee for fiscal services to such purchaser constitutes a sale of bonds at less than par in violation of this statute. Hayes v. Sanitary & Improvement Dist. No. 194, 196 Neb. 653, 244 N.W.2d 505 (1976).

District was authorized to issue bonds for not to exceed thirty years on such terms as district court might direct. Sanitary & Improvement Dist. v. City of Ralston, 182 Neb. 63, 152 N.W.2d 111 (1967).

31-756 Bonds; petition; contents.

The board of trustees or the administrator of the district or such holder or holders of any bond or bonds of the district shall file in the district court for the county in which the lands of the district, or the greater portion thereof, are situated, a petition praying in effect that the proceedings aforesaid may be examined, approved, and confirmed by the court. The petition shall state the facts showing the proceedings had for the issuance and sale of the bonds, and shall state generally that the sanitary and improvement district was duly organized, and that the first board of trustees was duly elected. The petition need not state the facts showing such organization of the district or the appointment of the first board of trustees but shall state the facts relevant to the appointment of the administrator.

Source: Laws 1949, c. 78, § 30, p. 207; Laws 1982, LB 868, § 24.

31-757 Bonds; petition; notice; hearing.

The court shall fix the time for the hearing of the petition, and shall order the clerk of the court to give and publish a notice of the filing of the petition. The notice shall be given by publication the same day each week three consecutive weeks. The notice shall state the time and place fixed for the hearing of the petition and prayer of the petition, and that any person interested in the organization of the district or in the proceedings for the issuance or sale of the bonds may, on or before the day fixed for the hearing of the petition, move to dismiss the petition or answer thereto. The petition may be referred to and described in the notice as the petition of .... (giving its name) praying that the proceedings for the issuance and sale of such bonds of such district may be examined, approved, and confirmed by the court.

Source: Laws 1949, c. 78, § 31, p. 207.

31-758 Bonds; petition; answer; rules of procedure.

Any person interested in the district, or in the issuance or sale of the bonds, may move to dismiss the petition, or file an answer thereto. The provisions of the code of civil procedure respecting motions and answer to a petition shall be applicable to motions and answer to the petition in such special proceedings. The persons so filing motions and answering the petition shall be the defendants to the special proceedings, and the board of trustees shall be the plaintiff. Every material statement of the petition not specially controverted by the answer must, for the purpose of such special proceedings, be taken as true. Each person failing to answer the petition shall be deemed to admit as true all the material statements of the petition. The rules of pleading and practice provided by the code of civil procedure which are not inconsistent with the provisions of sections 31-727 to 31-762 are applicable to the special proceedings herein provided for.

Source: Laws 1949, c. 78, § 32, p. 208.

Cross References

Rules of pleading promulgated by Supreme Court, see section 25-801.01.

31-759 Bonds; proceedings; jurisdiction of court; statement.

Upon the hearing of such special proceedings, the court shall have the power and jurisdiction to examine and determine the legality and validity of, and approve and confirm or disapprove and disaffirm, each and all of the proceed-

ings for the organization of such district under sections 31-727 to 31-762, from and including the petition for the organization of the district, and all other proceedings which may affect the legality or validity of the bonds and the order of the sale and the sale thereof. The court in inquiring into the regularity, legality, or correctness of such proceedings shall disregard an error, irregularity, or omission which does not affect the substantial rights of the parties to such special proceedings. It may approve and confirm such proceedings in part and disapprove and declare illegal or invalid other and subsequent parts of the proceedings. The court shall find and determine whether the notice of the filing of the petition has been duly given and published for the time and in the manner prescribed in section 31-757. The costs of the special proceedings may be allowed and apportioned between the parties in the discretion of the court. If the court shall determine the proceedings for the organization of the district and for the voting and issuing of the bonds legal and valid, the board of trustees or the administrator shall then prepare a written statement beginning with the filing of the petition for the organization of the district, including all subsequent proceedings for the organization of the district and voting and issuing of the bonds, and ending with the decree of the court finding the proceedings for the organization of the district and the proceedings for the voting and issuing of the bonds legal and valid. The written statement shall be certified under oath by the board of trustees or the administrator of the district.

Source: Laws 1949, c. 78, § 33, p. 208; Laws 1982, LB 868, § 25; Laws 2001, LB 420, § 26.

31-760 Repealed. Laws 1959, c. 130, § 5.

31-761 District; change in boundary; petition; notice; hearing; order; effect.

(1) The sanitary and improvement district may be enlarged and additional territory annexed to the district by either of the following methods:

(a) By petitions signed by the owner or owners of all the property to be annexed to the district. If such a petition requesting annexation is presented to the trustees and approved by the trustees the change in the boundaries to include the additional area shall be certified by the clerk of the district to the county clerk in which the greater portion of the district is located and thereafter the district shall include the area thus annexed.

(b) By a petition filed with the clerk of the district, signed by persons owning not less than fifty percent of the area to be annexed, but not signed by persons owning all the area requested to be annexed. On the filing of such petition, the trustees of the district shall fix a time and place for a hearing thereon and give notice of said hearing by two weekly publications and by either registered or certified mail to the record owners of all persons owning land within the territory sought to be annexed, not less than ten days prior to the date of said hearing, if the address of said owners is known or can be ascertained by reasonable diligence by the trustees. At the said meeting, any person owning property within the area proposed to be annexed or any person owning property or residing within the district may appear and be heard. If, after said hearing, the board of trustees find and determine that annexation of the additional area will be conducive to the public health, convenience, and welfare and will not be an undue burden on the district, the board of trustees may, by resolution, annex the additional area and fix the boundary thereof which shall

not include more than the area requested in the petition. A copy of the said resolution shall be filed with the county clerk of the county in which the greater portion of the district is located and thereafter the area included by said resolution shall be a part of the district.

(2) All property, from and after it is annexed to the district as above provided, shall be subject to all taxes and other burdens thereafter levied by the district, regardless of when the obligation for which said taxes or assessments are levied was incurred.

(3) No lands included within any municipal corporation shall be included in any sanitary and improvement district, and no tract of twenty acres or more which is outside any municipal corporation and is used primarily for industrial purposes shall be included in any sanitary and improvement district organized under sections 31-727 to 31-762 without the written consent of the owner of such tract.

Source: Laws 1949, c. 78, § 35, p. 210; Laws 1957, c. 242, § 25, p. 838.

No district may be enlarged by annexing or including land located within any municipal corporation. Sanitary & Improvement Dist. v. City of Ralston, 182 Neb. 63, 152 N.W.2d 111 (1967).

31-762 Sections; supplementary to existing law.

Sections 31-727 to 31-762 are supplementary to existing statutes and confer upon sanitary and improvement districts powers not heretofore granted and sections 31-727 to 31-762 shall not be construed as repealing or amending any existing statute.

Source: Laws 1949, c. 78, § 36, p. 211.

31-762.01 District located near solid waste disposal site; improvements or facilities; approval requirements.

(1) In addition to any authority granted to a city, village, or county under sections 31-727 to 31-762 to review or approve any actions or proposed actions of a sanitary and improvement district, any sanitary and improvement district which includes real property located within one mile of the boundary of a solid waste disposal site for which a permit application is pending or for which a permit has been issued pursuant to section 13-2036 shall obtain the approval of the governing body of any county, municipality, or agency which has applied for or which is a holder of such permit prior to entering into any contract or agreement for or otherwise providing for building, reconstructing, purchasing, or otherwise acquiring or providing any improvements or facilities pursuant to section 31-727, 31-740, or 31-744, and prior to the acquisition of any property pursuant to section 31-736, 31-737, or 31-738.

(2) Approval under this section shall be based upon a determination by the county, municipality, or agency:

(a) That the proposed action by the sanitary and improvement district will not hinder, impede, obstruct, interfere with, or unduly burden the county, municipality, or agency in the performance of its duties and responsibilities under the Integrated Solid Waste Management Act;

(b) That the proposed action by the sanitary and improvement district is consistent with the preservation of the public health, safety, and welfare under the provisions of such act; and

(c) That the proposed action by the sanitary and improvement district will not create financial burdens upon the county, municipality, or agency responsible for a facility in the construction, operation, management, closure, or postclosure care of the facility disproportionate to the benefits from the proposed action to be derived by the owners of the land within the sanitary and improvement district making a reasonable use of their land.

(3) For purposes of this section, county, municipality, facility, and agency shall have the definitions provided in the Integrated Solid Waste Management Act.

Source: Laws 1994, LB 1207, § 13.

Cross References

Integrated Solid Waste Management Act, see section 13-2001.

(c) DISTRICT BOUNDARIES

31-763 Annexation of territory by a city or village.

Whenever any city or village annexes all the territory within the boundaries of any sanitary and improvement district organized under the provisions of sections 31-701 to 31-726, or under sections 31-727 to 31-762, or any road improvement district organized under sections 39-1601 to 39-1636, or any fire protection district authorized under Chapter 35, article 5, the district shall merge with the city or village and the city or village 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 district, and the city or village shall be liable for and recognize, assume, and carry out all valid contracts and obligations of the district. All taxes, assessments, claims, and demands of every kind due or owing to the district shall be paid to and collected by the city or village. Any special assessments which the district was authorized to levy, assess, relevy or reassess, but which were not levied, assessed, relevied or reassessed, at the time of the merger, for improvements made by it or in the process of construction or contracted for may be levied, assessed, relevied or reassessed by the annexing city or village to the same extent as the district may have levied or assessed but for the merger; *Provided*, nothing herein contained shall authorize the annexing city or village to revoke any resolution, order, or finding made by the district in regard to special benefits or increase any assessments made by the district, but such city or village shall be bound by all such findings or orders and assessments to the same extent as the district would be bound; *and provided further*, that no district so annexed shall have power to levy any special assessments after the effective date of such annexation.

Source: Laws 1959, c. 130, § 1, p. 467; Laws 1969, c. 255, § 1, p. 925.

Upon annexation of sanitary and improvement district by Omaha, in absence of fraud, Omaha was bound by all findings, orders, and assessments made by district to same extent as district. Pedersen v. Westroads, Inc., 189 Neb. 236, 202 N.W.2d 198 (1972).

This section covers the annexation by a city of all of the property within the boundaries of a sanitary and improvement district. Sanitary & Improvement Dist. v. City of Ralston, 182 Neb. 63, 152 N.W.2d 111 (1967).

31-764 Annexation; trustees; administrator; accounting; effect; special assessments prohibited.

The trustees of a road improvement district or fire protection district or the trustees or administrator of a sanitary and improvement district shall within

thirty days of the effective date of the merger submit to the city a written accounting of all assets and liabilities, contingent or fixed, of the district. Unless the city or village within six months thereafter brings an action against the trustees or administrator of the district for an accounting or for damages for breach of duty, the trustees or administrator shall be discharged of all further duties and liabilities and their bonds exonerated. If the city or village brings such an action and does not recover judgment in its favor, the taxable costs may include reasonable expenses incurred by the trustees of a road improvement district or fire protection district or the trustees or administrator of a sanitary and improvement district in connection with such suit and a reasonable attorney's fee for the trustees' or administrator's attorney. The city or village shall represent the district and all parties who might be interested in such an action. The city or village and such trustees or administrator shall be the only necessary parties to such action; *Provided*, nothing contained in this section shall authorize the trustees or administrator to levy any special assessments after the effective date of the merger.

Source: Laws 1959, c. 130, § 2, p. 468; Laws 1969, c. 255, § 2, p. 926; Laws 1976, LB 313, § 9; Laws 1982, LB 868, § 26.

No action for accounting or damages having been filed, city of Omaha assumed all general obligations upon merger. Pedersen v. Westroads, Inc., 189 Neb. 236, 202 N.W.2d 198 (1972).

31-765 Annexation; when effective; trustees; administrator; duties; special assessments prohibited.

The merger shall be effective thirty days after the effective date of the ordinance annexing the territory within the district; *Provided*, if the validity of the ordinance annexing the territory is challenged by a proceeding in a court of competent jurisdiction, the effective date of the merger shall be thirty days after the final determination of the validity of the ordinance. The trustees of a road improvement district or fire protection district or the trustees or administrator of a sanitary and improvement district shall continue in possession and conduct the affairs of the district until the effective date of the merger, but shall not during such period levy any special assessments after the effective date of annexation.

Source: Laws 1959, c. 130, § 3, p. 468; Laws 1969, c. 255, § 3, p. 926; Laws 1982, LB 868, § 27.

A court decree confirming legality of municipal bonds does not adjudicate collateral matters, nor the validity of a fiscal agent's fee. Hayes v. Sanitary & Improvement Dist. No. 194, 196 Neb. 653, 244 N.W.2d 505 (1976).

Merger of district and city is effective thirty days after the effective date of ordinance annexing the territory within the district. Sanitary & Improvement Dist. v. City of Ralston, 182 Neb. 63, 152 N.W.2d 111 (1967).

31-766 Annexation; obligations and assessments; agreement to divide; approval; special assessments prohibited.

If only a part of the territory within any sanitary and improvement district, any road improvement district, or any fire protection district is annexed by a city or village, the road improvement district or fire protection district acting through its trustees or the sanitary and improvement district acting through its trustees or administrator and the city or village acting through its governing body may agree between themselves as to the division of the assets, liabilities, maintenance, or other obligations of the district for a change in the boundaries of the district so as to exclude the portion annexed by the city or village or may

agree upon a merger of the district with the city or village. The division of assets, liabilities, maintenance, or other obligations of the district shall be equitable, shall be proportionate to the valuation of the portion of the district annexed and to the valuation of the portion of the district remaining following annexation, and shall, to the greatest extent feasible, reflect the actual impact of the annexation on the ability of the district to perform its duties and responsibilities within its new boundaries following annexation. In event a merger is agreed upon, the city or village shall have all the rights, privileges, duties, and obligations as provided in sections 31-763 to 31-766 when the city annexes the entire territory within the district, and the trustees or administrator shall be relieved of all further duties and liabilities and their bonds exonerated as provided in section 31-764. No agreement between the district and the city or village shall be effective until submitted to and approved by the district court of the county in which the major portion of the district is located. No agreement shall be approved which may prejudice the rights of any bondholder or creditor of the district or employee under contract to the district. The court may authorize or direct amendments to the agreement before approving the same. If the district and city or village do not agree upon the proper adjustment of all matters growing out of the annexation of a part of the territory located within the district, the district, the annexing city or village, any bondholder or creditor of the district, or any employee under contract to the district may apply to the district court of the county where the major portion of the district is located for an adjustment of all matters growing out of or in any way connected with the annexation of such territory, and after a hearing thereon the court may enter an order or decree fixing the rights, duties, and obligations of the parties. In every case such decree or order shall require a change of the district boundaries so as to exclude from the district that portion of the territory of the district which has been annexed. Such change of boundaries shall become effective on the date of entry of such decree. Only the district and the city or village shall be necessary parties to such an action. Any bondholder or creditor of the district or any employee under contract to the district whose interests may be adversely affected by the annexation may intervene in the action pursuant to section 25-328. The decree when entered shall be binding on the parties the same as though the parties had voluntarily agreed thereto. Nothing contained in this section shall authorize any district to levy any special assessments within the annexed area after the effective date of annexation.

Source: Laws 1959, c. 130, § 4, p. 469; Laws 1969, c. 255, § 4, p. 927; Laws 1982, LB 868, § 28; Laws 1994, LB 630, § 6.

If an adjustment of matters arising out of an annexation is sought, proceedings under this section must be instituted as soon as it becomes evident that an agreed adjustment cannot be reached. Millard Rur. Fire Prot. Dist. No. 1 v. City of Omaha, 226 Neb. 50, 409 N.W.2d 574 (1987).

This section does not limit power of a city to annex lands within rural fire protection district. Webber v. City of Scottsbluff, 187 Neb. 282, 188 N.W.2d 814 (1971).

This section must be construed in light of the intent of the two preceding sections. Abernathy v. City of Omaha, 183 Neb. 660, 163 N.W.2d 579 (1968).

Rights of district and of a municipality are to be promptly adjusted after annexation of part of the district by the municipality. Sanitary & Improvement Dist. v. City of Ralston, 182 Neb. 63, 152 N.W.2d 111 (1967).

This section sustained as constitutional. City of Bellevue v. Eastern Sarpy County S. F. P. Dist., 180 Neb. 340, 143 N.W.2d 62 (1966).

31-767 Dissolution of districts; resolution; notice; outstanding indebtedness, effect; hearing; filing.

Whenever a majority of the board of trustees or the administrator of any sanitary and improvement district organized under the provisions of Chapter

31, article 7, and amendments thereto, shall desire that the district shall be wholly dissolved, the trustees or administrator shall first propose a resolution declaring the advisability of such dissolution and setting out verbatim the terms and conditions thereof, and also setting out the time and place when the board of trustees or administrator shall meet to consider the adoption of such resolution. Notice of the time and place when the resolution shall be set for consideration shall be published the same day each week for two consecutive weeks in a newspaper of general circulation published in the county where the district was organized, which publication shall contain the entire wording of the proposed resolution. If any part of the district lies within the area of the jurisdiction of any municipality, then the trustees or administrator shall mail a copy of such proposed resolution to such municipality within five days after the date of first publication 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 on objections to the passage of the resolution, at which hearing the owners of property within the district, or any municipality if any part of such district lies within the area of its zoning jurisdiction, may appear and make objections to the proposed resolution. If the owners representing a majority of the area of real estate within the district fail to sign and present to the board or to the administrator, on or prior to the hearing date, a written petition opposing the resolution, then a majority of the board of trustees or the administrator may pass the resolution and thereby adopt the proposed dissolution; *Provided*, that no such resolution shall be adopted if the district is then obligated on any outstanding bonds, warrants, or other debts or obligations unless the holders of such bonds, warrants, or other debts or obligations shall all sign written consents to the dissolution prior to the adoption of the resolution of dissolution. If the petition opposing such resolution is signed by property owners representing a majority of the area of real estate within the district and presented to the board of trustees or the administrator on or prior to the hearing date, then the board of trustees or the administrator shall not adopt such resolution. After the board of trustees or the administrator has adopted such resolution of dissolution, the clerk of the district shall prepare and file a certified copy of the resolution of dissolution in the office of the county clerk where the original articles of association were filed and in the office of the Secretary of State.

Source: Laws 1967, c. 186, § 1, p. 507; Laws 1982, LB 868, § 29.

31-768 Dissolution and merger of districts; resolution; notice; hearing; restrictions; filing; effect.

Whenever a majority of the respective boards of trustees or the administrators of two sanitary and improvement districts organized under the provisions of Chapter 31, article 7, organized within the same county shall desire that one of the districts shall wholly merge into the other district, the trustees or administrators shall first propose a joint resolution declaring the advisability of such merger and setting out verbatim the terms and conditions thereof and specifying which district shall be the surviving district, and also setting out the time and place when the boards of trustees or administrators of the two districts shall meet to consider the adoption of such resolution. If any part of either district lies within the area of the zoning jurisdiction of any municipality, then the trustees or the administrators shall mail a copy of such proposed joint resolution to such municipality within five days after the date of first publication of the published notice described in this section. Notice of the time and

place when such resolution shall be set for consideration shall be published the same day each week for two consecutive weeks in a newspaper of general circulation published in the county where the districts were organized, which publication shall contain the entire wording of the proposed resolution. The last publication shall be not less than five days nor more than two weeks prior to the time set for hearing on objections to the passage of the resolution, at which hearing the owners of property within either of the districts or the holders of any unpaid bonds, warrants, or other obligations of either district, or any municipality if any part of such district or districts lies within the area of its zoning jurisdiction, may appear and make objections to the proposed resolution. If a petition opposing such resolution is signed by property owners representing a majority of the area of real estate within either district or is signed by any holder of any unpaid bonds, warrants, or other obligations of either district and if such petition is presented to the boards of trustees or administrators on or prior to the hearing date, then the boards of trustees or administrators shall not adopt such resolution. After the boards of trustees or administrators have both adopted such resolution of merger, the clerk of the district or the administrator shall prepare and file a certified copy of such resolution of merger in the office of the county clerk where the original articles of association of the districts were filed and in the office of the Secretary of State, and thereupon the surviving district shall succeed to and become vested with full title 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 nonsurviving district, and the surviving district shall also be liable for and recognize, assume, and carry out all valid contracts and obligations of the nonsurviving district including all outstanding warrants, bonds, or other indebtedness. All taxes, assessments, and demands of every kind due or owing to the nonsurviving district shall be paid to and collected by the surviving district. Upon the filing of the certified copies of the resolution of merger as provided in this section, the corporate existence of the nonsurviving district shall thereupon terminate and the boundaries of the surviving district shall be extended to include all the territory within the boundaries of the nonsurviving district. A majority of the board of trustees or the administrator of the surviving district shall have power, from time to time, to give binding directions in writing to the county treasurer of the county in which the surviving district is located, directing that the treasurer segregate the special assessment funds of the two districts or directing the segregation of the other assets of the two districts or directing the method and priority of payment of registered warrants of the two districts, or giving directions to the county treasurer as to other problems of fiscal management of the affairs of the two districts involved in the merger.

Source: Laws 1967, c. 186, § 2, p. 508; Laws 1982, LB 868, § 30.

31-769 District; detachment of property; resolution; notice; hearing; outstanding indebtedness, effect; isolated property; detachment; filing.

(1) Whenever a majority of the board of trustees or the administrator of any sanitary and improvement district organized under the provisions of Chapter 31, article 7, desires that any property within the district be detached from the district, the trustees or the administrator shall first propose a resolution declaring the advisability of such detachment and setting out verbatim the terms and conditions thereof and also setting out the time and place when the board of trustees or the administrator will meet to consider the adoption of

such resolution. Notice of the time and place when such resolution is set for consideration shall be published the same day each week for two consecutive weeks in a newspaper of general circulation published in the county where the district was organized, which publication shall contain the entire wording of the proposed resolution. If any part of the district lies within the area of the zoning jurisdiction of any municipality, then the trustees or the administrator shall mail a copy of such proposed resolution to such municipality within five days after the date of first publication of such resolution. The last publication shall be not less than five days nor more than two weeks prior to the time set for hearing on objections to the passage of the resolution, at which hearing the owners of property within the district, or any municipality if any part of such district lies within the area of its zoning jurisdiction, may appear and make objections to the proposed resolution. If the owners representing a majority of the area of real estate within the district fail to sign and present to the board of trustees or the administrator, on or prior to the hearing date, a written petition opposing the resolution, then a majority of the board of trustees or the administrator may pass the resolution and thereby adopt the proposed detachment, except that no such resolution shall be adopted if the district is then indebted on any outstanding bonds or warrants of the district unless the holders of such bonds and warrants all sign written consents to the detachment prior to the adoption of the resolution of detachment. If the petition opposing such resolution is signed by property owners representing a majority of the area of real estate within the district and presented to the board of trustees or to the administrator on or prior to the hearing date, then the board of trustees or the administrator shall not adopt such resolution. After the board of trustees or the administrator has adopted such resolution of detachment, the clerk of the district shall prepare and file a certified copy of such resolution of detachment in the office of the county clerk where the original articles of association were filed and in the office of the Secretary of State, and thereupon the area detached shall become excluded and detached from the boundaries of the district.

(2) The owner of a discrete tract of land which is part of a sanitary and improvement district but which is not connected to the main area of the district may petition the board of trustees or the administrator of the district to have the property detached from the district. Following receipt of the petition, the board of trustees or the administrator shall propose a resolution declaring the advisability of such detachment and setting out verbatim the terms and conditions thereof and also setting out the time and place when the board of trustees or the administrator will meet to consider the adoption of such resolution. Notice of the time and place for such consideration shall be published as provided in subsection (1) of this section. If any part of the district lies in whole or in part within the area of the zoning jurisdiction of any municipality, then the board of trustees or the administrator shall mail a copy of such proposed resolution to such municipality within five days after the date of first publication of such resolution. At the hearing for consideration of such resolution, the board of trustees or the administrator shall determine if the tract of land proposed for detachment:

(a) Has an area of twenty-five acres or more;

(b) Is wholly detached from the main area of the sanitary and improvement district and separated from such district by a distance of at least one thousand feet at the nearest points;

(c) Is undeveloped and predominantly devoted to agricultural uses; and

(d) Has no improvements placed upon it by the sanitary and improvement district and receives no current services from the district.

If the administrator or the board of trustees by majority vote determines that the tract in question meets all of the conditions provided in subdivisions (a) through (d) of this subsection, the resolution shall be adopted, except that no such resolution shall be adopted if the district is then indebted on any outstanding bonds or warrants of the district unless the holders of such bonds and warrants all sign written consents to the detachment. After the board of trustees or the administrator has adopted such resolution of detachment, the clerk of the district shall prepare and file a certified copy of such resolution of detachment in the office of the county clerk where the original articles of association were filed and in the office of the Secretary of State, and thereupon the area detached shall become excluded and detached from the boundaries of the district.

Source: Laws 1967, c. 186, § 3, p. 510; Laws 1982, LB 868, § 31; Laws 1992, LB 764, § 3.

31-770 Real estate in two districts; detachment from one district; approval.

When any land is a part of two sanitary and improvement districts and the owners of such land desire that it be a part of only one district, such owners shall file their request with the trustees or the administrator of each district. The trustees or the administrator of the districts shall meet jointly and develop an agreement for the detachment of the land from one of the districts and the adjustment of indebtedness. If the trustees or administrators are unable to reach an agreement, they shall file a petition in the district court of the county in which such land is located and the court shall have jurisdiction to detach the land and adjust the indebtedness.

Source: Laws 1972, LB 1387, § 3; Laws 1982, LB 868, § 32.

(d) APPOINTMENT OF AN ADMINISTRATOR

31-771 Appointment of an administrator; petition; conditions.

A petition may be filed with the district court of the county in which a majority of the real property of a sanitary and improvement district is located for referral of the district to the Auditor of Public Accounts for the appointment of an administrator of the district and suspension of the authority of the board of trustees or other relief as provided by sections 31-772 to 31-780. Such petition may be filed by: (1) A majority of the board of trustees of the district; (2) the holders of more than fifty percent in principal amount of the outstanding bonds of the district; (3) the holders of more than fifty percent in principal amount of outstanding construction fund warrants of the district; (4) a majority of the lessees permitted to vote pursuant to section 31-735 who are residents of the district and resident property owners of the district; (5) the owners of more than one-half of the real property within the district; or (6) a municipality whose boundary adjoins the district and which exercises zoning jurisdiction over the district. A petition filed by a municipality pursuant to subdivision (6) of this section may be filed by such municipality only on grounds that the district has issued outstanding bonds or construction fund warrants which have been in

default for more than ninety days or the district lacks a functioning board of trustees.

Source: Laws 1982, LB 868, § 33.

31-772 Appointment of an administrator; petition; hearing; notice.

The court shall fix the time for the hearing of the petition pursuant to section 31-771 and shall order the clerk of the court to give and publish a notice of the filing of the petition. The notice shall be given by publication the same day of the week each week for three consecutive weeks. Within five days after the first publication of such notice, the petitioner shall cause to be mailed by United States mail a copy of such notice to each holder of outstanding warrants and bonds, to each member of the board of trustees if the board has not petitioned for the appointment, and to each person whose property ownership is of record on the records of the register of deeds at least thirty days and not more than forty days prior to the mailing of a notice. Notice shall be sent to each bond and warrant holder, trustee, and property owner whose name and post office address are known after diligent investigation and inquiry. The notice shall state the time and place fixed for the hearing of the petition and the prayer of the petition, and that any person with an interest in the district may, on or before the day fixed for the hearing of the petition, move to join in, dismiss, or answer the petition. The petition may be referred to and described in the notice as the petition of .... (giving name of petitioner) praying for the referral of the sanitary and improvement district to the Auditor of Public Accounts for the appointment of an administrator of the sanitary and improvement district and the suspension of the authority of the board of trustees of such district to exercise the powers granted the board of trustees under sections 31-727 to 31-770 during the period of such administrator's appointment.

Source: Laws 1982, LB 868, § 34.

31-773 Appointment of an administrator; petition; contents.

The petition shall state that the sanitary and improvement district (1) has been in default for more than ninety days on its issued and outstanding bonds or construction fund warrants of the district, (2) has levied a tax upon the taxable value of the taxable property in the district which, along with the sinking fund derived from special assessments, has not been sufficient to meet payments of interest and principal on the issued and outstanding bonds of the district, (3) has failed to levy special assessments on all lots, parcels, or pieces of real property within the terms provided in section 31-751, or (4) lacks a functioning board of trustees. The petition shall pray for referral of the sanitary and improvement district to the Auditor of Public Accounts for the appointment of an administrator for the district and for an order suspending the authority of the board of trustees of the district to exercise the powers granted to such board pursuant to sections 31-727 to 31-770 during the period of such administrator's appointment or for such other relief as the court may determine appropriate.

Source: Laws 1982, LB 868, § 35; Laws 1992, LB 1063, § 31; Laws 1992, Second Spec. Sess., LB 1, § 31.

31-774 Appointment of an administrator; petition; interested person; rights; procedure applicable.

Any person with an interest in the district may join in the petition, move to dismiss the petition, or file an answer to such petition. The provisions of the code of civil procedure respecting motions and answers to a petition shall be applicable to motions and answers to the petition in such special proceedings. The persons filing motions to dismiss and answering the petition shall be the defendants to the special proceedings and the persons filing the petition or joining in the petition shall be the plaintiffs. Every material statement of the petition not specially controverted by the answer shall, for the purpose of the special proceedings, be taken as true. Each person or party in interest failing to answer the petition shall be deemed to admit as true all the material statements of the petition. The rules of pleading and practice provided by the code of civil procedure which are not inconsistent with the provisions of sections 31-727 to 31-770 are applicable to the special proceedings in sections 31-771 to 31-776.

Source: Laws 1982, LB 868, § 36.

Cross References

Rules of pleading promulgated by Supreme Court, see section 25-801.01.

31-775 Court; order; findings; relief granted; costs.

Upon the hearing of the special proceedings pursuant to sections 31-771 to 31-776, the court shall, upon a finding that any of the statements in subdivisions (1) to (4) of section 31-773 are true, that the petition has been properly filed and notice of the petition has been duly given and published for the time and in the manner prescribed in sections 31-771 to 31-780, and that it is in the best interest of the district, have the power and jurisdiction to issue an order which refers the sanitary and improvement district to the Auditor of Public Accounts for appointment by the auditor of an administrator from a list of not less than two names of persons possessing real estate and financial expertise compiled by the court in the proceedings, and which provides for the suspension of the authority of the board of trustees of the district to exercise the powers granted such board under sections 31-727 to 31-770 during the period of such administrator's appointment. In the alternative or as additional relief the court may order such other relief as may be appropriate to cure the defects of the district, including, but not limited to, (1) appointment of trustees to serve until the next regular election, (2) calling a special election to elect trustees which shall be conducted in the same manner as other elections for trustees, and (3) directing the board of trustees to levy taxes or special assessments as required by sections 31-727 to 31-770. The cost of the special proceedings may be allowed and apportioned between the parties in the discretion of the court.

Source: Laws 1982, LB 868, § 37.

31-776 Auditor of Public Accounts; appoint administrator; file certificate.

Upon receipt of the order of the district court referring the sanitary and improvement district to the Auditor of Public Accounts for the appointment of an administrator, the auditor shall appoint an administrator with authority, including all authority of the board of trustees, chairperson, and clerk, to direct the affairs of the district pursuant to sections 31-727 to 31-780 unless the auditor shall determine upon good cause that the appointment of an administrator would not be in the best interests of the district. Within sixty days of receipt of such order of the district court, the auditor shall file with the court a certificate evidencing compliance with this section and if the auditor deter-

mines not to appoint an administrator, such certificate shall specify the grounds for the auditor's determination that the appointment would not be in the best interest of the district.

Source: Laws 1982, LB 868, § 38.

31-777 Board of trustees; power suspended; administrator; assume powers.

Upon the issuance of a certificate of appointment by the Auditor of Public Accounts to a designated sanitary and improvement district administrator, the authority of the board of trustees of the district to exercise the powers of the district conferred by sections 31-727 to 31-770 shall be suspended. The administrator shall during the period of his or her appointment possess all of the powers of the board of trustees and shall possess exclusive authority to exercise the powers conferred in sections 31-727, 31-727.02, 31-733, 31-734, 31-737, 31-739, 31-740, 31-741 to 31-748, 31-749 to 31-756, 31-759, and 31-764 to 31-770.

Source: Laws 1982, LB 868, § 39.

31-778 Board of trustees or administrator; negotiate indebtedness; issue new bonds or warrants; procedure.

The board of trustees or the administrator shall have the power to negotiate a scaling, discounting, reduction in interest rate, or any other compromise of any or all of the bonds, warrants, or other indebtedness of the district with the owners or holders of such indebtedness. In order to carry out any compromise agreements made, the board of trustees or the administrator shall have the power to issue new bonds or warrants which may be delivered to the holders or owners of the indebtedness being compromised or may be sold on such terms as the board of trustees or administrator shall determine to provide cash to carry out the compromise settlement. Before any new bonds or warrants are issued, the terms of the compromise settlement and the issuance of such new bonds or warrants shall be approved by the district court for the county in which the district or the greater portion of the district is situated, following the procedure set forth in sections 31-756 to 31-759. Such review by the district court shall be limited to the legality and validity of the new bonds or warrants to be issued and the decree of the district court determining the issuance of the new bonds or warrants to be legal and valid shall be conclusive against the district and all other persons having or claiming any interest in the district. Notwithstanding any other provision of law, the treasurer of the district shall disburse funds of the district in accordance with the compromise settlement approved by the district court.

Source: Laws 1982, LB 868, § 40.

31-779 Administrator; levy; administration tax; use; administrator; fee; expenses.

(1) The administrator may levy a separate tax upon the taxable value of the taxable property in the district which shall be known as the administration tax and which shall be separately accounted for by the treasurer of the district. Such tax shall be payable annually in money. Such tax may be used to pay the fees and expenses of the administrator and his or her administration, including the cost of audit services, legal services, and financial advisory services ordered by the administrator.

(2) The administrator shall receive a minimum fee of five hundred dollars per month during the term of his or her appointment. The administrator shall also be entitled to reimbursement for his or her actual and necessary expenses upon presentation of an accounting of his or her expenses to the Auditor of Public Accounts. The monthly administrator's fee provided for in this subsection shall be subject to adjustment at any time during the term of the administrator's appointment by the Auditor of Public Accounts. The factors to be considered by the auditor in his or her determination to increase the administrator's fee shall include the nature and extent of the administrator's services, the complexity of the problems confronting the district, and the value of the services of the administrator to the district. The auditor should also consider the cost of obtaining comparable services of the administrator in the private sector.

Source: Laws 1982, LB 868, § 41; Laws 1992, LB 1063, § 32; Laws 1992, Second Spec. Sess., LB 1, § 32.

31-780 Administrator; period of authority; termination.

The administrator shall serve at the pleasure of the Auditor of Public Accounts or until the district court shall terminate the authority of the auditor and the administrator. A petition for review by the court of the original order may be filed by any person with an interest in the district. The court shall have the power to terminate the authority of the Auditor of Public Accounts and the administrator upon its determination that none of the conditions set forth in section 31-773 exist or it is in the best interest of the district that the authority of the administrator be terminated. A termination of the authority of the Auditor of Public Accounts and the administrator shall reinstate the authority of the board of trustees pursuant to sections 31-727 to 31-770.

Source: Laws 1982, LB 868, § 42.

(e) ANNEXATION BY PETITION

31-781 Petition requesting annexation; meeting; vote.

(1) Any sanitary and improvement district desiring to be annexed by a city of the metropolitan, primary, first, or second class or village may, subject to the requirements in subsection (2) of this section, by formal vote of a majority of the members of the board of trustees of the district, petition the city council of the city or board of trustees of the village for annexation. Such petition shall be filed on or before March 1 of the year in which annexation is sought by the district.

(2) Prior to taking the formal vote to petition the city or village for annexation, the board of trustees of the district shall schedule a meeting to discuss the filing of the petition with the residents and property owners of the district. At least thirty days prior to the date of such meeting, the board of trustees shall send notice of the meeting by first-class mail, postage prepaid, to each property owner and residence in the district. Such notice shall set out the date, time, and place of the meeting and shall indicate that the purpose of the meeting is to discuss the filing of a petition for annexation by a city or village and that those attending the meeting will be offered the opportunity to express their opinions. The board of trustees shall take no formal action on the petition for annexation until such meeting has taken place, and no petition shall be valid if such meeting has not occurred.

Source: Laws 1993, LB 210, § 1.

31-782 Petition; filed with clerk; response.

The petition described in section 31-781 shall be filed with the city or village clerk and shall be deemed received by the city council of the city or board of trustees of the village on the date upon which it is presented to the clerk. Following the filing of the petition, the district shall respond promptly and fully to all requests by the city or village for information with regard to any matter relevant to annexation.

Source: Laws 1993, LB 210, § 2.

31-783 Petition; review; vote; when.

The city council of the city or board of trustees of the village shall review all petitions filed under section 31-781 and by formal vote of the council or board either grant or deny the petition. The vote shall be taken not later than the date of the first regular meeting of the council or board in July of the year in which the petition was filed.

Source: Laws 1993, LB 210, § 3.

31-784 Petition denial; report.

If the city council of the city or board of trustees of the village votes to deny a petition filed under section 31-781, it shall approve and adopt by vote of the council or board a report specifying the reasons for denial. Such report shall recite the specific reasons, whether financial or otherwise, which led to the decision of the council or board. Special emphasis shall be placed upon conditions in the control of the sanitary and improvement district which might be remedied by action of the district in the future. The city or village may set out in the report the conditions which, if met, would permit the city or village to annex the district in the future.

Source: Laws 1993, LB 210, § 4.

31-785 Compliance; not required.

Compliance with sections 31-781 to 31-784 shall not be required for annexation of a sanitary and improvement district. Failure to comply with such sections shall not serve as the basis for the invalidation of an otherwise lawful annexation of a district by a city or village.

Source: Laws 1993, LB 210, § 5.

(f) RECALL OF TRUSTEES

31-786 Terms, defined.

For purposes of sections 31-786 to 31-793:

(1) Filing clerk means the election commissioner or county clerk of the county in which all or the largest portion of the land area comprising a sanitary and improvement district is located;

(2) Qualified property owning voter means a person entitled to vote as provided in section 31-735 for all trustees of a sanitary and improvement district other than those which may be elected only by qualified resident voters; and

(3) Qualified resident voter means a person entitled to vote as provided in section 31-735 for all trustees of a sanitary and improvement district.

Source: Laws 1997, LB 874, § 1; Laws 2002, LB 176, § 4.

31-787 Trustee; removal by recall; petition; procedure.

(1) A trustee of a sanitary and improvement district may be removed from office by recall pursuant to sections 31-786 to 31-793. A petition demanding that the question of removing a trustee be submitted to the qualified resident voters or qualified property owning voters that elected such trustee shall be signed by qualified resident voters or qualified property owning voters, as the case may be, who represent at least thirty-five percent of the number of votes cast for the trustee who received the most votes in the last district election pursuant to section 31-735 and who was elected by the same voters as the trustee whose recall is being sought. The signatures shall be affixed to petition papers and shall be considered part of the petition.

(2) The petition papers shall be procured from the filing clerk. Prior to the issuance of such petition papers, an affidavit shall be signed and filed with the filing clerk by at least one qualified resident voter of the district, if the trustee whose recall is being sought was elected solely by qualified resident voters, or at least one qualified resident voter or qualified property owning voter, if the trustee whose recall is being sought was elected by other qualified resident voters and qualified property owning voters. Such voter or voters shall be deemed to be the principal circulator or circulators of the recall petition. The affidavit shall state the name of the trustee sought to be removed and whether qualified property owning voters participated in the election of the trustee and shall request that the filing clerk issue initial petition papers to the principal circulator for circulation. The filing clerk shall notify the principal circulator or circulators that the necessary signatures must be gathered within thirty days after the date of issuing the petitions.

(3) The filing clerk, upon issuing the initial petition papers or any subsequent petition papers, shall enter in a record, to be kept in his or her office, the name of the principal circulator or circulators to whom the papers were issued, the date of issuance, the number of papers issued, and whether qualified property owning voters may participate in signing the petitions. The filing clerk shall certify on the papers the name of the principal circulator or circulators to whom the papers were issued, the date they were issued, and whether qualified property owning voters may participate in signing the petitions. No petition paper shall be accepted as part of the petition unless it bears such certificate. The principal circulator or circulators who check out petitions from the filing clerk may distribute such petitions to persons who may act as circulators of such petitions.

(4) Each signer of a recall petition shall be (a) qualified to vote in a district election and (b) a qualified resident voter if the trustee whose recall is being sought was elected solely by qualified resident voters.

Source: Laws 1997, LB 874, § 2; Laws 2002, LB 176, § 5; Laws 2003, LB 444, § 2.

31-788 Secretary of State; petition papers; requirements.

(1) The Secretary of State shall design the uniform petition papers to be distributed by all filing clerks for use in the recall of trustees of sanitary and improvement districts and shall keep a sufficient number of such blank petition papers on file for distribution to any filing clerk requesting recall petitions.

(2) Each petition paper presented to a qualified voter for his or her signature shall clearly indicate at the top (a) whether the trustee whose recall is being

sought was elected solely by qualified resident voters, (b) whether the signatories must be qualified resident voters or may include qualified property owning voters, (c) that the signatories must support the holding of a recall election for the trustee, (d) the name of the individual sought to be recalled, and (e) a general statement of the reason or reasons for which recall is sought.

(3) Each petition paper shall contain a statement entitled Instructions to Petition Circulators prepared by the Secretary of State to assist circulators in understanding the provisions governing the petition process established by sections 31-786 to 31-793. The instructions shall include the following statement: No one circulating this petition paper in an attempt to gather signatures shall sign the circulator's affidavit unless each person who signed the petition paper did so in the presence of the circulator.

Source: Laws 1997, LB 874, § 3; Laws 2002, LB 176, § 6; Laws 2003, LB 444, § 3.

31-789 Signature verification; effect.

(1) The principal circulator or circulators shall file, as one instrument, all petition papers comprising a recall petition for signature verification with the filing clerk within thirty days after the filing clerk issues the initial petition papers to the principal circulator or circulators as provided in section 31-787.

(2) Within fifteen days after the filing of the petition, the filing clerk shall ascertain whether or not the petition is signed by sufficient qualified resident voters and qualified property owning voters as provided in subsection (1) of section 31-787. No new signatures may be added after the initial filing of the petition papers. No signatures may be removed unless the filing clerk receives an affidavit signed by the person requesting that his or her signature be removed before the petitions are filed with the filing clerk for signature verification.

(3) If the petition is found to be sufficient, the filing clerk shall attach to the petition a certificate showing the result of such examination. If the petition is found not to be sufficient, the filing clerk shall file the petition in his or her office without prejudice to the filing of a new petition for the same purpose.

Source: Laws 1997, LB 874, § 4; Laws 2002, LB 176, § 7.

31-790 Notification to trustee; resignation; recall election; how conducted.

(1) If the recall petition is found to be sufficient, the filing clerk shall notify the trustee whose removal is sought and the board of trustees of the sanitary and improvement district that sufficient signatures have been gathered.

(2) If the trustee does not resign within five days after receiving the notice, the filing clerk shall order an election to be held not less than forty-five days nor more than sixty days after the expiration of the five-day period, except that if an election for the board of trustees of the district is to be held within one hundred twenty days after the expiration of the five-day period, the filing clerk shall provide for the holding of the removal election at the time of such regular election. The recall election shall be conducted in the same manner as an election for members of the board of trustees as provided in section 31-735. After the filing clerk sets the date for the recall election, the recall election shall

be held regardless of whether the trustee whose removal is sought resigns before the recall election is held.

Source: Laws 1997, LB 874, § 5.

31-791 Official ballot; form.

The form of the official ballot at a recall election conducted pursuant to section 31-790 shall conform to the requirements of this section. With respect to each trustee whose removal is sought, the question shall be submitted: Shall (name of trustee) be removed from the office of trustee? Immediately following each such question there shall be printed on the ballot the two responses: Yes and No. Immediately to the left of each response shall be placed a square or oval in which the voters qualified to vote for the trustee in a regular election may vote for one of the responses by making a cross or other clear, identifiable mark. The name of the trustee which shall appear on the ballot shall be the name of the trustee that appeared on the ballot of the previous election that included his or her name.

Source: Laws 1997, LB 874, § 6; Laws 2002, LB 176, § 8.

31-792 Election results; effect; vacancy; special election.

(1) If a majority of the votes cast at a recall election are against the removal of the trustee named on the ballot or the election results in a tie, the trustee shall continue in office for the remainder of his or her term.

(2) If a majority of the votes cast at a recall election are for the removal of the trustee named on the ballot, he or she shall, regardless of any technical defects in the recall petition, be deemed removed from office unless a recount is ordered. If the trustee is deemed removed, the removal shall result in an immediate vacancy in the office from the date of the election. The vacancy shall be filled as provided in subsection (2) of section 31-735.

(3) If there are vacancies in the offices of a majority or more of the members of the board of trustees at one time due to the recall of such members, a special election to fill such vacancies shall be conducted as expeditiously as possible by the filing clerk in the manner specified in section 31-735.

(4) No trustee who is removed at a recall election or who resigns after the initiation of the recall process shall be appointed to fill the vacancy resulting from his or her removal or the removal of any other member of the same board of trustees during the remainder of his or her term of office.

Source: Laws 1997, LB 874, § 7.

31-793 Recall petition; filing limitation.

No recall petition shall be filed against a trustee under section 31-787 within twelve months after a recall election has failed to remove him or her from office or within six months after the beginning of his or her term of office or within six months prior to the incumbent filing deadline for the office.

Source: Laws 1997, LB 874, § 8.

ARTICLE 8
WATERSHED DISTRICTS

Section
31-801. Repealed. Laws 1977, LB 510, § 10.
31-802. Repealed. Laws 1977, LB 510, § 10.
31-803. Repealed. Laws 1977, LB 510, § 10.
31-804. Repealed. Laws 1977, LB 510, § 10.
31-805. Repealed. Laws 1977, LB 510, § 10.
31-806. Repealed. Laws 1977, LB 510, § 10.
31-807. Repealed. Laws 1977, LB 510, § 10.
31-808. Repealed. Laws 1977, LB 510, § 10.
31-809. Repealed. Laws 1977, LB 510, § 10.
31-810. Repealed. Laws 1977, LB 510, § 10.
31-811. Repealed. Laws 1977, LB 510, § 10.
31-812. Repealed. Laws 1977, LB 510, § 10.
31-813. Repealed. Laws 1977, LB 510, § 10.
31-814. Repealed. Laws 1977, LB 510, § 10.
31-815. Repealed. Laws 1977, LB 510, § 10.
31-816. Repealed. Laws 1977, LB 510, § 10.
31-817. Repealed. Laws 1959, c. 131, § 18.
31-818. Repealed. Laws 1959, c. 131, § 18.
31-819. Repealed. Laws 1959, c. 131, § 18.
31-820. Repealed. Laws 1959, c. 131, § 18.
31-821. Repealed. Laws 1977, LB 510, § 10.
31-822. Repealed. Laws 1977, LB 510, § 10.
31-823. Repealed. Laws 1977, LB 510, § 10.
31-824. Repealed. Laws 1977, LB 510, § 10.
31-825. Repealed. Laws 1977, LB 510, § 10.
31-826. Repealed. Laws 1977, LB 510, § 10.
31-827. Repealed. Laws 1977, LB 510, § 10.
31-828. Repealed. Laws 1977, LB 510, § 10.
31-829. Repealed. Laws 1977, LB 510, § 10.
31-830. Repealed. Laws 1977, LB 510, § 10.
31-831. Repealed. Laws 1977, LB 510, § 10.
31-832. Repealed. Laws 1977, LB 510, § 10.
31-833. Repealed. Laws 1977, LB 510, § 10.
31-834. Repealed. Laws 1977, LB 510, § 10.
31-835. Repealed. Laws 1977, LB 510, § 10.
31-836. Repealed. Laws 1977, LB 510, § 10.
31-837. Repealed. Laws 1977, LB 510, § 10.

31-801 Repealed. Laws 1977, LB 510, § 10.

31-802 Repealed. Laws 1977, LB 510, § 10.

31-803 Repealed. Laws 1977, LB 510, § 10.

31-804 Repealed. Laws 1977, LB 510, § 10.

31-805 Repealed. Laws 1977, LB 510, § 10.

31-806 Repealed. Laws 1977, LB 510, § 10.

31-807 Repealed. Laws 1977, LB 510, § 10.

31-808 Repealed. Laws 1977, LB 510, § 10.

31-809 Repealed. Laws 1977, LB 510, § 10.

31-810 Repealed. Laws 1977, LB 510, § 10.

31-811 Repealed. Laws 1977, LB 510, § 10.

31-812 Repealed. Laws 1977, LB 510, § 10.

31-813 Repealed. Laws 1977, LB 510, § 10.

31-814 Repealed. Laws 1977, LB 510, § 10.

31-815 Repealed. Laws 1977, LB 510, § 10.

31-816 Repealed. Laws 1977, LB 510, § 10.

31-817 Repealed. Laws 1959, c. 131, § 18.

31-818 Repealed. Laws 1959, c. 131, § 18.

31-819 Repealed. Laws 1959, c. 131, § 18.

31-820 Repealed. Laws 1959, c. 131, § 18.

31-821 Repealed. Laws 1977, LB 510, § 10.

31-822 Repealed. Laws 1977, LB 510, § 10.

31-823 Repealed. Laws 1977, LB 510, § 10.

31-824 Repealed. Laws 1977, LB 510, § 10.

31-825 Repealed. Laws 1977, LB 510, § 10.

31-826 Repealed. Laws 1977, LB 510, § 10.

31-827 Repealed. Laws 1977, LB 510, § 10.

31-828 Repealed. Laws 1977, LB 510, § 10.

31-829 Repealed. Laws 1977, LB 510, § 10.

31-830 Repealed. Laws 1977, LB 510, § 10.

31-831 Repealed. Laws 1977, LB 510, § 10.

31-832 Repealed. Laws 1977, LB 510, § 10.

31-833 Repealed. Laws 1977, LB 510, § 10.

31-834 Repealed. Laws 1977, LB 510, § 10.

31-835 Repealed. Laws 1977, LB 510, § 10.

31-836 Repealed. Laws 1977, LB 510, § 10.

31-837 Repealed. Laws 1977, LB 510, § 10.

ARTICLE 9
COUNTY DRAINAGE ACT

Section
31-901. Declaration of policy.
31-902. Terms, defined.
31-903. Drainage assistance; petition by landowners; contents; county board; investigation.

Section
31-904. Drainage assistance; petition; denial; approval; county board; assist in drainage.
31-905. Drainage fund; tax; levy; purpose.
31-906. Drainage fund; levy; special fund.
31-907. Drainage improvement; petition; county board; order.
31-908. Drainage improvement; proposed plan; contents.
31-909. Proposed drainage improvement plan; file with county clerk; hearing; notice; contents.
31-910. Proposed drainage improvement plan; hearing; objections.
31-911. Proposed drainage improvement plan; order; appeal; procedure.
31-912. Proposed drainage improvement plan; county board; proceed with plan.
31-913. Drainage improvements; work completed; payment.
31-914. Drainage improvements; cost; payment; warrant.
31-915. Drainage improvements; borrowing from county general fund permitted.
31-916. Drainage improvements; assessments; interest; due date; lien; public lands; collection.
31-917. Drainage improvements; assessments; installments; limitation.
31-918. Drainage improvements; damages; county board; claim; limitation; hearing.
31-919. Drainage improvements; assessment of benefits; award of damages, when final; appeal.
31-920. Drainage improvements; damages; additional assessments of benefits; payment.
31-921. Drainage improvements; additional assessments.
31-922. County board; drainage assistance and regulation; general powers.
31-922.01. County board; rights-of-way; manner of acquisition.
31-923. Cleaning project; county road; benefits; payment; county road fund.
31-924. Cleaning project; road ditch, ditch, or watercourse; installation and maintenance of bridge or culvert; payment; county road funds.
31-925. Cleaning project; ditch or watercourse; state highway; contract with Department of Roads.
31-926. County board; engineers; attorneys; employees; payment from drainage fund.
31-927. County board; limitation on powers; contract with other districts.
31-928. Cities of first or second class or villages; included in improvement district.
31-929. Drainage improvements; damages; immunity.
31-930. County board; enjoin or restrain; when.
31-931. Sections; supplemental effect.
31-932. Drainage district; dissolution; right-of-way interest becomes property of county.
31-933. Act, how cited.

31-901 Declaration of policy.

(1) The maintenance of adequate drainage within the confines of certain counties of the state is hereby declared to be a matter of public health, convenience and welfare.

(2) The use of road ditches, the use of public and private ditches and natural watercourses for drainage requires some coordinated system of control and maintenance.

(3) Where portions of the drainage system of any county are not included within the boundaries of any drainage district organized under Chapter 31, article 3 or 4, or within the boundaries of any sanitary drainage district organized under Chapter 31, article 5 or 7, the county board may assist in the control and maintenance of the drainage of any area within said county, under the provisions of sections 31-901 to 31-933.

Source: Laws 1959, c. 132, § 1, p. 483.

Proceedings involved the cleaning, widening, and changing of a drainage ditch. Harms v. County Board of Supervisors, 173 Neb. 687, 114 N.W.2d 713 (1962).

31-902 Terms, defined.

For purposes of the County Drainage Act, unless the context otherwise requires:

(1) County board shall mean either the board of supervisors when the county is organized under the township form or county commissioners when the county is organized under the commissioner system;

(2) Ditch shall include all road ditches and any ditch whether constructed privately or by a public agency, the water from which drains into road ditches, drainage ditches, or watercourses;

(3) Lots and lands shall include all real estate and any interest therein whether owned by individuals, partnerships, limited liability companies, or corporations, whether federal, state, county, school or municipal, all public roads, and all railroad right-of-way;

(4) Watercourse shall mean any stream, creek, draw, or natural depression through which normal drainage or storm water is accustomed to flow;

(5) Owner shall mean the person, persons, or organization shown by the records of the register of deeds or county clerk of any county to be the record titleholder to any lot or land; and

(6) Cleaning shall mean removing of trees, brush, obstructions, and sediment or the widening, deepening, straightening, or altering the channel of any ditch or watercourse.

Source: Laws 1959, c. 132, § 2, p. 484; Laws 1993, LB 121, § 196.

31-903 Drainage assistance; petition by landowners; contents; county board; investigation.

At such time as a petition by one or more owners of any lots or lands within the county is filed with the county board of any county stating: (1) That there are areas within said county which are not within the boundaries of any drainage district organized under Chapter 31, article 3 or 4, or any sanitary drainage district organized under Chapter 31, article 5 or 7, as the same now exist or may hereafter be amended; (2) that said lands are subject to overflow or lack of adequate drainage; (3) that public health, convenience and welfare would be served by the assistance in the control and maintenance of drainage in said areas by the county board; and (4) that the county board should assist and regulate the drainage in said areas under the provisions of sections 31-901 to 31-933, the county board shall investigate the facts set out therein and make determination thereon within thirty days from date of filing.

Source: Laws 1959, c. 132, § 3, p. 484.

31-904 Drainage assistance; petition; denial; approval; county board; assist in drainage.

If the county board determines that the allegations of said petition are not true, it shall deny the request. If it determines that the allegations of said petition are true, it shall, by resolution, declare that the county intends to assist in drainage under the provisions of sections 31-901 to 31-933. The determination and finding of the board shall be conclusive. If a county board has by

resolution determined to assist and regulate drainage, it may at any time after one year has elapsed, by resolution, rescind such action and determine that the county assistance is not necessary. If the county board makes the determination to assist in drainage it shall have the authority provided for in sections 31-905 to 31-932.

Source: Laws 1959, c. 132, § 4, p. 485.

31-905 Drainage fund; tax; levy; purpose.

The county board may, at the time the next levy for the county is set up, levy not to exceed eight-tenths of one cent on each one hundred dollars upon the taxable value of all the taxable property of the county for the establishment of a drainage fund. No other general levy of any kind shall be made either for operation under the County Drainage Act, for maintenance, for construction, or for any other reason connected with or incidental to the drainage by the county board. Except as provided for in sections 31-920 and 31-922, the money raised from this levy shall be used for the expenses of administering the act, including supervisory and technical expenses, and shall not be used to pay costs and expenses which can be allocated to specific drainage projects.

Source: Laws 1959, c. 132, § 5, p. 485; Laws 1979, LB 187, § 146; Laws 1992, LB 719A, § 128.

31-906 Drainage fund; levy; special fund.

The money raised from the levy provided in section 31-905 shall be used for the expenses of the county board in operating under the provisions of sections 31-901 to 31-933 and shall be kept by the county treasurer in a special fund for that purpose.

Source: Laws 1959, c. 132, § 6, p. 486.

31-907 Drainage improvement; petition; county board; order.

After a determination has been made as provided in section 31-904, if at any time a petition signed by one or more owners of lots and lands affected is filed with the board requesting: (1) The cleaning of a road ditch; (2) the cleaning of a public or private ditch which is used for drainage by more than one landowner; (3) the cleaning of a watercourse; (4) the construction of any dike, revetment or bank protection; or (5) the installation of a culvert or drain, the board shall make a determination as to whether said improvement would be conducive to public health, convenience or welfare.

Source: Laws 1959, c. 132, § 7, p. 486.

31-908 Drainage improvement; proposed plan; contents.

If the board determines that said requested drainage improvement should be undertaken, it shall within ninety days develop a proposed plan for said improvement. This plan shall include:

(1) An estimate of the cost of said improvement;

(2) If the estimate indicates the cost will exceed one thousand dollars, a profile showing elevations of the drainageway before, and the proposed elevations after the completion thereof;

(3) A plat showing the lots and lands that will be benefited by said improvement and the proposed assessment of benefits and award of damages in connection therewith for each owner;

(4) A brief statement showing the nature of said improvement and the place of starting and ending thereof;

(5) A list of the owners of the lands and lots included in said plat together with the addresses as shown in the office of the county treasurer of said county; and

(6) A map showing the location and route of said improvement.

Source: Laws 1959, c. 132, § 8, p. 486.

31-909 Proposed drainage improvement plan; file with county clerk; hearing; notice; contents.

The proposal shall be filed with the county clerk of the county who shall set a hearing date not less than thirty nor more than ninety days from date of filing. Notice of the hearing shall be given by certified mail addressed to the address of each land or lot owner as shown on the plat. The notice shall give the date of hearing, the amount of benefits assessed against or damages awarded to the owner so notified, and a recital that the plan for the improvement is on file and subject to inspection in the office of the clerk. If no address of a landowner is ascertainable, the county clerk shall publish a notice of the hearing as to such owner by one publication in a legal newspaper published or of general circulation in such county.

Source: Laws 1959, c. 132, § 9, p. 487; Laws 1986, LB 960, § 24.

Notice was properly given to landowners in district. Harms v. County Board of Supervisors, 173 Neb. 687, 114 N.W.2d 713 (1962).

31-910 Proposed drainage improvement plan; hearing; objections.

At the hearing the county board shall hear objections from any land or lot owner as to the following:

(1) Whether the project will be conducive to the public health, convenience or welfare;

(2) Assessment of benefits;

(3) Compensation for land appropriated; and

(4) Damage claimed to property affected by the improvement. Within thirty days from the date of the hearing, the county board shall make final determination of the amount of benefits to be assessed and damages to be awarded and shall decide any other objections raised at said hearing. Notice of such determination shall be given by certified mail to all parties who filed objections thereto.

Source: Laws 1959, c. 132, § 10, p. 487.

31-911 Proposed drainage improvement plan; order; appeal; procedure.

Any person or corporation feeling aggrieved thereby may appeal to the district court within and for the proper county from any final order or judgment of the board made in the proceedings and entered upon its journal determining any one of the items set forth in section 31-910. Such appeal shall be by complaint filed with the county clerk within twenty days after receipt of

the notice provided for in section 31-910. The complainant shall furnish a bond running to the county to be approved by the county clerk conditioned to pay all costs that may be adjudged against the complainant if the appeal be not sustained. The county clerk shall thereupon make a transcript of the objections and the determination and such complainant shall, within ten days after receipt of such transcript, file such transcript in the district court and such court shall hear and determine such appeal in a summary manner as in a case in equity and shall increase or reduce the assessments of benefits or may increase or reduce the award of damages upon any tract where the same may be required to make the apportionment equitable. All appeals that may be filed shall be heard and determined by the court in one proceeding and only one transcript of the determination shall be required.

Source: Laws 1959, c. 132, § 11, p. 488; Laws 1961, c. 138, § 10, p. 402; Laws 1961, c. 144, § 1, p. 421.

Under former law, failure to provide any procedural method for lodging jurisdiction in district court defeated right of appeal. Harms v. County Board of Supervisors, 173 Neb. 687, 114 N.W.2d 713 (1962).

31-912 Proposed drainage improvement plan; county board; proceed with plan.

In the event no appeal is perfected as provided in section 31-911, or upon final determination of said appeal, unless the court should hold that the improvement is not conducive to public health, convenience and welfare, the board shall proceed as follows:

(1) If the estimated cost of the improvement is two thousand dollars, or less, the board may, through rental of equipment or private contract, make said improvements without public letting;

(2) If the estimated cost of the improvement is more than two thousand dollars, plans and specifications therefor shall be drawn by an engineer employed by said board. At such time as the plans and specifications are complete, the board shall fix a time for the opening of bids on said improvement and publish notice thereof for three weeks prior to such letting;

(3) No project shall be divided into small sections in order to avoid the requirement for public letting set forth in this section; and

(4) No bid shall be accepted which is more than the estimated cost of said improvement. The board shall let the contract to the lowest responsible bidder and shall take from said bidder a sufficient bond as security for performance of the contract pursuant to and within the time fixed by said plans and specifications.

Source: Laws 1959, c. 132, § 12, p. 488.

31-913 Drainage improvements; work completed; payment.

Payment for the work done under the provisions of section 31-912 shall be made monthly upon progress certificate of the engineer with ten percent of each estimate to be withheld until final completion and acceptance of said improvement.

Source: Laws 1959, c. 132, § 13, p. 489.

31-914 Drainage improvements; cost; payment; warrant.

The cost of each improvement shall be paid by warrant signed by the county clerk drawn upon the county treasurer, which warrant shall designate the particular improvement project upon which it is drawn and shall be paid from money received from assessments on lots and lands in the particular improvement project.

Source: Laws 1959, c. 132, § 14, p. 489.

31-915 Drainage improvements; borrowing from county general fund permitted.

Pending the collection of assessments on any particular projects, the county treasurer may, with approval from the county board, transfer money from the general fund, which money shall be returned when collections are made of assessments of benefits as provided for by sections 31-901 to 31-933.

Source: Laws 1959, c. 132, § 15, p. 489.

31-916 Drainage improvements; assessments; interest; due date; lien; public lands; collection.

At such time as the contract for said improvement is let, or in the event no contract is let, at such time as the improvement is completed, the county board shall determine the exact amount of each assessment and direct the county clerk to certify the same to the county treasurer. This certificate shall establish the due date for payment for said assessments. Said assessments shall bear interest after the due date at the rate of seven percent per annum and shall be a lien upon the real estate assessed against to the same extent as general taxes, prior to all other liens, and may be collected by sale of the same as for delinquent general taxes. Where the lot or land assessed belongs to any public or governmental corporation, no interest shall be charged until after a claim has been filed by the county treasurer with the appropriate payment agency of such public or governmental corporation. Where title to lands assessed is in the State of Nebraska, payment shall be made under provisions of Chapter 31, article 6.

Source: Laws 1959, c. 132, § 16, p. 489.

31-917 Drainage improvements; assessments; installments; limitation.

The county board, in its sole discretion, may provide for the payment of the assessments in five equal annual installments, the unpaid balances of which shall bear interest at not to exceed the legal rate of interest or the interest which is borne by the warrants issued in payments of said project. In the event that the board elects to defer payments as provided in this section, warrants shall be given in payment of the costs of said project, which warrants shall be payable from collection of such assessments.

Source: Laws 1959, c. 132, § 17, p. 489.

31-918 Drainage improvements; damages; county board; claim; limitation; hearing.

Should a lot or land owner suffer damage resulting from said drainage improvement and such party not have been notified thereof as provided for in section 31-909, such lot or land owner may, within thirty days from the date that said damage occurred, file a claim with the county board setting forth the

nature of such damage and requesting a hearing thereon. A hearing shall then be had as provided for in section 31-910, with right of appeal as set out in section 31-911. Should assessment of benefits be made and a lot or land owner not have been notified as provided for in section 31-909, such lot or land owner shall have thirty days from the time of discovery of assessment or within one year from the date that said assessment is filed in the office of the county treasurer, whichever date occurs first, to request a hearing on the validity of his assessment and he shall have the right of appeal as set out in section 31-911; *Provided*, neither the failure to notify any lot or land owner nor the outcome of such appeal shall invalidate the proceedings as to other lot or land owners.

Source: Laws 1959, c. 132, § 18, p. 490.

31-919 Drainage improvements; assessment of benefits; award of damages, when final; appeal.

The assessment of benefits against, and award of damages to, every lot or land owner who has been notified as provided in section 31-909 and who fails to file objections or having filed objections fails to prosecute appeal from ruling thereon, shall be final. The collection of any assessment levied shall not be enjoined, nor shall it be set aside or be held void because of any irregularity or error committed in any of the proceedings had under sections 31-901 to 31-933. The award of damages to any such lot or land owner shall likewise be final and no claim shall be made against the county or the area benefited because of any claimed subsequent or consequential damages arising because of said improvement.

Source: Laws 1959, c. 132, § 19, p. 490.

31-920 Drainage improvements; damages; additional assessments of benefits; payment.

Should the board allow damage, or should the court on appeal allow damage to the claimant as provided for in section 31-919, additional assessments of benefits shall be made against the lot and land owners by supplemental assessments upon the proportion fixed by the original assessment upon the lots and lands benefited to pay such claim, to be certified and collected as original assessments. Should this additional amount to be so assessed be less than five hundred dollars the board in its discretion may pay the same from the drainage fund created by section 31-905.

Source: Laws 1959, c. 132, § 20, p. 491.

31-921 Drainage improvements; additional assessments.

Should unexpected expenses or awards of damages require a supplemental assessment of benefits to pay for such improvements, the board shall have the authority to make such supplemental assessments in the manner provided in section 31-920. Should this additional amount to be so assessed be less than five hundred dollars, the board in its discretion may pay the same from the drainage fund created by section 31-905.

Source: Laws 1959, c. 132, § 21, p. 491.

31-922 County board; drainage assistance and regulation; general powers.

(1) The county board shall have authority to direct landowners to remove, from ditches and watercourses adjoining or within the boundaries of their premises, obstructions which the landowners have placed or permitted to be placed therein, including the removal of inadequate culverts, crossings and bridges.

(2) If an inadequate bridge, culvert or crossing has been in or over a ditch or watercourse for more than one year prior to September 28, 1959, the cost of removal or replacement shall be paid either from the county road fund, the county drainage fund or from the assessments under an improvement project conducted under sections 31-907 to 31-920.

(3) Where the removal of such obstruction is not to be payable out of special funds as provided for in subsection (2) of this section, the board, after thirty days' notice by certified mail, to the owner, may remove the obstruction and assess the costs thereof against such owner in the manner provided in section 31-916; *Provided*, the owner shall have the right to appeal from the order in the manner provided for in section 31-911.

Source: Laws 1959, c. 132, § 22, p. 491.

31-922.01 County board; rights-of-way; manner of acquisition.

The county board, in constructing a drainage improvement under the provisions of sections 31-901 to 31-933, may procure rights-of-way by purchase, gift, or by exercise of the right of eminent domain in the manner set forth in sections 76-704 to 76-724.

Source: Laws 1961, c. 144, § 2, p. 421.

31-923 Cleaning project; county road; benefits; payment; county road fund.

Where any cleaning project benefits a county road, the county board may assess the appropriate share of the costs to the county road fund.

Source: Laws 1959, c. 132, § 23, p. 492.

31-924 Cleaning project; road ditch, ditch, or watercourse; installation and maintenance of bridge or culvert; payment; county road funds.

Where the cleaning involves a road ditch or a ditch or watercourse that is crossed by a county or township bridge or culvert, the board, in its discretion, may provide for the use of county road funds for installation and maintenance of such bridge or culvert or to assist therein.

Source: Laws 1959, c. 132, § 24, p. 492.

31-925 Cleaning project; ditch or watercourse; state highway; contract with Department of Roads.

Where the cleaning of a ditch or watercourse involves a state highway, the county board is authorized to make any contract with the Department of Roads with reference to bridges or culverts or if unable to agree therein, to bring any action necessary to force the state to participate in said improvement.

Source: Laws 1959, c. 132, § 25, p. 492.

31-926 County board; engineers; attorneys; employees; payment from drainage fund.

The county board may employ engineers, attorneys, and others to assist in the administration of sections 31-901 to 31-933. Payment for these services shall be made from the drainage fund except where a particular improvement project is set up, in which case the share of engineering, legal and other costs shall become part of the improvement project's costs and shall be paid therefrom.

Source: Laws 1959, c. 132, § 26, p. 492.

31-927 County board; limitation on powers; contract with other districts.

The county board shall not set up any drainage improvement project within the boundaries of any drainage district organized under Chapter 31, article 3 or 4, or sanitary districts organized under Chapter 31, article 5 or 7, but may have authority to contract with any such district with reference to drainage within such district.

Source: Laws 1959, c. 132, § 27, p. 492.

31-928 Cities of first or second class or villages; included in improvement district.

Lots and lands within the confines of any village or city of the second or first class may be included within the boundaries of an improvement project as provided for in sections 31-907 to 31-918.

Source: Laws 1959, c. 132, § 28, p. 493; Laws 1961, c. 138, § 11, p. 403.

Cross References

Cities and villages, classification, see sections 16-101, 17-101, and 17-201.

31-929 Drainage improvements; damages; immunity.

Neither the county, the county board, nor the individual members thereof shall be liable for damages to or loss sustained by any lot or land owner by reason of their actions in the administration of sections 31-901 to 31-933 or for failure to function hereunder.

Source: Laws 1959, c. 132, § 29, p. 493.

31-930 County board; enjoin or restrain; when.

Sections 31-901 to 31-933 shall not prevent any lot or land owner from enjoining or restraining the board from cleaning or other actions under section 31-922 when it can be proven that such action by the board will damage such owner and no provision for reimbursement therefor has been provided, either by making said owner party to said project in the manner provided in section 31-909 or otherwise.

Source: Laws 1959, c. 132, § 30, p. 493.

31-931 Sections; supplemental effect.

Sections 31-901 to 31-933 shall in no way interfere with or prevent the operation of any drainage district organized under the laws of this state or the construction of roads, road ditches, culverts, drains, or bridges in connection therewith but shall be supplemental and independent legislation.

Source: Laws 1959, c. 132, § 31, p. 493.

31-932 Drainage district; dissolution; right-of-way interest becomes property of county.

Upon dissolution of any drainage district, the right-of-way interest of such drainage district shall pass to and become the property of the county where located. Nothing in this section shall apply to any irrigation ditch or ditches.

Source: Laws 1959, c. 132, § 32, p. 493.

31-933 Act, how cited.

Sections 31-901 to 31-933 shall be known and may be cited as the County Drainage Act.

Source: Laws 1959, c. 132, § 33, p. 493.

ARTICLE 10

FLOOD PLAIN MANAGEMENT

Section
31-1001. Legislative findings; purpose of sections.
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31-1020. Local government; failure to implement flood plain management regulations; department; powers and duties.
31-1021. Local government; enforce department regulations.
31-1022. Adoption of regulations; notice; hearing; appeal.
31-1023. State agencies, boards, and commissions; flood plain management duties.
31-1024. Repealed. Laws 1993, LB 626, § 8.
31-1025. Repealed. Laws 1993, LB 626, § 8.
31-1026. Repealed. Laws 1993, LB 626, § 8.
31-1027. Repealed. Laws 1993, LB 626, § 8.
31-1028. Repealed. Laws 1993, LB 626, § 8.
31-1029. Repealed. Laws 1993, LB 626, § 8.
31-1030. Repealed. Laws 1993, LB 626, § 8.
31-1031. Repealed. Laws 1993, LB 626, § 8.

31-1001 Legislative findings; purpose of sections.

(1) The Legislature finds that recurrent flooding in various areas of the state presents serious hazards to the health, safety, welfare, and property of the people of the state, both within and outside such areas. The hazards include loss of life, loss of and damage to private and public property, disruption of lives and of livelihoods, interruption of commerce, transportation, communica-

tion, and governmental services, and unsanitary and unhealthy living and environmental conditions. The wise use of land subject to flooding is a matter of state concern. The Legislature further finds that the establishment of improved flood plain management practices and the availability of financial assistance to citizens of the state whose property is damaged during times of flooding are essential to the health, safety, and general welfare of the people of Nebraska.

(2) The purposes of sections 31-1001 to 31-1023 shall be to:

(a) Accelerate the mapping of flood-prone areas;

(b) Assist local governments in the promulgation and implementation of effective flood plain management regulations and other flood plain management practices;

(c) Assure that when state lands are used and state-owned and state-financed facilities are located and constructed, flood hazards are prevented, flood losses are minimized, and the state's eligibility for flood insurance is maintained; and

(d) Encourage local governments with flood-prone areas to qualify for participation in the national flood insurance program.

Source: Laws 1983, LB 35, § 1; Laws 1993, LB 626, § 1.

31-1002 Definitions, where found.

For purposes of sections 31-1001 to 31-1023, unless the context otherwise requires, the definitions in sections 31-1003 to 31-1016 shall apply.

Source: Laws 1983, LB 35, § 2; Laws 1993, LB 626, § 2.

31-1003 Department, defined.

Department shall mean the Department of Natural Resources.

Source: Laws 1983, LB 35, § 3; Laws 2000, LB 900, § 75.

31-1004 Repealed. Laws 1993, LB 626, § 8.

31-1005 Base flood, defined.

Base flood shall mean the flood having a one percent chance of being equalled or exceeded in magnitude in any given year.

Source: Laws 1983, LB 35, § 5.

31-1006 Drainway, defined.

Drainway shall mean any depression two feet or more below the land which serves to give direction to a current of water less than nine months of the year, and which has a bed and well-defined banks.

Source: Laws 1983, LB 35, § 6.

31-1007 Flood, defined.

Flood shall mean the water of any watercourse or drainway which is above the bank or outside the channel and banks of such watercourse or drainway.

Source: Laws 1983, LB 35, § 7.

31-1008 Floodway, defined.

Floodway shall mean the channel of a watercourse or drainway and the adjacent land areas that are necessary to be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a reasonable height, as designated by the department.

Source: Laws 1983, LB 35, § 8; Laws 2000, LB 900, § 76.

31-1009 Flood fringe, defined.

Flood fringe shall mean that portion of the flood plain of the base flood which is outside of the floodway.

Source: Laws 1983, LB 35, § 9.

31-1010 Flood plain, defined.

Flood plain shall mean the area adjoining a watercourse or drainway which has been or may be covered by flood waters.

Source: Laws 1983, LB 35, § 10.

31-1011 Flood plain management, defined.

Flood plain management shall mean the operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to, flood control works and flood plain management regulations.

Source: Laws 1983, LB 35, § 11.

31-1012 Flood plain management regulations, defined.

Flood plain management regulations shall mean and include zoning ordinances, subdivision regulations, building codes, and other applications of the police power which are authorized by law to secure safety from floods and provide for the reasonable and prudent use of flood plains.

Source: Laws 1983, LB 35, § 12.

31-1013 Local government, defined.

Local government shall mean a county, city, or village in the state.

Source: Laws 1983, LB 35, § 13.

31-1014 National flood insurance program, defined.

National flood insurance program shall mean the program authorized by the United States Congress under the National Flood Insurance Act of 1968, as amended, 42 U.S.C., 4001 to 4128.

Source: Laws 1983, LB 35, § 14.

31-1015 Obstruction, defined.

Obstruction shall mean any wall, wharf, embankment, levee, dike, pile, abutment, projection, excavation, channel rectification, bridge, conduit, culvert, building, wire, fence, rock, gravel, refuse, fill, or other analogous structure or matter which may impede, retard, or change the direction of the flow of water, either in itself or by catching or collecting debris carried by such water, or that is placed where the natural flow of the water would carry such structure or matter downstream to the damage or detriment of either life or property.

Obstruction shall not include a dam designed to store or divert water for which permission for construction has been obtained from the Department of Natural Resources pursuant to the Safety of Dams and Reservoirs Act.

Source: Laws 1983, LB 35, § 15; Laws 1993, LB 626, § 3; Laws 2000, LB 900, § 77; Laws 2005, LB 335, § 72.

Cross References

Safety of Dams and Reservoirs Act, see section 46-1601.

31-1016 Watercourse, defined.

Watercourse shall mean any depression two feet or more below the surrounding land which serves to give direction to a current of water at least nine months of the year and which has a bed and well-defined banks.

Source: Laws 1983, LB 35, § 16.

31-1017 Department; flood plain management; powers and duties.

The department shall be the official state agency for all matters pertaining to flood plain management. In carrying out that function, the department shall have the power and authority to:

(1) Coordinate flood plain management activities of local, state, and federal agencies;

(2) Receive federal funds intended to accomplish flood plain management objectives;

(3) Prepare and distribute information and conduct educational activities which will aid the public and local units of government in complying with the purposes of sections 31-1001 to 31-1023;

(4) Provide local governments having jurisdiction over flood-prone lands with technical data and maps adequate to develop or support reasonable flood plain management regulation;

(5) Adopt and promulgate rules and regulations establishing minimum standards for local flood plain management regulation. In addition to the public notice requirement in the Administrative Procedure Act, the department shall, at least twenty days in advance, notify by mail the clerks of all cities, villages, and counties which might be affected of any hearing to consider the adoption, amendment, or repeal of such minimum standards. Such minimum standards shall be designed to protect human life, health, and property and to preserve the capacity of the flood plain to discharge the waters of the base flood and shall take into consideration (a) the danger to life and property by water which may be backed up or diverted by proposed obstructions and land uses, (b) the danger that proposed obstructions or land uses will be swept downstream to the injury of others, (c) the availability of alternate locations for proposed obstructions and land uses, (d) the opportunities for construction or alteration of proposed obstructions in such a manner as to lessen the danger, (e) the permanence of proposed obstructions or land uses, (f) the anticipated development in the foreseeable future of areas which may be affected by proposed obstructions or land uses, (g) hardship factors which may result from approval or denial of proposed obstructions or land uses, and (h) such other factors as are in harmony with the purposes of sections 31-1001 to 31-1023. Such minimum standards may, when required by law, distinguish between farm and nonfarm activities and shall provide for anticipated developments and grada-

tions in flood hazards. If deemed necessary by the department to adequately accomplish the purposes of such sections, such standards may be more restrictive than those contained in the national flood insurance program standards, except that the department shall not adopt standards which conflict with those of the national flood insurance program in such a way that compliance with both sets of standards is not possible;

(6) Provide local governments and other state and local agencies with technical assistance, engineering assistance, model ordinances, assistance in evaluating permit applications and possible violations of flood plain management regulations, assistance in personnel training, and assistance in monitoring administration and enforcement activities;

(7) Serve as a repository for all known flood data within the state;

(8) Assist federal, state, or local agencies in the planning and implementation of flood plain management activities, such as flood warning systems, land acquisition programs, and relocation programs;

(9) Enter upon any lands and waters in the state for the purpose of making any investigation or survey or as otherwise necessary to carry out the purposes of such sections. Such right of entry shall extend to all employees, surveyors, or other agents of the department in the official performance of their duties, and such persons shall not be liable to prosecution for trespass when performing their official duties;

(10) Enter into contracts or other arrangements with any state or federal agency or person as defined in section 49-801 as necessary to carry out the purposes of sections 31-1001 to 31-1023; and

(11) Adopt and enforce such rules and regulations as are necessary to carry out the duties and responsibilities of such sections.

Source: Laws 1983, LB 35, § 17; Laws 1993, LB 626, § 4; Laws 2000, LB 900, § 78.

Cross References

Administrative Procedure Act, see section 84-920.

This section requires the Nebraska Natural Resources Commission to adopt, at a minimum, flood plain regulations promulgated by the Federal Emergency Management Agency. Giger v. City of Omaha, 232 Neb. 676, 442 N.W.2d 182 (1989).

31-1018 Preparation of flood hazard data and maps; department; duties; considerations.

In determining areas of the state for which state-prepared flood hazard data and maps are needed by local governments or by state or federal agencies and the order in which such data and maps are to be prepared, the department shall consider the following factors in such areas:

(1) Potential for future development;

(2) Potential for flood damage or loss of life;

(3) Probability that adequate data and maps will be prepared within a reasonable time by other sources;

(4) Availability and adequacy of any existing maps;

(5) Availability of flood data and other information necessary to produce adequate maps; and

(6) Degree of interest shown by the local governments in the area in utilizing flood data and maps in an effective flood plain management program.

Flood area data and maps produced by the department may be provided either directly to the local government which has jurisdiction over such area or indirectly through the national flood insurance program if the department and the federal agency responsible for administering the national flood insurance program agree to such an arrangement. Such maps shall delineate the flood plain of the base flood and, when information is available, the floodway and flood fringe of such flood plain. Such maps shall also contain or be accompanied by such other information as the department deems appropriate.

Source: Laws 1983, LB 35, § 18; Laws 1993, LB 626, § 5; Laws 2000, LB 900, § 79.

31-1019 Local government; flood plain management; duties.

When the department, a federal agency, or any other entity has provided a local government with sufficient data and maps with which to reasonably locate within its zoning jurisdiction any portion of the flood plain for the base flood of any watercourse or drainway, it shall be the responsibility of such local government to adopt, administer, and enforce flood plain management regulations which meet or exceed the minimum standards adopted by the department pursuant to subdivision (5) of section 31-1017. The authority of a local government to adopt flood plain management regulations in accordance with this section shall not be conditional upon a prior appointment of a planning commission or the adoption of a comprehensive development plan pursuant to sections 14-403, 14-404, 14-407, 15-1101, 15-1102, 19-901, 19-929, 23-114.01 to 23-114.03, or 23-174.04 to 23-174.07.

Source: Laws 1983, LB 35, § 19; Laws 2000, LB 900, § 80.

31-1020 Local government; failure to implement flood plain management regulations; department; powers and duties.

If a local government does not adopt and implement flood plain management regulations in accordance with section 31-1019 within one year after flood hazard data and maps have been provided to it pursuant to such section, the department shall, upon petition of at least ten percent of the owners of the land located within the flood plain of the base flood delineated in such maps, or upon the written request of the board of directors of the natural resources district in which such land is located, conduct a public hearing after providing notice pursuant to section 31-1022. If the department finds after such hearing that the data and maps available are sufficient to reasonably locate the boundaries of the base flood, the department shall determine and fix by order the boundaries of the base flood and, where deemed appropriate, the boundaries of the floodway within the zoning jurisdiction of such local government. If within three months after the date of such order the local government still has not adopted and implemented flood plain management regulations for the area subject to such order in accordance with section 31-1019, the department shall be vested with the power and authority to adopt flood plain management regulations for the area and shall adopt and promulgate such regulations for the identified base flood within the zoning jurisdiction of such local government. Such regulations shall be consistent with the minimum standards adopted by the department pursuant to subdivision (5) of section 31-1017 and shall take effect on the date prescribed by the department. All ordinances or

other actions by the local government which are contrary to the rules and regulations of the department shall be null and void.

Source: Laws 1983, LB 35, § 20; Laws 1993, LB 626, § 6; Laws 2000, LB 900, § 81.

31-1021 Local government; enforce department regulations.

It shall be the duty of the local government to administer and enforce any regulations adopted by the department pursuant to section 31-1020 in the same manner as if the local government had enacted such regulations. Such duty may be enforced in a mandamus action brought against such local government by any resident or landowner within the jurisdiction of such local government. If such mandamus action is successful, the local government may be held responsible for all reasonable and actual costs of the plaintiff, including, but not limited to, attorney's fees. Neither the regulations enacted by the department nor the boundaries of the base flood or floodway adopted by the department may be modified by the local government without the written consent of the department, except that a local government may adopt a measure more restrictive than that adopted by the department.

Source: Laws 1983, LB 35, § 21; Laws 2000, LB 900, § 82.

31-1022 Adoption of regulations; notice; hearing; appeal.

Notice of any hearing to be conducted by the department pursuant to section 31-1020 shall be given to the clerk of the local government and to such other local officials as the department deems appropriate, at least thirty days prior to the hearing. Notice shall also be published in a newspaper of general circulation in the area involved at least once each week for three consecutive weeks, the last publication of which shall be not less than five days prior to the date set for the hearing. The rules and regulations of the department adopted and promulgated in accordance with section 31-1020 shall not be subject to the provisions of the Administrative Procedure Act. Appeals from department determinations pursuant to section 31-1020 may be taken by any aggrieved party, and the appeals shall be in accordance with the Administrative Procedure Act.

Source: Laws 1983, LB 35, § 22; Laws 1988, LB 352, § 28; Laws 2000, LB 900, § 83.

Cross References

Administrative Procedure Act, see section 84-920.

31-1023 State agencies, boards, and commissions; flood plain management duties.

(1) All state agencies, boards, and commissions shall take preventive action to minimize flood hazards and losses in connection with state-owned and state-financed buildings, roads, and other facilities, and shall take such steps as are necessary to insure compliance with the minimum standards adopted by the department in accordance with subdivision (5) of section 31-1017 when such facilities are being located or constructed in any area where no local government is enforcing flood plain management regulations pursuant to section 31-1019 or 31-1021. If a local government with jurisdiction over the land upon which any such facility is to be located or constructed is enforcing flood plain

management regulations pursuant to section 31-1019 or 31-1021, the state agency, board, or commission locating or constructing such facility shall comply with such regulations unless such compliance is specifically waived by the department.

(2) The department shall assist state agencies, boards, and commissions in determining and evaluating flood hazards and alternative flood protective measures and shall establish by rule or regulation, standards and procedures to govern its review of proposed state-owned and state-financed facilities not subject to local flood plain management regulations. Such standards and procedures shall meet the minimum criteria necessary to maintain the state's eligibility for flood insurance under the national flood insurance program.

Source: Laws 1983, LB 35, § 23; Laws 1993, LB 626, § 7; Laws 2000, LB 900, § 84.

31-1024 Repealed. Laws 1993, LB 626, § 8.

31-1025 Repealed. Laws 1993, LB 626, § 8.

31-1026 Repealed. Laws 1993, LB 626, § 8.

31-1027 Repealed. Laws 1993, LB 626, § 8.

31-1028 Repealed. Laws 1993, LB 626, § 8.

31-1029 Repealed. Laws 1993, LB 626, § 8.

31-1030 Repealed. Laws 1993, LB 626, § 8.

31-1031 Repealed. Laws 1993, LB 626, § 8.

CHAPTER 32
ELECTIONS

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ARTICLE 1
GENERAL PROVISIONS AND DEFINITIONS

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32-101 Act, how cited.

Sections 32-101 to 32-1551 shall be known and may be cited as the Election Act.

Source: Laws 1994, LB 76, § 1; Laws 1995, LB 337, § 1; Laws 1995, LB 514, § 1; Laws 1996, LB 964, § 1; Laws 1997, LB 764, § 8; Laws 2001, LB 768, § 1; Laws 2002, LB 1054, § 7; Laws 2003, LB 181, § 1; Laws 2003, LB 358, § 1; Laws 2003, LB 359, § 1; Laws 2003, LB 521, § 3; Laws 2005, LB 401, § 2; Laws 2005, LB 566, § 1.

32-102 Act; applicability; how construed.

The Election Act shall apply to all elections held in the state unless otherwise specifically provided. The act shall be liberally construed so that the will of the registered voters is not defeated by an informality or a failure to comply with the act with respect to the giving of any notice or the conducting of any election or the certifying of the results of the election.

Source: Laws 1994, LB 76, § 2.

32-103 Definitions, where found.

For purposes of the Election Act, the definitions found in sections 32-104 to 32-120 shall be used.

Source: Laws 1994, LB 76, § 3; Laws 1997, LB 764, § 9; Laws 2003, LB 358, § 2; Laws 2005, LB 566, § 2.

32-104 Candidate, defined.

Candidate shall mean a registered voter for whom votes may be cast at any election and who, either tacitly or expressly, consents to be considered. Candidate shall not include a candidate for President or Vice President of the United States.

Source: Laws 1994, LB 76, § 4.

32-105 Certificate of election, defined.

Certificate of election shall mean a document issued to a candidate who has been elected to office at an election.

Source: Laws 1994, LB 76, § 5.

32-106 Certificate of nomination, defined.

Certificate of nomination shall mean a document issued to a candidate who receives the requisite number of votes and qualifies to be placed on a general election ballot.

Source: Laws 1994, LB 76, § 6.

32-107 District, defined.

District shall mean a subdivision of the state or of a county, city, village, or other political subdivision in which all registered voters residing within the district are entitled to participate in the election of any one or more candidates or in the determination by election of any question or proposition.

Source: Laws 1994, LB 76, § 7; Laws 1997, LB 764, § 10.

32-108 Election, defined.

Election shall mean any statewide or local primary, special, joint, or general election at which registered voters of the state or the political subdivision holding the election by ballot choose public officials or decide any questions and propositions lawfully submitted to them.

Source: Laws 1994, LB 76, § 8.

Court has jurisdiction over contest of election for reorganization of school districts. Arends v. Whitten, 172 Neb. 297, 109 N.W.2d 363 (1961).

School district elections are specifically excepted from general primary election law. Farrell v. School Dist. No. 54, 164 Neb. 853, 84 N.W.2d 126 (1957).

32-109 Elective office, defined.

Elective office shall mean any office which has candidates nominated or elected at the time of a statewide primary election, any office which has candidates nominated at the time of a statewide primary election and elected at the time of a statewide general election, any office which has candidates elected at the time of a statewide general election, any office which has candidates nominated or elected at a city or village election, and any office created by an act of the Legislature which has candidates elected at an election.

Source: Laws 1994, LB 76, § 9.

32-110 Elector, defined.

Elector shall mean a citizen of the United States whose residence is within the state and who is at least eighteen years of age or is seventeen years of age and will attain the age of eighteen years on or before the first Tuesday after the first Monday in November of the then current calendar year.

Source: Laws 1994, LB 76, § 10.

1. Residence
2. Citizenship
3. Indians
4. Miscellaneous

1. Residence

Self-supporting students who regard the location of their school as their home may vote where the school is located. Swan v. Bowker, 135 Neb. 405, 281 N.W. 891 (1938).

Foreign railroad laborers, who were moved about as their work required, were not residents within the meaning of the Constitution and entitled to vote because the box cars in which they lived in inclement weather remained on a sidetrack within one precinct most of the four months that preceded an election. White v. Slama, 89 Neb. 65, 130 N.W. 978, Ann. Cas. 1912C 518 (1911).

As a general rule a minor cannot change his domicile before he reaches his majority, but a self-supporting minor, who has resided in this state for more than six months and who possesses the other requirements, becomes a qualified elector when he reaches his majority. Russell v. State, 62 Neb. 512, 87 N.W. 344 (1901).

Self-supporting students who regard the location of their school as their home and who have no particular future residence in mind, may vote where the school is located. Berry v. Wilcox, 44 Neb. 82, 62 N.W. 249, 48 A.S.R. 706 (1895).

Persons who were living on a temporary military post and had no intention to return to their former places of residence, and who possessed the other requirements, were qualified electors. State ex rel. Valentine v. Griffey, 5 Neb. 161, 31 L.E.2d 890 (1876).

2. Citizenship

Under the Constitution of 1875, a male person twenty-one years old and of foreign birth, who came to this country while a minor, did not become a qualified elector upon his father's declaration of intention to become a citizen of the United States. Haywood v. Marshall, 53 Neb. 220, 73 N.W. 449 (1897).

An alien who came to this country while a minor, whose father later declared his intention to become a citizen of the United States, who removed to the Territory of Nebraska in 1856, became a citizen of the United States and of Nebraska by the organic and enabling acts and the act of admission. Boyd v. Nebraska ex rel. Thayer, 143 U.S. 135 (1892), reversing State ex

rel. Thayer v. Boyd, 31 Neb. 682, 48 N.W. 739 (1891), 51 N.W. 602 (1892).

Voting status under Nebraska law would presumably show United States citizenship. Beatrice Foods Co. v. United States, 312 F.2d 29 (8th Cir. 1963).

3. Indians

Indians to whom allotments of land had been made, and who possessed the other requirements, were prima facie qualified electors even though formal approval of their allotments had not been made and patents had not been issued. State ex rel. Crawford v. Norris, 37 Neb. 299, 55 N.W. 1086 (1893).

Indians who are not living apart from a tribe and who have not adopted the habits of civilized life are prima facie not qualified electors, and it must be shown that an allotment of land has been made to them before the legality of their votes can be established. State ex rel. Fair v. Frazier, 28 Neb. 438, 44 N.W. 471 (1890).

An Indian who was born in the United States as a member of a tribe recognized by the federal government, and who later took up his residence apart from his tribe, but had not been naturalized, or taxed, or recognized as a citizen by either the state or federal government, was not a citizen of the United States under the first section of the fourteenth amendment. Elk v. Wilkins, 112 U.S. 94 (1884).

4. Miscellaneous

This section as amended applies to general elections only and does not prescribe the qualifications for school district elections or amend or supplement the school laws. Cunningham v. Ilg, 118 Neb. 682, 226 N.W. 333 (1929).

32-110.01 Electronic voting system, defined.

Electronic voting system means a voting system in which each part of the process is done electronically.

Source: Laws 2003, LB 358, § 3.

32-110.02 Government document, defined.

Government document means an identification document or other document issued by a federal, state, or local government agency that includes the name and address of the voter as they appear on his or her voter registration application, including those documents that acknowledge the person's civil or legal status or entitlement to a government service or program.

Source: Laws 2005, LB 566, § 3.

32-111 Incumbent, defined.

Incumbent shall mean the person whom the canvassers or the courts declare elected to an elective office or who has been appointed to an elective office.

Source: Laws 1994, LB 76, § 11.

32-112 Oath, defined.

Oath shall include affirmation.

Source: Laws 1994, LB 76, § 12.

32-113 Population, defined.

Population shall mean the population of the state or any of its political subdivisions as determined by the most recent federal decennial census.

Source: Laws 1994, LB 76, § 13.

32-114 Precinct, defined.

Precinct shall mean a defined area established by law within which all registered voters cast their votes at one polling place. Precinct may include any ward or other division of territory in any city or village when created and designated by ordinance for election purposes.

Source: Laws 1994, LB 76, § 14.

32-115 Registered voter, defined.

Registered voter shall mean an elector who has a valid voter registration record on file with the election commissioner or county clerk in the county of his or her residence.

Source: Laws 1994, LB 76, § 15; Laws 1997, LB 764, § 11.

''Inactive'' registered voters must be counted as registered voters until their names are legally removed from the voter rolls. State ex rel. Bellino v. Moore, 254 Neb. 385, 576 N.W.2d 793 (1998).

32-116 Residence, defined.

Residence shall mean (1) that place in which a person is actually domiciled, which is the residence of an individual or family, with which a person has a settled connection for the determination of his or her civil status or other legal purposes because it is actually or legally his or her permanent and principal home, and to which, whenever he or she is absent, he or she has the intention of returning, (2) the place where a person has his or her family domiciled even if he or she does business in another place, and (3) if a person is homeless, the county in which the person is living. No person serving in the armed forces of the United States shall be deemed to have a residence in Nebraska because of being stationed in Nebraska.

Source: Laws 1994, LB 76, § 16.

This section does not establish absolute criteria for determining residence or domicile. Dilsaver v. Pollard, 191 Neb. 241, 214 N.W.2d 478 (1994).

This section does not enlarge or limit the provisions of the Constitution which prescribe the qualifications of electors. Berry v. Wilcox, 44 Neb. 82, 62 N.W. 249, 48 A.S.R. 706 (1895).

32-117 Sign, defined.

Sign shall mean to affix a signature.

Source: Laws 1994, LB 76, § 17.

32-118 Signature, defined.

Signature shall mean the name of a person written with his or her own hand or the mark of a person unable to write his or her name if the person's name is written by some other person and the mark is made near the name by the person unable to write his or her name.

Source: Laws 1994, LB 76, § 18.

32-118.01 Special election, defined.

Special election shall mean an election other than a regularly scheduled primary or general election as specified in statute or by home rule charter.

Source: Laws 1997, LB 764, § 12.

Special election is defined by this section. Arends v. Whitten, 172 Neb. 297, 109 N.W.2d 363 (1961).

32-119 Swear, defined.

Swear shall include affirm.

Source: Laws 1994, LB 76, § 19.

32-119.01 Voting system, defined.

Voting system means the process of creating, casting, and counting ballots.

Source: Laws 2003, LB 358, § 4.

32-120 Ward, defined.

Ward shall mean a compact and contiguous geographic area within a political subdivision created by the political subdivision for election purposes.

Source: Laws 1994, LB 76, § 20.

32-121 Repealed. Laws 2004, LB 940, § 4.

ARTICLE 2

ELECTION OFFICIALS

(a) SECRETARY OF STATE

Section
32-201. Disputed points of election law; Secretary of State; duties.
32-202. Secretary of State; duties.
32-203. Secretary of State; powers.
32-204. Election Administration Fund; created; use; investment.
32-205. Secretary of State; office hours on election day.
32-206. Official election calendar; publish; contents; filing or other acts; time.
(b) COUNTY ELECTION OFFICIALS
32-207. Election commissioner; counties having over 100,000 inhabitants; appointment; term; vacancy.
32-208. Election commissioner; qualifications.
32-209. Chief deputy election commissioner; qualifications; appointment; bond; duties.
32-210. Chief deputy election commissioner; vacancy; procedure for filling.
32-211. Election commissioner; counties having 20,000 to 100,000 inhabitants; chief deputy; appointment; qualifications; terms; vacancy; elimination of office.
32-212. Election commissioner; appoint other employees; qualifications.
32-213. Election commissioner; oath of office; bond.
32-214. Election commissioner; enforcement of act; election commissioner or chief deputy election commissioner; removal; grounds; procedure.
32-215. Election commissioner; rules and regulations; select registration and polling places.
32-216. Election commissioner; office; records and equipment; annual inventory statement; purchases; requirements; waiver of bid procedure; when.
32-217. Election commissioner, chief deputy election commissioner, and employees; county employees; salaries; how paid.
32-218. County clerk perform duties of election commissioner; when; deputy county clerk for elections.
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(c) COUNTIES WITH ELECTION COMMISSIONERS
32-220. Sections; applicability.
32-221. Inspectors and judges and clerks of election; appointment; term; qualifications; vacancy; failure to appear; removal.
32-222. Inspectors and judges and clerks of election; oath.
32-223. Receiving board; members; requirements; inspectors; clerk of election; appointment.
32-224. Repealed. Laws 2007, LB 646, § 17.
32-225. Precinct and district inspectors; duties.
32-226. Election duties; who may perform.
32-227. Election workers; wages.
32-228. Election worker; notice of appointment; failure to serve; penalty.
(d) COUNTIES WITHOUT ELECTION COMMISSIONERS
32-229. Sections; applicability.
32-230. Receiving board; clerk of election; appointment; procedure; members; qualification; vacancy.

Section
32-231. Judge and clerk of election; qualifications; term; district inspectors; duties.
32-232. Election duties; who may perform; messenger; appointment; duties.
32-233. Election workers; wages.
32-234. Repealed. Laws 2007, LB 646, § 17.
32-235. Election worker; notice of appointment.
32-236. Judge and clerk of election; district inspector; service required; violation; penalty.
32-237. Judge or clerk of election; inspector; failure to appear; replacement procedure.
32-238. Judge or clerk of election; inspector; oath.
32-239. Judges and clerks of election; district inspectors; vacancies; how filled.
32-240. Judge or clerk of election; district inspector; excused from serving; when.
(e) ELECTION COMMISSIONERS AND COUNTY CLERKS
32-241. Election worker; employment protection; employer; prohibited acts; violation; penalty; lists; prohibited acts.
32-242. Oaths; who may administer; seal.

(a) SECRETARY OF STATE

32-201 Disputed points of election law; Secretary of State; duties.

The Secretary of State shall decide disputed points of election law. The decisions shall have the force of law until changed by the courts.

Source: Laws 1994, LB 76, § 21.

32-202 Secretary of State; duties.

In addition to any other duties prescribed by law, the Secretary of State shall:

(1) Supervise the conduct of primary and general elections in this state;

(2) Provide training for election commissioners, county clerks, and other election officials in providing for registration of voters and the conduct of elections;

(3) Enforce the Election Act;

(4) With the assistance and advice of the Attorney General, make uniform interpretations of the act;

(5) Provide periodic training for the agencies and their agents and contractors in carrying out their duties under sections 32-308 to 32-310;

(6) Develop and print forms for use as required by sections 32-308, 32-310, 32-320, 32-329, 32-947, 32-956, and 32-958;

(7) Contract with the Department of Administrative Services for storage and distribution of the forms;

(8) Require reporting to ensure compliance with sections 32-308 to 32-310;

(9) Prepare and transmit reports as required by the National Voter Registration Act of 1993, 42 U.S.C. 1973gg et seq.;

(10) Develop and print a manual describing the requirements of the initiative and referendum process and distribute the manual to election commissioners and county clerks for distribution to the public upon request;

(11) Develop and print pamphlets described in section 32-1405.01;

(12) Adopt and promulgate rules and regulations for elections conducted under sections 32-952 to 32-959; and

(13) Establish a free access system, such as a toll-free telephone number or an Internet web site, that any voter who casts a provisional ballot may access to discover whether the vote of that voter was counted and, if the vote was not counted, the reason that the vote was not counted. The Secretary of State shall establish and maintain reasonable procedures necessary to protect the security, confidentiality, and integrity of personal information collected, stored, or otherwise used by the free access system. Access to information about an individual provisional ballot shall be restricted to the individual who cast the ballot.

Source: Laws 1994, LB 76, § 22; Laws 1995, LB 337, § 2; Laws 1996, LB 964, § 2; Laws 2003, LB 358, § 5; Laws 2008, LB838, § 1. Operative date January 1, 2009.

Cross References

Interference with Secretary of State or refusal to comply with section, penalty, see section 32-1501.

32-203 Secretary of State; powers.

In addition to any other powers prescribed by law, the Secretary of State may:

(1) Inspect, with or without the filing of a complaint by any person, and review the practices and procedures of election commissioners, county clerks, their employees, and other election officials in the conduct of primary and general elections and the registration of qualified electors;

(2) Employ such personnel as necessary to efficiently carry out his or her powers and duties as prescribed in the Election Act;

(3) Adopt and promulgate rules and regulations in regard to the registration of voters and the conduct of elections; and

(4) Enforce the act by injunctive action brought by the Attorney General in the district court for the county in which any violation of the act occurs.

Source: Laws 1994, LB 76, § 23; Laws 2005, LB 566, § 4.

32-204 Election Administration Fund; created; use; investment.

The Election Administration Fund is hereby created. The fund shall consist of federal funds, state funds, gifts, and grants appropriated for the administration of elections. The Secretary of State shall use the fund for voting systems, provisional voting, computerized statewide voter registration lists, voter registration by mail, training or informational materials related to elections, and any other costs related to elections. 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 State Treasurer shall transfer any money in the Voter Registration Cash Fund on February 21, 2003, to the Election Administration Fund.

Source: Laws 1994, LB 76, § 24; Laws 1995, LB 7, § 29; Laws 1997, LB 764, § 13; Laws 2003, LB 14, § 1.

Cross References

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

32-205 Secretary of State; office hours on election day.

The office of the Secretary of State shall be open and available to any election commissioner, county clerk, city or village clerk, and their employees on each

primary and general election day during the hours the polls are open for voting.

Source: Laws 1994, LB 76, § 25.

32-206 Official election calendar; publish; contents; filing or other acts; time.

(1) The Secretary of State shall publish an official election calendar by December 1 prior to the statewide primary election. Such calendar, to be approved as to form by the Attorney General, shall set forth the various election deadline dates and other pertinent data as determined by the Secretary of State. The official election calendar shall be merely a guideline and shall in no way legally bind the Secretary of State or the Attorney General.

(2) Except as provided in sections 32-302 and 32-306, any filing or other act required to be performed by a specified day shall be performed by 5 p.m. of such day, except that if such day falls upon a Saturday, Sunday, or legal holiday, performance shall be required on the next business day.

Source: Laws 1994, LB 76, § 26.

(b) COUNTY ELECTION OFFICIALS

32-207 Election commissioner; counties having over 100,000 inhabitants; appointment; term; vacancy.

The office of election commissioner shall be created for each county having a population of more than one hundred thousand inhabitants. The election commissioner shall be appointed by the Governor and shall serve for a term of four years or until a successor has been appointed and qualified. In the event of a vacancy, the Governor shall appoint an election commissioner to serve the unexpired portion of the term.

Source: Laws 1994, LB 76, § 27.

Cross References

Distribute political accountability and disclosure forms, see section 49-14,139.
Election commissioner perform duties of jury commissioner, when, see section 25-1625.

Election commissioner of Douglas County is not in charge of municipal elections in Sarpy County. Barton v. City of Omaha, 180 Neb. 752, 145 N.W.2d 444 (1966).

This section provides for an election commissioner who is required to perform all of the duties in reference to elections that are performed by the county clerks in all other counties. Rasp v. McHugh, 121 Neb. 380, 237 N.W. 394 (1931).

Duties of election commissioner and procedure to be followed in cases where the citizenship of an elector is in question are discussed in detail. State ex rel. Williams v. Moorhead, 96 Neb. 559, 148 N.W. 552 (1914), reversing 95 Neb. 80, 144 N.W. 1055 (1914).

32-208 Election commissioner; qualifications.

The election commissioner in counties having a population of more than one hundred thousand inhabitants shall be a registered voter, a resident of such county for at least one year, and of good moral character and integrity and capacity. No person who is a candidate for any elective office or is a deputy, clerk, or employee of any person who is a candidate for any elective office shall be eligible for the office of election commissioner. The election commissioner shall not hold any other elective office and shall not be eligible to any elective office or to become a candidate for an elective office during his or her term of office or within six months after leaving office.

Source: Laws 1994, LB 76, § 28; Laws 1997, LB 764, § 14; Laws 2001, LB 226, § 1; Laws 2003, LB 707, § 1.

Under the act of 1889, a candidate for public office was not eligible to act as a supervisor of registration, but a supervisor of registration was eligible to be elected to public office. State ex rel. Roche v. Cosgrove, 34 Neb. 386, 51 N.W. 974 (1892).

32-209 Chief deputy election commissioner; qualifications; appointment; bond; duties.

(1) The election commissioner in counties having a population of more than one hundred thousand inhabitants shall appoint a chief deputy election commissioner in the manner provided in section 32-210. The chief deputy election commissioner shall be a member of a different political party than the election commissioner, shall be a registered voter in the county and of the party he or she is to represent, and shall be a resident of such county for at least one year.

(2) The chief deputy election commissioner shall hold office until the term of the election commissioner expires.

(3) The chief deputy election commissioner shall give bond to the State of Nebraska in the sum of five thousand dollars with security to be approved by the Governor conditioned on the faithful performance of the duties of such office.

(4) The chief deputy election commissioner shall perform duties assigned by the election commissioner. In the absence of the election commissioner, the chief deputy election commissioner shall perform all the duties of the election commissioner consistent with the policies and procedures established by the election commissioner. The chief deputy election commissioner shall also be responsible for carrying out any directions properly made and given by the election commissioner prior to his or her absence.

Source: Laws 1994, LB 76, § 29; Laws 2001, LB 226, § 2.

Deputy election commissioner is required to be a member of a political party other than the one with which the election commissioner affiliates. State ex rel. Williams v. Moorhead, 96 Neb. 559, 148 N.W. 552 (1914), reversing 95 Neb. 80, 144 N.W. 1055 (1914).

32-210 Chief deputy election commissioner; vacancy; procedure for filling.

The election commissioner in counties having a population of more than one hundred thousand inhabitants shall, within ten days after being appointed or being notified that a vacancy exists in the office of chief deputy election commissioner, notify by registered or certified mail the county chairperson of the political parties from which a chief deputy election commissioner may be appointed that an appointment needs to be made. The county chairperson of the political parties shall call a meeting of a committee comprised of the county chairperson, vice-chairperson, secretary, and treasurer of the political parties within ten days after receiving the letter for the purpose of preparing a list of three or more candidates. The list shall be submitted to the election commissioner within five days after the meeting, and the election commissioner shall select a chief deputy election commissioner from the list of names of candidates submitted within ten days after receiving the list.

Source: Laws 1994, LB 76, § 30; Laws 1997, LB 764, § 15.

32-211 Election commissioner; counties having 20,000 to 100,000 inhabitants; chief deputy; appointment; qualifications; terms; vacancy; elimination of office.

The office of election commissioner may be created for each county having a population of not less than twenty thousand nor more than one hundred thousand inhabitants. Such office may be created by resolution of the county

board establishing such office, and the election commissioner shall be appointed by the county board. The appointment of a chief deputy election commissioner shall be at the option of the county board. If a chief deputy election commissioner is appointed, he or she shall be a member of a different political party than the election commissioner. The election commissioner and chief deputy election commissioner shall be registered voters, residents of such county for at least one year, and of good moral character and integrity and capacity. The election commissioner and chief deputy election commissioner shall serve for terms of four years from the date of their initial appointment or until their successors have been appointed and qualified. The county board may by resolution eliminate the office of election commissioner at the end of a term or upon a vacancy in the office. The county board shall not appoint any county official who is serving an elected term to the office of election commissioner or chief deputy election commissioner. If a vacancy occurs in either office, the county board shall appoint an election commissioner or chief deputy election commissioner to serve for the unexpired term.

Source: Laws 1994, LB 76, § 31; Laws 1997, LB 764, § 16; Laws 2001, LB 226, § 3.

32-212 Election commissioner; appoint other employees; qualifications.

Each election commissioner shall appoint other deputies, precinct and district inspectors, judges of election, clerks of election, deputy registrars, and peace officers to serve at elections and other assistants necessary for the performance of the duties of his or her office, the registration of voters, and the conduct of elections. Such employees shall be registered voters representing all political parties as nearly as practicable in proportion to the number of votes cast in such county at the immediately preceding general election for the office of Governor or President of the United States by the parties, respectively.

Source: Laws 1994, LB 76, § 32.

A ballot, endorsed by one judge of election and an inspector appointed under this section, is valid where the voter believes that the ballot was endorsed by two judges of election. Rasp v. McHugh, 121 Neb. 380, 237 N.W. 394 (1931).

32-213 Election commissioner; oath of office; bond.

Before entering upon his or her duties, the election commissioner shall take and subscribe an oath in the form provided in section 11-101.01 and shall give bond in the sum of ten thousand dollars conditioned on the faithful and honest performance of the duties of the office and the care and preservation of the property of the office within thirty days after appointment as provided in section 11-105. When the election commissioner is appointed by the Governor, the bond shall be given to the State of Nebraska, approved by the Governor, and filed with the Secretary of State. When the election commissioner is appointed by the county board, the bond shall be given to, approved by, and filed with the county board.

Source: Laws 1994, LB 76, § 33.

32-214 Election commissioner; enforcement of act; election commissioner or chief deputy election commissioner; removal; grounds; procedure.

The election commissioner shall be responsible for the enforcement of the Election Act as it relates to his or her office and for the competency, integrity, and conduct of his or her chief deputy election commissioner and all personnel

appointed by him or her. The election commissioner or chief deputy election commissioner shall be removed when it appears that (1) he or she has been derelict in the performance of the duties of his or her office, (2) he or she is incompetent, (3) his or her conduct is prejudicial to the public interest, (4) he or she has appointed incompetent, negligent, or corrupt precinct or district inspectors, judges of election, clerks of election, or deputy registrars, (5) a fair and impartial registration of voters was not obtained in any district of the county, or (6) the act was not enforced in the county. If the election commissioner is appointed by the Governor, the Governor shall remove the election commissioner or chief deputy election commissioner when either is subject to removal under this section. If the Governor fails to remove the election commissioner or the chief deputy election commissioner when either the election commissioner or deputy, or both, are subject to removal under this section, any citizen of the county may institute an action to order the Governor to remove the election commissioner, chief deputy election commissioner, or both. If the election commissioner is appointed by the county board, the county board shall remove the election commissioner or chief deputy election commissioner when either is subject to removal under this section. If the county board fails to remove the election commissioner or the chief deputy election commissioner when either the election commissioner or deputy, or both, are subject to removal under this section, any citizen of the county may institute an action to order the county board to remove the election commissioner, chief deputy election commissioner, or both.

Source: Laws 1994, LB 76, § 34; Laws 1997, LB 764, § 17.

The election commissioner is responsible for the enforcement of the election laws. Rasp v. McHugh, 121 Neb. 380, 237 N.W. 394 (1931).

32-215 Election commissioner; rules and regulations; select registration and polling places.

(1) The election commissioner shall adopt and promulgate rules and regulations in regard to elections and the registration of voters in his or her county which are not inconsistent with the Election Act or the rules and regulations of the Secretary of State. The election commissioner shall have charge of and make provisions for all elections to be held in such county unless otherwise specifically provided.

(2) The election commissioner shall select and appoint the places of registration and the polling place for each precinct and cause the same to be properly equipped and maintained.

Source: Laws 1994, LB 76, § 35; Laws 1997, LB 764, § 18.

32-216 Election commissioner; office; records and equipment; annual inventory statement; purchases; requirements; waiver of bid procedure; when.

(1) The county board of each county which has an election commissioner pursuant to section 32-207 or 32-211 shall provide an office for the election commissioner suitable for the preservation of the records of his or her office and the performance of his or her duties. The expense of providing and furnishing such office shall be the responsibility of the county. All books, documents, papers, records, and election equipment or appurtenances held or used by or under the control of any officer of any such county or any city, village, or political subdivision of the county and relating to or used in the

conduct of elections and registration of voters shall, upon request of the election commissioner, be transferred to the care, custody, and control of the election commissioner. The election commissioner shall prepare and file the annual inventory statement with the county board of all county personal property in his or her custody or possession as provided in sections 23-346 to 23-350.

(2) The county shall provide all necessary supplies, materials, equipment, and services for the registration of voters, for the conduct of elections, and for every incidental purpose connected with registration or elections in accordance with the County Purchasing Act. The county shall allow the election commissioner to purchase or acquire any material, equipment, or service needed to meet any emergency or any situation in which the procedures of the County Purchasing Act cannot be implemented in a reasonable amount of time to comply with any registration or election process required by the Election Act. Purchases related to voting systems, including creating, casting, and counting ballots, shall be subject to the bid procedure in accordance with the County Purchasing Act, except that the election commissioner may waive any bid procedure and purchase supplies and contract for services for voting systems whenever such bid procedure would in any way interfere with the timely and proper administration and conduct of an election.

Source: Laws 1994, LB 76, § 36; Laws 2003, LB 358, § 6.

Cross References

County Purchasing Act, see section 23-3101.

Election commissioner of Douglas County is not in charge of municipal elections in Sarpy County. Barton v. City of Omaha, 180 Neb. 752, 145 N.W.2d 444 (1966).

A county is liable for the expense of reprinting correct ballots where a mistake is discovered in ballots which have already been printed and paid for by the county. Wahlquist v. Adams County, 94 Neb. 682, 144 N.W. 171 (1913).

32-217 Election commissioner, chief deputy election commissioner, and employees; county employees; salaries; how paid.

The election commissioner, the chief deputy election commissioner, and all employees of the office of the election commissioner shall be county employees. The county board shall set the salaries of the election commissioner and chief deputy election commissioner at least sixty days prior to the expiration of the term of office of the election commissioner holding office. The salary shall become effective as soon as such salary may become operative under the Constitution of Nebraska.

In counties having a population of more than two hundred thousand inhabitants, the salary of the election commissioner shall be at least ten thousand five hundred dollars annually payable in periodic installments out of the county general fund and the salary of the chief deputy election commissioner shall be at least nine thousand dollars annually payable in periodic installments out of the county general fund.

In counties having a population of more than one hundred fifty thousand and not more than two hundred thousand inhabitants, the salary of the election commissioner shall be at least seven thousand five hundred dollars annually payable in periodic installments out of the county general fund and the salary of the chief deputy election commissioner shall be at least six thousand dollars annually payable in periodic installments out of the county general fund.

In counties having a population of more than one hundred thousand and not more than one hundred fifty thousand inhabitants, the salary of the election commissioner shall be at least nine thousand five hundred dollars annually payable in periodic installments out of the county general fund and the salary of the chief deputy election commissioner shall be at least eight thousand five hundred dollars annually payable in periodic installments out of the county general fund.

In counties having a population of not more than one hundred thousand inhabitants, the salary of the election commissioner shall be at least six thousand five hundred dollars annually payable in periodic installments out of the county general fund and the salary of the chief deputy election commissioner shall be at least five thousand dollars annually payable in periodic installments out of the county general fund.

Source: Laws 1994, LB 76, § 37.

32-218 County clerk perform duties of election commissioner; when; deputy county clerk for elections.

(1) The county clerk shall have the powers and perform the duties assigned to the election commissioner except in those counties which have an election commissioner as provided by section 32-207 or 32-211. The powers and duties assigned to the county clerk in the Election Act relating to the registration of voters and the conduct of elections shall only apply to county clerks in counties without an election commissioner. The county clerk may hire additional personnel to perform the duties assigned under the act.

(2) The county board may establish the position of deputy county clerk for elections. Such deputy shall be appointed by the county clerk and shall not be a member of the same political party as the county clerk, except that any deputy county clerk for elections serving on January 1, 1995, shall be allowed to continue in his or her position for as long as he or she holds the position. Under the direction of the county clerk, the deputy shall be primarily responsible for performing the duties imposed on the county clerk by the election laws of this state and shall perform such other duties as may from time to time be assigned to him or her by the county clerk. The deputy shall serve at the pleasure of the county clerk. The county board shall determine the compensation of the deputy.

Source: Laws 1994, LB 76, § 38.

32-219 Political activities; restrictions.

The election commissioner and chief deputy election commissioner, once appointed, qualified, bonded, and sworn into office, and the county clerk acting as the election officer, shall not hold a political party office or be a member or officer of a candidate committee for any candidate seeking public office. This section shall not prohibit a county clerk acting as the election officer from participating in his or her own reelection campaign or fundraisers. This section shall not be construed to preclude an election commissioner, a chief deputy election commissioner, or a county clerk from being a delegate to a county, state, or national political party convention.

Source: Laws 1994, LB 76, § 39.

(c) COUNTIES WITH ELECTION COMMISSIONERS

32-220 Sections; applicability.

Sections 32-221 to 32-228 shall apply to counties which have an election commissioner as provided in section 32-207 or 32-211.

Source: Laws 1994, LB 76, § 40.

32-221 Inspectors and judges and clerks of election; appointment; term; qualifications; vacancy; failure to appear; removal.

(1) The election commissioner shall appoint precinct and district inspectors, judges of election, and clerks of election to assist the election commissioner in conducting elections on election day. In counties with a population of less than three hundred thousand inhabitants, judges and clerks of election and inspectors shall be appointed at least thirty days prior to the statewide primary election, shall hold office for terms of two years or until their successors are appointed and qualified for the next statewide primary election, and shall serve at all elections in the county during their terms of office. In counties with a population of three hundred thousand or more inhabitants, judges and clerks of election shall be appointed at least thirty days prior to the first election for which appointments are necessary and shall serve for at least four elections.

(2) Judges and clerks of election may be selected at random from a cross section of the population of the county. All qualified citizens shall have the opportunity to be considered for service. All qualified citizens shall fulfill their obligation to serve as judges or clerks of election as prescribed by the election commissioner. No citizen shall be excluded from service as a result of discrimination based upon race, color, religion, sex, national origin, or economic status. No citizen shall be excluded from service unless excused by reason of ill health or other good and sufficient reason.

(3) All persons appointed shall be of good repute and character, be able to read and write the English language, and except as otherwise provided in subsection (5) of section 32-223, be registered voters in the county. No candidate at an election shall be appointed as a judge or clerk of election or inspector for such election other than a candidate for delegate to a county, state, or national political party convention.

(4) If a vacancy occurs in the office of judge or clerk of election or inspector, the election commissioner shall fill such vacancy in accordance with section 32-223. If any judge or clerk of election or inspector fails to appear at the hour appointed for the opening of the polls, the remaining officers shall notify the election commissioner, select a registered voter to serve in place of the absent officer if so directed by the election commissioner, and proceed to conduct the election. If the election commissioner finds that a judge or clerk of election or inspector does not possess all the qualifications prescribed in this section or if any judge or clerk of election or inspector is guilty of neglecting the duties of the office or of any official misconduct, the election commissioner shall remove the person and fill the vacancy.

Source: Laws 1994, LB 76, § 41; Laws 1997, LB 764, § 19; Laws 2003, LB 357, § 1.

32-222 Inspectors and judges and clerks of election; oath.

Before entering upon his or her duties, each judge of election, clerk of election, and inspector shall take and subscribe an oath and file the same with the election commissioner. The oath need not be taken and signed before a person authorized to administer oaths. If the oath is printed in the sign-in register, the signing of the sign-in register by such judges, clerks, and inspectors shall be a complete and sufficient compliance with the requirements of section 11-101.01. The form of the oath shall be as provided in such section.

Source: Laws 1994, LB 76, § 42; Laws 1997, LB 764, § 20.

32-223 Receiving board; members; requirements; inspectors; clerk of election; appointment.

(1) For each precinct except as provided in subsection (2) of this section, the election commissioner shall appoint a precinct inspector and a receiving board to consist of at least two judges and two clerks of election. The election commissioner may appoint district inspectors to aid the election commissioner in the performance of his or her duties and supervise a group of precincts on election day.

(2) In precincts in which electronic voting systems are used, the receiving board shall have at least three members.

(3) The election commissioner may allow persons serving on a receiving board as judges and clerks of election and precinct inspectors to serve for part of the time the polls are open and appoint other judges and clerks of election and precinct inspectors to serve on the same receiving board for the remainder of the time the polls are open.

(4) On each receiving board at any one time, one judge and one clerk of election shall be registered voters of the political party casting the highest number of votes in the county for Governor or for President of the United States in the immediately preceding general election, and one judge and one clerk of election shall be registered voters of the political party casting the next highest number of votes in the county for Governor or for President of the United States in the immediately preceding general election, except that one judge or clerk of election may be a registered voter who is not affiliated with either of such parties. If a third judge is appointed, such judge shall be a registered voter of the political party casting the highest number of votes in the county for Governor or for President of the United States in the immediately preceding general election. All precinct and district inspectors shall be divided between all political parties as nearly as practicable in proportion to the number of votes cast in such county at the immediately preceding general election for Governor or for President of the United States by the parties, respectively.

(5) The election commissioner may appoint a person who is at least sixteen years old but is not eligible to register to vote as a clerk of election. Such clerk of election shall meet the requirements of subsection (3) of section 32-221, except that such clerk shall not be required to be a registered voter. No more than one clerk of election appointed under this subsection shall serve at any precinct. A clerk of election appointed under this subsection shall be considered a registered voter who is not affiliated with a political party for purposes of this section.

Source: Laws 1994, LB 76, § 43; Laws 2002, LB 1054, § 8; Laws 2003, LB 357, § 2; Laws 2003, LB 358, § 7.

32-224 Repealed. Laws 2007, LB 646, § 17.

32-225 Precinct and district inspectors; duties.

(1) The precinct inspector appointed pursuant to section 32-223 shall be present in the polling place of the precinct during all elections and act as the personal agent and deputy of the election commissioner. The precinct inspector shall enforce the Election Act and see that all proceedings are in accordance with the instructions, rules, regulations, and laws and shall challenge any voter whose name does not appear on the election register or who the precinct inspector believes is impersonating a person whose name appears on the register or is attempting to vote illegally. The precinct inspector shall ensure that the judges and clerks of election comply with the act in the conduct of the election.

(2) A district inspector appointed pursuant to section 32-223 shall oversee the procedures of a group of polling places and shall act as the personal agent and deputy of the election commissioner. The district inspector shall ensure that the Election Act is uniformly enforced at the polling places assigned to him or her and perform tasks assigned by the election commissioner. The district inspector may perform all of the duties required of a precinct inspector.

Source: Laws 1994, LB 76, § 45.

It is the duty of election commissioner and his assistants to see that judges and clerks obey the law, conduct and canvass the votes, and make prompt returns to the election commissioner. State ex rel. Williams v. Moorhead, 96 Neb. 559, 148 N.W. 552 (1914), reversing 95 Neb. 80, 144 N.W. 1055 (1914).

32-226 Election duties; who may perform.

At the discretion of the precinct or district inspector, any clerk of election may perform the duties of a judge of election and any judge of election may perform the duties of a clerk of election. The election commissioner may excuse the two clerks of election from serving at any election, and the judges of election shall perform such duties without additional compensation. The precinct inspector may perform the duties of a judge or clerk of election when authorized by the election commissioner.

Source: Laws 1994, LB 76, § 46; Laws 1999, LB 802, § 1.

32-227 Election workers; wages.

The judges and clerks of election, precinct and district inspectors, and other temporary election workers shall receive wages at no less than the minimum rate set in section 48-1203 for each hour of service rendered. The election commissioner shall determine the rate of pay and may vary the rate based on the duties of each position. Each such election worker shall sign an affidavit stating the number of hours he or she has worked.

Source: Laws 1994, LB 76, § 47; Laws 2002, LB 1054, § 9.

32-228 Election worker; notice of appointment; failure to serve; penalty.

(1) The election commissioner shall notify each person appointed as a judge or clerk of election, precinct inspector, district inspector, member of a counting board, or member of a canvassing board of the appointment by letter. Such letter shall be mailed at least fifteen days prior to the required reporting date for each statewide primary and general election. Each appointee shall, at the time fixed in the notice of appointment, report to the office of the election

commissioner or other designated location to complete any informational forms and receive training regarding his or her duties. The training shall include instruction as required by the Secretary of State and any other training deemed necessary by the election commissioner. Each appointee, if found qualified and unless excused by reason of ill health or other good and sufficient reason, shall serve for the term of his or her appointment.

(2) An appointee who fails to serve for such term, unless excused by reason of ill health or other good and sufficient reason, is guilty of a Class V misdemeanor. The election commissioner shall submit the names of appointees violating this subsection to the local law enforcement agency for citation pursuant to sections 32-1549 and 32-1550.

Source: Laws 1994, LB 76, § 48; Laws 1997, LB 764, § 21; Laws 2002, LB 1054, § 10.

(d) COUNTIES WITHOUT ELECTION COMMISSIONERS

32-229 Sections; applicability.

Sections 32-230 to 32-240 shall apply to counties which do not have an election commissioner.

Source: Laws 1994, LB 76, § 49.

32-230 Receiving board; clerk of election; appointment; procedure; members; qualification; vacancy.

(1) As provided in subsection (5) of this section, the precinct committeeman and committeewoman of each political party shall appoint a receiving board consisting of three judges of election and two clerks of election except as provided in subsection (3) of this section. The chairperson of the county central committee of each political party shall send the names of the appointments to the county clerk no later than February 1 prior to the primary election.

(2) If no names are submitted by the chairperson, the county clerk shall appoint judges or clerks of election from the appropriate political party. Judges and clerks of election may be selected at random from a cross section of the population of the county. All qualified citizens shall have the opportunity to be considered for service. All qualified citizens shall fulfill their obligation to serve as judges or clerks of election as prescribed by the county clerk. No citizen shall be excluded from service as a result of discrimination based upon race, color, religion, sex, national origin, or economic status. No citizen shall be excluded from service unless excused by reason of ill health or other good and sufficient reason.

(3) In precincts in which electronic voting systems are used, the receiving board shall have at least three members.

(4) The county clerk may allow persons serving on a receiving board to serve for part of the time the polls are open and appoint other persons to serve on the same receiving board for the remainder of the time the polls are open.

(5) In each precinct at any one time, one judge and one clerk of election shall be appointed from the political party casting the highest number of votes in the county for Governor or for President of the United States in the immediately preceding general election, one judge and one clerk shall be appointed from the political party casting the next highest number of votes in the county for

Governor or for President of the United States in the immediately preceding general election, and one judge shall be appointed from the political party casting the third highest number of votes in the county for Governor or for President of the United States in the immediately preceding general election. If the political party casting the third highest number of votes cast less than ten percent of the total vote cast in the county at the immediately preceding general election, the political party casting the highest number of votes at the immediately preceding general election shall be entitled to two judges and one clerk.

(6) The county clerk may appoint registered voters to serve in case of a vacancy among any of the judges or clerks of election or in addition to the judges and clerks in any precinct when necessary to meet any situation that requires additional judges and clerks. Such appointees may include registered voters unaffiliated with any political party. Such appointees shall serve at subsequent or special elections as determined by the county clerk.

(7) The county clerk may appoint a person who is at least sixteen years old but is not eligible to register to vote as a clerk of election. Such clerk of election shall meet the requirements of subsection (1) of section 32-231, except that such clerk shall not be required to be a registered voter. No more than one clerk of election appointed under this subsection shall serve at any precinct. A clerk of election appointed under this subsection shall be considered a registered voter who is not affiliated with a political party for purposes of this section.

Source: Laws 1994, LB 76, § 50; Laws 1997, LB 764, § 22; Laws 2002, LB 1054, § 11; Laws 2003, LB 357, § 3; Laws 2003, LB 358, § 8; Laws 2007, LB646, § 1.

An election board, as ordinarily constituted, requires three judges and two clerks. Mosiman v. Weber, 107 Neb. 737, 187 N.W. 109 (1922).

32-231 Judge and clerk of election; qualifications; term; district inspectors; duties.

(1) Each judge and clerk of election appointed pursuant to section 32-230 shall (a) be of good repute and character and able to read and write the English language, (b) reside in the precinct in which he or she is to serve unless necessity demands that personnel be appointed from another precinct, (c) be a registered voter except as otherwise provided in subsection (7) of section 32-230, and (d) serve for a term of two years or until judges and clerks of election are appointed for the next primary election. No candidate at an election shall be eligible to serve as a judge or clerk of election at the same election other than a candidate for a delegate to a county, state, or national political party convention.

(2) The county clerk may appoint district inspectors to aid the county clerk in the performance of his or her duties and supervise a group of precincts on election day. A district inspector shall meet the requirements for judges and clerks of election as provided in subsection (1) of this section, shall oversee the procedures of a group of polling places, and shall act as the personal agent and deputy of the county clerk. The district inspector shall ensure that the Election Act is uniformly enforced at the polling places assigned to him or her and perform tasks assigned by the county clerk. The district inspector may perform all of the duties required of a judge or clerk of election.

Source: Laws 1994, LB 76, § 51; Laws 1999, LB 802, § 2; Laws 2002, LB 1054, § 12; Laws 2003, LB 357, § 4.

32-232 Election duties; who may perform; messenger; appointment; duties.

(1) Any clerk of election may perform the duties of a judge of election, and any judge of election may perform the duties of a clerk of election. The county clerk may excuse two clerks of election from serving at any election, and the judges of election shall perform such duties without additional compensation.

(2) The county clerk shall designate one of the members of the receiving board as a messenger. The messenger shall receive from the county clerk the ballots and other equipment necessary for holding the election in the precinct for which he or she is a judge or clerk and shall deliver them to the polling place in his or her precinct at least one hour before the time provided by section 32-908 for opening the polls. The messenger shall return the ballots and other equipment to the county clerk as soon as possible after the votes are counted.

Source: Laws 1994, LB 76, § 52; Laws 1999, LB 802, § 3; Laws 2007, LB646, § 2.

32-233 Election workers; wages.

Judges and clerks of election, district inspectors, messengers, and other temporary election workers shall receive wages at no less than the minimum rate set in section 48-1203 for each hour of service rendered. The county clerk shall determine the rate of pay and may vary the rate based on the duties of each position. Each such election worker shall sign an affidavit stating the number of hours he or she has worked.

Source: Laws 1994, LB 76, § 53; Laws 1996, LB 1011, § 20; Laws 1999, LB 802, § 4; Laws 2002, LB 1054, § 13.

32-234 Repealed. Laws 2007, LB 646, § 17.

32-235 Election worker; notice of appointment.

(1) The county clerk shall, by mail, notify judges and clerks of election, district inspectors, members of counting boards, and members of canvassing boards of their appointment. The notice shall inform the appointee of his or her appointment and of the date and time he or she is required to report to the office of the county clerk or other designated location and the polling place. The notice shall be mailed at least fifteen days prior to each statewide primary and general election. The county clerk shall order the members of the receiving board to appear at their respective polling place on the day and at the hour specified in the notice of appointment.

(2) Each appointee shall, at the time fixed in the notice of appointment, report to the office or other location to complete any informational forms and receive training regarding his or her duties. The training shall include instruction as required by the Secretary of State and any other training deemed necessary by the county clerk.

Source: Laws 1994, LB 76, § 55; Laws 1997, LB 764, § 23; Laws 1999, LB 802, § 5; Laws 2002, LB 1054, § 14; Laws 2007, LB646, § 3.

32-236 Judge and clerk of election; district inspector; service required; violation; penalty.

Each judge and clerk of election appointed pursuant to subsection (5) of section 32-230 and each district inspector appointed pursuant to subsection (2) of section 32-231 shall serve at all elections, except city and village elections, held in the county or precinct during his or her two-year term unless excused. A violation of this section by an appointee is a Class V misdemeanor. The county clerk shall submit the names of appointees violating this section to the local law enforcement agency for citation pursuant to sections 32-1549 and 32-1550.

Source: Laws 1994, LB 76, § 56; Laws 1997, LB 764, § 24; Laws 1999, LB 802, § 6; Laws 2002, LB 1054, § 15.

32-237 Judge or clerk of election; inspector; failure to appear; replacement procedure.

If any judge or clerk of election or inspector fails to appear at the appropriate hour, the inspector or remaining judges and clerks shall notify the county clerk, select a registered voter to serve in place of the absent person, and proceed to conduct the election. The registered voter shall be affiliated with the same political party as the absent person if possible.

Source: Laws 1994, LB 76, § 57; Laws 1997, LB 764, § 25; Laws 1999, LB 802, § 7.

32-238 Judge or clerk of election; inspector; oath.

Before entering upon his or her duties, each judge or clerk of election and each inspector shall sign an oath to be returned to the county clerk after the polls close. The oath need not be taken and signed before a person authorized to administer oaths. If the oath is printed in the sign-in register, the signing of the sign-in register shall be complete and sufficient compliance with the requirements of section 11-101.01. The form of the oath shall be as provided in such section.

Source: Laws 1994, LB 76, § 58; Laws 1997, LB 764, § 26; Laws 1999, LB 802, § 8.

32-239 Judges and clerks of election; district inspectors; vacancies; how filled.

All vacancies of judges and clerks of election appointed pursuant to section 32-230 and district inspectors appointed pursuant to subsection (2) of section 32-231 shall be filled as nearly as possible in the manner in which the original appointments were made. At least fifteen days prior to any election, the county clerk shall review the list of district inspectors and the list of judges and clerks of election in the precincts in which the election is to occur and fill any vacancies. When a district inspector or judge or clerk of election is a candidate for an office to be voted upon at the election, except for a candidate for a delegate to a county, state, or national political party convention, his or her position as a district inspector, judge, or clerk shall be vacant.

Source: Laws 1994, LB 76, § 59; Laws 1999, LB 802, § 9.

32-240 Judge or clerk of election; district inspector; excused from serving; when.

Any person who is appointed to serve as a judge or clerk of election or district inspector may, at any time before election day, be excused by the county clerk from serving in such capacity by reason of his or her own sickness, the serious illness of any member of his or her family, or unavoidable absence from the county on election day.

Source: Laws 1994, LB 76, § 60; Laws 1997, LB 764, § 27; Laws 1999, LB 802, § 10.

(e) ELECTION COMMISSIONERS AND COUNTY CLERKS

32-241 Election worker; employment protection; employer; prohibited acts; violation; penalty; lists; prohibited acts.

(1) Any person who is appointed in any county to serve as a judge or clerk of election, a precinct or district inspector, a canvassing board member, or any other election worker shall not be subject to discharge from employment, loss of pay, loss of overtime pay, loss of sick leave, loss of vacation time, the threat of any such action, or any other form of penalty as a result of his or her absence from employment due to such service if he or she gives reasonable notice to his or her employer of such appointment. Reasonable notice shall be waived for those persons appointed as judges or clerks of election on the day of election to fill vacancies. Any such person shall be excused upon request from any shift work, without loss of pay, for the hours he or she is required to serve and, if he or she is required to serve eight hours or more, for eight hours prior to and eight hours following the hours he or she is required to serve.

(2) No employer shall subject an employee serving as a judge or clerk of election, a precinct or district inspector, a canvassing board member, or any other election worker to coercion, discharge from employment, loss of pay, loss of overtime pay, loss of sick leave, loss of vacation time, the threat of any such action, or any other form of penalty on account of his or her absence from employment by reason of such service, except that an employer may reduce the pay of an employee for each hour of work missed by an amount equal to the hourly compensation other than expenses paid to the employee by the county for such service.

(3) A violation of this section is a Class V misdemeanor. The election commissioner or county clerk shall submit the names of persons violating this section to the local law enforcement agency for citation pursuant to sections 32-1549 and 32-1550.

(4) The election commissioner or county clerk shall not provide a list of judges or clerks of election, precinct or district inspectors, canvassing board members, or other election workers to any committee or to any person until the election has been completed.

Source: Laws 1994, LB 76, § 61; Laws 1997, LB 764, § 28; Laws 2002, LB 1054, § 16; Laws 2003, LB 548, § 1.

32-242 Oaths; who may administer; seal.

(1) The election commissioner, county clerk, chief deputy election commissioners, office personnel of the election commissioner or county clerk, judges of election, precinct or district inspectors, and deputy registrars may administer all oaths required or necessary in the administration of the Election Act.

(2) The election commissioner or county clerk may adopt an official seal for use as prescribed by law.

Source: Laws 1994, LB 76, § 62; Laws 1997, LB 764, § 29.

ARTICLE 3

REGISTRATION OF VOTERS

Section
32-301. Registration list; registration of electors; registration records; how kept; use on election day.
32-302. Registration of electors; office hours; deadline for registration; designated voter registration agency.
32-303. Registration of electors; other places of registration.
32-304. Repealed. Laws 2005, LB 566, § 59.
32-305. Deputy registrar; application; training; when; oath; violation; effect.
32-306. Deputy registrars; teams; duties; acknowledgment of registration; when; applicability of section.
32-307. Voter registration site; acts prohibited; registration procedure.
32-308. Registration list; verification; voter registration application; Department of Motor Vehicles; duties; registration; when; persons involved in registration; status.
32-309. Voter registration application; delivery; when; confidentiality.
32-310. Voter registration; State Department of Education; Department of Health and Human Services; duties; confidentiality; persons involved in registration; status; delivery of applications; when; registration; when.
32-311. Registration of elector; personal application; place or time.
32-311.01. Registration application; use; informational statements.
32-312. Registration application; contents.
32-312.01. Registration application; examine for sufficiency.
32-312.02. Registration application; required information.
32-312.03. Registration application; identity confirmation; identifying number.
32-312.04. Registration application; use to update voter registration record; requirements.
32-312.05. Voter registration record; effective date.
32-313. Qualifications of elector; abstract of felony convictions; clerks of court; duty; notification of federal court felony conviction; how treated.
32-314. Loss of eligibility to vote; when; update voter registration record; when; change of residence within county; change of name or party affiliation; effect.
32-315. Change of name or address; election commissioner or county clerk; duties.
32-316. Certificate of registration; issuance; fee.
32-317. Designation of postal address; when; no residence; how treated.
32-318. Signature; when required.
32-318.01. Identification documents; required, when.
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32-320. Acceptable mail-in forms; official registration applications; distribution; proceeds; how credited.
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Section
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32-301 Registration list; registration of electors; registration records; how kept; use on election day.

(1) The Secretary of State shall implement, in a uniform and nondiscriminatory manner, a single, uniform, official, centralized, interactive computerized statewide voter registration list defined, maintained, and administered at the office of the Secretary of State that contains the name and registration information of every legally registered voter in the state and assigns a unique identifier to each legally registered voter in the state. The computerized list shall serve as the single system for storing and managing the official list of registered voters throughout the state and shall comprise the voter registration register. The computerized list shall be coordinated with other agency data bases within the state and shall be available for electronic access by election commissioners and county clerks. The computerized list shall serve as the official voter registration list for the conduct of all elections under the Election Act. The Secretary of State shall provide such support as may be required so that election commissioners and county clerks are able to electronically enter voter registration information obtained by such officials on an expedited basis at the time the information is received. The Secretary of State shall provide adequate technological security measures to prevent unauthorized access to the computerized list. No General Funds shall be appropriated for purposes of this list, and funds available in the Election Administration Fund may be used for such purposes.

(2) The election commissioner or county clerk shall provide for the registration of the electors of the county. Upon receipt of a voter registration application in his or her office from an eligible elector, the election commissioner or county clerk shall enter the information from the application in the voter registration register and may create an electronic image, photograph, microphotograph, or reproduction in an electronic digital format to be used as the voter registration record. The election commissioner or county clerk shall provide a precinct list of registered voters for each precinct for the use of judges and clerks of election in their respective precincts on election day. An electronically prepared list of registered voters in a form prescribed by the Secretary of State shall meet the requirements for a precinct list of registered voters.

Source: Laws 1994, LB 76, § 63; Laws 1999, LB 234, § 1; Laws 2003, LB 357, § 5; Laws 2005, LB 566, § 5.

32-302 Registration of electors; office hours; deadline for registration; designated voter registration agency.

The office of the election commissioner or county clerk shall remain open during the usual business days of the year for purposes of general registration and revision and for the transaction of the business of the office. Such registration and revision shall be carried on at all times during the regular business hours of the office of the election commissioner or county clerk ending at 6 p.m. on the second Friday preceding any election. The election commis-

sioner or county clerk may, during any of the seven days immediately preceding the deadline for registration, cause his or her office to be open at times in addition to the hours during which it is required by law to be open in order for electors to register to vote. The office of the election commissioner or county clerk shall be a designated voter registration agency for purposes of section 7 of the National Voter Registration Act of 1993, 42 U.S.C. 1973gg-5, as such section existed on March 11, 2008.

Source: Laws 1994, LB 76, § 64; Laws 2008, LB750, § 1.
Effective date March 11, 2008.

32-303 Registration of electors; other places of registration.

In addition to his or her office, the election commissioner or county clerk may provide a place of registration in each incorporated city or village in the county and in each legislative district in cities of the metropolitan class. The place of registration may be open not less than one day within the thirty days prior to the statewide primary election and the statewide general election and at such times and during such hours as the election commissioner or county clerk may direct. An election commissioner or county clerk may establish a permanent place of registration in each incorporated city or village in the county or each legislative district in a city of the metropolitan class by training registered voters to act as deputy registrars. A private residence shall not be used as a permanent place of registration except in incorporated villages.

Source: Laws 1994, LB 76, § 65; Laws 2002, LB 935, § 4.

32-304 Repealed. Laws 2005, LB 566, § 59.

32-305 Deputy registrar; application; training; when; oath; violation; effect.

(1) Any registered voter may apply to the election commissioner or county clerk to be appointed as a deputy registrar for the purpose of registering voters. The application form shall be prescribed by the election commissioner, county clerk, or Secretary of State. The deputy registrar shall notify the election commissioner or county clerk of the location and time of proposed voter registration and the names and party affiliations of the deputy registrars at least seventy-two hours prior to required publication deadlines. The election commissioner or county clerk, at his or her discretion, may approve or disapprove the deputy registrar's plans for voter registration and shall notify the deputy registrar of such decision.

(2) Any person appointed as a deputy registrar shall attend a training session conducted by an election commissioner or county clerk. A person who attends and successfully completes a training session after January 1, 1995, shall be qualified as a deputy registrar for any county in the state and shall receive a certificate verifying successful completion of the training and indicating his or her qualification as a deputy registrar to conduct registration in any county in the state.

(3) Before entering upon his or her duties, the deputy registrar shall take and subscribe to the following oath:

You do solemnly swear that you will support the Constitution of the United States and the Constitution of Nebraska and will faithfully and impartially

perform the duties of the office of deputy registrar according to law and to the best of your ability.

(4) Deputy registrars trained after January 1, 1995, shall not be required to attend another training session unless the Secretary of State determines that substantial changes have occurred in the voter registration process requiring additional training. The training session may vary in length but shall not exceed four hours. The Secretary of State shall inspect and review all training programs, procedures, and practices to assure that they relate to the position of a deputy registrar and his or her duties.

(5) Any deputy registrar who violates any registration procedure, rule, regulation, or guideline may have his or her status as a deputy registrar revoked by the election commissioner, county clerk, or Secretary of State.

Source: Laws 1994, LB 76, § 67; Laws 1997, LB 764, § 30.

32-306 Deputy registrars; teams; duties; acknowledgment of registration; when; applicability of section.

Deputy registrars shall register voters in teams of at least two deputies, one of whom is not a member of the same political party as the other or others. The deputy registrars shall return the completed registration applications to the office of the election commissioner or county clerk of the county in which the registrations are to be effective no later than the end of the next business day after the registrations are taken. The election commissioner or county clerk shall mail an acknowledgment of registration at least five days prior to the next election to each person registered by a deputy registrar. Deputy registrars shall not register voters after 6 p.m. on the third Friday preceding any election. A registration application received after the deadline shall not be processed by the election commissioner or county clerk until after the election. This section shall not apply to registration done by the employees of the election commissioner or county clerk.

Source: Laws 1994, LB 76, § 68; Laws 1997, LB 764, § 31; Laws 2005, LB 566, § 6.

32-307 Voter registration site; acts prohibited; registration procedure.

No materials advocating or advertising any political issue, candidate, or party shall be displayed or distributed within fifty feet of any voter registration site. No alcohol shall be served within fifty feet of any voter registration site. The registration procedure shall be conducted in a neutral manner and shall not be connected with anything unrelated to the object of registering electors except as otherwise provided in sections 32-308 to 32-310.

Source: Laws 1994, LB 76, § 69.

32-308 Registration list; verification; voter registration application; Department of Motor Vehicles; duties; registration; when; persons involved in registration; status.

(1) The Secretary of State and the Director of Motor Vehicles shall enter into an agreement to match information in the computerized statewide voter registration list with information in the data base of the Department of Motor Vehicles to the extent required to enable each such official to verify the accuracy of the information provided on applications for voter registration. The

Director of Motor Vehicles shall enter into an agreement with the Commissioner of Social Security under section 205(r)(8) of the federal Social Security Act, 42 U.S.C. 405(r)(8), as such section existed on April 17, 2003, for purposes of the Election Act.

(2) The Department of Motor Vehicles, with the assistance of the Secretary of State, shall prescribe a voter registration application which may be used to register to vote or change his or her address for voting purposes at the same time an elector applies for an original or renewal motor vehicle operator's license, an original or renewal state identification card, or a replacement or duplicate thereof. The voter registration application shall contain the information required pursuant to section 32-312 and shall be designed so that it does not require the duplication of information in the application for the motor vehicle operator's license or state identification card, except that it may require a second signature of the applicant. The department and the Secretary of State shall make the voter registration application available to the county treasurer, the license examiners of the department, and any other person who issues operators' licenses or state identification cards. The application shall be completed at the office of the county treasurer or department by the close of business on the third Friday preceding any election to be registered to vote at such election. A registration application received after the deadline shall not be processed by the election commissioner or county clerk until after the election.

(3) State agency personnel and county treasurers involved in the voter registration process pursuant to this section and section 32-309 shall not be considered deputy registrars or agents or employees of the election commissioner or county clerk.

Source: Laws 1994, LB 76, § 70; Laws 1997, LB 764, § 32; Laws 2003, LB 357, § 6; Laws 2005, LB 566, § 7.

32-309 Voter registration application; delivery; when; confidentiality.

Upon receipt of a completed voter registration application, a county treasurer, a license examiner of the Department of Motor Vehicles, and any other person who issues motor vehicle operators' licenses or state identification cards shall deliver the completed voter registration application to the election commissioner or county clerk of the county in which the county treasurer, license examiner, or other person is located not later than ten days after receipt by the county treasurer, license examiner, or other person, except that if the voter registration application is received within five days prior to the third Friday preceding any election, it shall be delivered not later than five days after its original filing date. The election commissioner or county clerk shall, if necessary, forward the voter registration application to the election commissioner or county clerk of the county in which the applicant resides within such prescribed time limits. Any information on whether an applicant registers or declines to register and the location of the office at which he or she registers shall be confidential and shall only be used for voter registration purposes.

Source: Laws 1994, LB 76, § 71; Laws 2005, LB 566, § 8.

32-310 Voter registration; State Department of Education; Department of Health and Human Services; duties; confidentiality; persons involved in registration; status; delivery of applications; when; registration; when.

(1) The State Department of Education and the Department of Health and Human Services shall provide the opportunity to register to vote at the time of application, review, or change of address for the following programs, as applicable: (a) The food stamp program; (b) the medicaid program; (c) the WIC program as defined in section 71-2225; (d) the aid to dependent children program; (e) the vocational rehabilitation program; and (f) any other public assistance program or program primarily for the purpose of providing services to persons with disabilities. If the application, review, or change of address is accomplished through an agent or contractor of the department, the agent or contractor shall provide the opportunity to register to vote. Any information on whether an applicant registers or declines to register and the agency at which he or she registers shall be confidential and shall only be used for voter registration purposes.

(2) The department, agent, or contractor shall make the mail-in registration application described in section 32-320 available at the time of application, review, or change of address and shall provide assistance, if necessary, to the applicant in completing the application to register to vote. The department shall retain records indicating whether an applicant accepted or declined the opportunity to register to vote.

(3) Department personnel, agents, and contractors involved in the voter registration process pursuant to this section shall not be considered deputy registrars or agents or employees of the election commissioner or county clerk.

(4) The applicant may return the completed voter registration application to the department, agent, or contractor or may personally mail or deliver the application to the election commissioner or county clerk as provided in section 32-321. If the applicant returns the completed application to the department, agent, or contractor, the department, agent, or contractor shall deliver the application to the election commissioner or county clerk of the county in which the office of the department, agent, or contractor is located not later than ten days after receipt by the department, agent, or contractor, except that if the application is returned to the department, agent, or contractor within five days prior to the third Friday preceding any election, it shall be delivered not later than five days after the date it is returned. The election commissioner or county clerk shall, if necessary, forward the application to the election commissioner or county clerk of the county in which the applicant resides within such prescribed time limits. The application shall be completed and returned to the department, agency, or contractor by the close of business on the third Friday preceding any election to be registered to vote at such election. A registration application received after the deadline shall not be processed by the election commissioner or county clerk until after the election.

(5) The departments shall adopt and promulgate rules and regulations to ensure compliance with this section.

Source: Laws 1994, LB 76, § 72; Laws 1996, LB 1044, § 93; Laws 1997, LB 764, § 33; Laws 2005, LB 566, § 9; Laws 2007, LB296, § 51.

32-311 Registration of elector; personal application; place or time.

Any elector may personally apply to register to vote at (1) the office of the election commissioner or county clerk, (2) a registration site at which a deputy registrar is in attendance, (3) a department listed in section 32-310 at the time

of an application, review, or change of address as provided in such section, or (4) the office of the county treasurer or Department of Motor Vehicles while applying for a motor vehicle operator's license or state identification card as provided in section 32-308.

Source: Laws 1994, LB 76, § 73.

32-311.01 Registration application; use; informational statements.

(1) The Secretary of State shall prescribe and distribute a registration application which may be used statewide to register to vote and update voter registration records. An applicant may use the application to register to vote or to update his or her voter registration record with changes in his or her personal information or other information related to his or her eligibility to vote. An applicant may submit the application in person, through a personal messenger or personal agent, or by mail. Every election commissioner or county clerk shall accept such an application for registration. If an applicant who is eligible to register to vote submits the application in person at the office of the election commissioner or county clerk, the information from the application shall be entered into the voter registration register in the presence of the applicant if possible.

(2) The application shall contain substantially all the information provided in section 32-312 and the following informational statements:

(a) An applicant who is unable to sign his or her name may affix his or her mark next to his or her name written on the signature line by some other person;

(b) If the application is submitted by mail and the applicant is registering in the state for the first time and has not previously voted within the state, the applicant must submit with the application a copy of a photo identification which is current and valid or a copy of a utility bill, bank statement, government check, paycheck, or other government document that is current and that shows the name and address of the applicant as they appear on the application in order to avoid additional identification requirements when voting for the first time;

(c) An applicant may deliver the application to the office of the election commissioner or county clerk in person, through a personal messenger or personal agent, or by mail;

(d) To vote at the polling place on election day, the completed application must be:

(i) Delivered by the applicant in person to the office of the election commissioner or county clerk on or before the deadline prescribed in section 32-302;

(ii) Delivered by the applicant's personal messenger or personal agent to the office of the election commissioner or county clerk on or before the third Friday before the election; or

(iii) Postmarked on or before the third Friday before the election if the application is submitted by mail; and

(e) The election commissioner or county clerk will, upon receipt of the application for registration, send an acknowledgment of registration to the applicant indicating whether the application is proper or not.

Source: Laws 1994, LB 76, § 81; Laws 1997, LB 764, § 38; Laws 2003, LB 359, § 3; R.S.1943, (2004), § 32-319; Laws 2005, LB 566, § 10; Laws 2008, LB750, § 2.
Effective date March 11, 2008.

32-312 Registration application; contents.

The registration application prescribed by the Secretary of State pursuant to section 32-311.01 shall provide the instructional statements and request the information from the applicant as provided in this section.

CITIZENSHIP—''Are you a citizen of the United States of America?'' with boxes to check to indicate whether the applicant is or is not a citizen of the United States.

AGE—''Are you at least eighteen years of age or will you be eighteen years of age on or before the first Tuesday following the first Monday of November of this year?'' with boxes to check to indicate whether or not the applicant will be eighteen years of age or older on election day.

WARNING—''If you checked 'no' in response to either of these questions, do not complete this application.''.

NAME—the name of the applicant giving the first and last name in full, the middle name in full or the middle initial, and the maiden name of the applicant, if applicable.

RESIDENCE—the name and number of the street, avenue, or other location of the dwelling where the applicant resides if there is a number. If the registrant resides in a hotel, apartment, tenement house, or institution, such additional information shall be included as will give the exact location of such registrant's place of residence. If the registrant lives in an incorporated or unincorporated area not identified by the use of roads, road names, or house numbers, the registrant shall state the section, township, and range of his or her residence and the corporate name of the school district as described in section 79-405 in which he or she is located.

POSTAL ADDRESS—the address at which the applicant receives mail if different from the residence address.

ADDRESS OF LAST REGISTRATION—the name and number of the street, avenue, or other location of the dwelling from which the applicant last registered.

TELEPHONE NUMBERS—the telephone number of the applicant at work and at home. At the request of the applicant, a designation shall be made that the telephone number is an unlisted number, and such designation shall preclude the listing of the applicant's telephone number on any list of voter registrations.

DRIVER'S LICENSE NUMBER OR LAST FOUR DIGITS OF SOCIAL SECURITY NUMBER—if the applicant has a Nebraska driver's license, the license number, and if the applicant does not have a Nebraska driver's license, the last four digits of the applicant's social security number.

DATE OF APPLICATION FOR REGISTRATION—the month, day, and year when the applicant presented himself or herself for registration or when the applicant completed and signed the registration application if the application was submitted by mail or delivered to the election official by the applicant's personal messenger or personal agent.

PLACE OF BIRTH—show the state, country, kingdom, empire, or dominion where the applicant was born.

DATE OF BIRTH—show the date of the applicant's birth. The applicant shall be at least eighteen years of age or attain eighteen years of age on or before the

first Tuesday after the first Monday in November to have the right to register and vote in any election in the present calendar year.

REGISTRATION TAKEN BY—show the signature of the authorized official or staff member accepting the application pursuant to section 32-309 or 32-310 or at least one of the deputy registrars taking the application pursuant to section 32-306, if applicable.

PARTY AFFILIATION—show the party affiliation of the applicant as Democrat, Republican, or Other .... or show no party affiliation as Nonpartisan. (Note: If you wish to vote in both partisan and nonpartisan primary elections for state and local offices, you must indicate a political party affiliation on the registration application. If you register without a political party affiliation (nonpartisan), you will receive only the nonpartisan ballots for state and local offices at primary elections. If you register without a political party affiliation, you may vote in partisan primary elections for congressional offices.)

OTHER—information the Secretary of State determines will assist in the proper and accurate registration of the voter.

Immediately following the spaces for inserting information as provided in this section, the following statement shall be printed:

To the best of my knowledge and belief, I declare under penalty of election falsification that:

(1) I live in the State of Nebraska at the address provided in this application;

(2) I have not been convicted of a felony or, if convicted, it has been at least two years since I completed my sentence for the felony, including any parole term;

(3) I have not been officially found to be non compos mentis (mentally incompetent); and

(4) I am a citizen of the United States.

Any registrant who signs this application knowing that any of the information in the application is false shall be guilty of a Class IV felony under section 32-1502 of the statutes of Nebraska. The penalty for a Class IV felony is up to five years imprisonment, a fine of up to ten thousand dollars, or both.

APPLICANT'S SIGNATURE—require the applicant to affix his or her signature to the application.

Source: Laws 1994, LB 76, § 74; Laws 1996, LB 900, § 1037; Laws 1997, LB 764, § 34; Laws 2003, LB 357, § 7; Laws 2003, LB 359, § 2; Laws 2005, LB 53, § 4; Laws 2005, LB 566, § 11.

When performing the duties required by this section, registration officials act ministerially and are required to record the answers as given by the applicants and determine the latter's status as qualified voters in accordance with their answers. State ex rel. Williams v. Moorhead, 96 Neb. 559, 148 N.W. 552 (1914), reversing 95 Neb. 80, 144 N.W. 1055 (1914).

32-312.01 Registration application; examine for sufficiency.

The office personnel of the election commissioner or county clerk or the deputy registrar shall examine the information provided by the applicant on his or her application for registration and shall determine whether the applicant has provided sufficient information with which to determine his or her qualifications to register to vote.

Source: Laws 2005, LB 566, § 12.

32-312.02 Registration application; required information.

To avoid rejection of an application for registration or a delay in the processing of the application, the information provided by the applicant pursuant to section 32-312 who is applying to register for the first time in the state or following a cancellation of the person's prior registration shall include:

(1) The name of the applicant;

(2) A description of the location of the applicant's residence that is sufficient to allow the election commissioner or county clerk to accurately assign the applicant to the appropriate precinct, including a political subdivision of the precinct if the applicant resides in a precinct which is divided into political subdivisions and the voters residing within each subdivision are entitled to participate in an election of any one or more candidates or in the determination by election of any question or proposition specific to the political subdivision;

(3) The postal address if different than the person's residence address;

(4) The date of birth of the applicant;

(5) The party affiliation of the applicant or an indication that the applicant is not affiliated with any political party;

(6) The applicant's Nebraska driver's license number or, if the applicant does not have a Nebraska driver's license, the last four digits of the applicant's social security number if the applicant has one; and

(7) The signature of the applicant.

Source: Laws 2005, LB 566, § 13.

32-312.03 Registration application; identity confirmation; identifying number.

(1) Notwithstanding other deficiencies that may cause an application for registration to be rejected, failure of the applicant to provide his or her Nebraska driver's license number or last four digits of his or her social security number shall not cause the application to be rejected.

(2) If the election commissioner or county clerk is able to verify at least one of the numbers against a record available from the Department of Motor Vehicles bearing the applicant's same name, residence address, and date of birth, that number will be entered into the applicant's voter registration record.

(3) If the applicant's Nebraska driver's license number or the last four digits of the applicant's social security number are confirmed in such a manner, the acknowledgment of registration sent to the registrant pursuant to section 32-322 shall advise the registrant of the number confirmed and the addition of the number to the registrant's voter registration record. The acknowledgment shall advise the registrant to contact the election commissioner or county clerk if the registrant has reason to believe that the number added to his or her voter registration record is incorrect or invalid.

(4) If the applicant for registration does not have a Nebraska driver's license or a social security number or if the applicant's Nebraska driver's license or social security number cannot be confirmed pursuant to subsection (2) of this section, the unique identifying number generated and assigned to the applicant's voter registration record in the voter registration register shall be used to identify the registrant for voter registration purposes.

Source: Laws 2005, LB 566, § 14.

32-312.04 Registration application; use to update voter registration record; requirements.

A registered voter using a registration application to update his or her voter registration record with changes in his or her personal information or other changes related to his or her eligibility to vote shall:

(1) Provide all new information needed to ensure his or her voter registration record is accurate and current;

(2) Provide sufficient information to allow the election commissioner or county clerk to identify the voter including:

(a) The former name under which the voter was previously registered if the voter is seeking to register under a different name;

(b) The voter's Nebraska driver's license number or last four digits of the voter's social security number or the unique identifying number assigned in place of such numbers pursuant to subsection (4) of section 32-312.03, if known;

(c) The residence address where the voter was previously registered; and

(d) A sufficient description of the current residence address to allow the election commissioner or county clerk to accurately assign the voter to the appropriate precinct and political subdivision of the precinct, if any, if the voter has moved since previously registering; and

(3) Affix his or her signature to the registration application.

Source: Laws 2005, LB 566, § 15.

32-312.05 Voter registration record; effective date.

The date that a person's voter registration record or an update of his or her voter registration record becomes effective is the date the person presented himself or herself in person to register, the date the registration application was delivered to the election commissioner or county clerk, or the date the registration application was received by the election commissioner or county clerk if the person submitted the registration application by mail.

Source: Laws 2005, LB 566, § 16.

32-313 Qualifications of elector; abstract of felony convictions; clerks of court; duty; notification of federal court felony conviction; how treated.

(1) No person is qualified to vote or to register to vote who is non compos mentis or who has been convicted of treason under the laws of the state or of the United States unless restored to civil rights. No person who has been convicted of a felony under the laws of this state or any other state is qualified to vote or to register to vote until two years after the sentence is completed, including any parole term. The disqualification is automatically removed at such time.

(2) The clerk of any court in which a person is convicted of a felony shall prepare an abstract each month of each final judgment served by the clerk convicting an elector of a felony. The clerk shall file the abstract with the election commissioner or county clerk of the elector's county of residence not later than the tenth day of the month following the month in which the abstract is prepared. The clerk of the court shall notify the election commissioner or county clerk in writing if any such conviction is overturned.

(3) Upon receiving notification from the United States Attorney of a felony conviction of a Nebraska resident in federal court or of the overturning of any such conviction, the Secretary of State shall forward the notice to the election commissioner or county clerk of the county of such person's residence. The election commissioner or county clerk shall remove the name of such person from the voter registration register upon receipt of notice of conviction.

Source: Laws 1994, LB 76, § 75; Laws 1999, LB 234, § 2; Laws 2005, LB 53, § 5.

A person convicted of a felony is not deprived of any right or privilege except as provided for by the Constitution and statutes. Bosteder v. Duling, 115 Neb. 557, 213 N.W. 809 (1927).

A person convicted of a misdemeanor is not thereby deprived of his right to vote. Gandy v. State, 10 Neb. 243, 4 N.W. 1019 (1880).

32-314 Loss of eligibility to vote; when; update voter registration record; when; change of residence within county; change of name or party affiliation; effect.

(1) Any person going into another territory or state and registering to vote or voting in that territory or state shall lose his or her eligibility to vote in this state. Any person going into another county of this state and registering to vote or voting in that county shall lose his or her eligibility to vote in the county where he or she was registered.

(2) A registered voter who changes his or her residence in one county to a residence address in a different county in the state shall register again or update his or her voter registration record in order to be eligible to vote.

(3) A registered voter who changes his or her name or residence within the county and has retained legal residence in the county since the date of his or her last registration shall register again or update his or her voter registration record to avoid additional requirements at the time of voting as provided in sections 32-914 and 32-915 and may be entitled to vote pursuant to section 32-914.01, 32-914.02, or 32-915.

(4) A registered voter who wants to change his or her party affiliation for purposes of a primary election shall complete a registration application pursuant to section 32-312.04 and submit it to the election commissioner or county clerk as provided in and prior to the deadline prescribed by section 32-302 or 32-321.

Source: Laws 1994, LB 76, § 76; Laws 1997, LB 764, § 35; Laws 2005, LB 566, § 17.

32-315 Change of name or address; election commissioner or county clerk; duties.

Upon receiving a completed voter registration application pursuant to section 32-309 or 32-310 indicating that a voter who is registered in the county has changed his or her name or moved to another residence within the same county, the election commissioner or county clerk shall change the voter registration record of the registered voter to the new name or new address and shall send an acknowledgment card to the registered voter indicating that the change of registration has been completed and the address of the voter's new polling place.

Source: Laws 1994, LB 76, § 77; Laws 1997, LB 764, § 36; Laws 1999, LB 234, § 3; Laws 2005, LB 566, § 18.

32-316 Certificate of registration; issuance; fee.

The election commissioner or county clerk may issue a certificate of registration to any registered voter who requests a certificate verifying that he or she is a registered voter in the county and pays a fee of three dollars. The certificate of registration shall include the information contained in section 32-312 and shall be issued with the seal of the election commissioner or county clerk. All fees so collected shall be reported to the county board and remitted to the county treasurer at least once each month.

Source: Laws 1994, LB 76, § 78; Laws 1997, LB 764, § 37.

32-317 Designation of postal address; when; no residence; how treated.

Any registered voter whose residence address is not a permissible postal address may designate a postal address for registration records. When the election commissioner or county clerk has reason to believe that the registration residence address of a registered voter is not a permissible postal address, the election commissioner or county clerk shall attempt to determine a proper postal address for the registered voter. If a registered voter has no residence address, his or her residence address shall be deemed to be the office of the election commissioner or county clerk of the county of such voter's residence for purposes of the Election Act.

Source: Laws 1994, LB 76, § 79.

32-318 Signature; when required.

Any registered voter whose signature does not appear in the registration records, due to fading, damage, loss, or other circumstance that affects the appearance or presence of the signature, may be required to submit his or her signature on a form prescribed by the Secretary of State to be included with the registration records of the registered voter. If the election commissioner or county clerk determines at any time that a then current signature of any registered voter is needed or if a registered voter's signature becomes subject to verification and a similar signature is not on file for such voter, the election commissioner or county clerk may request that the registered voter submit his or her signature on a form prescribed by the Secretary of State to be included with the voter's registration records.

Source: Laws 1994, LB 76, § 80; Laws 2005, LB 566, § 19.

32-318.01 Identification documents; required, when.

(1)(a) Except as provided by subsection (2) of this section, a person who registers to vote by mail after January 1, 2003, and has not previously voted in an election within the state shall present a photographic identification which is current and valid or a copy of a utility bill, bank statement, government check, paycheck, or other government document which is dated within the sixty days immediately prior to the date of presentation and which shows the same name and residence address of the person provided on the registration application in order to avoid identification requirements at the time of voting pursuant to section 32-914 or 32-947.

(b) Such documentation may be presented at the time of application for registration, after submission of the application for registration, or at the time of voting. The documentation must be received by the election commissioner or

county clerk not later than 6 p.m. on the second Friday preceding the election to avoid additional identification requirements at the time of voting at the polling place if the voter votes in person. If the voter is voting using a ballot for early voting, the documentation must be received by the election commissioner or county clerk prior to the date on which the ballot is mailed to the voter to avoid additional identification requirements at the time of voting. Documentation received after the ballot has been mailed to the voter but not later than 8 p.m. on election day will be considered timely for purposes of determining the applicant's eligibility to vote in the election.

(c) Such documentation may be presented in person, by mail, or by facsimile transmission.

(d) Failure to present such documentation may result in the ballot not being counted pursuant to verification procedures prescribed in sections 32-1002 and 32-1027.

(2) A person who registers to vote by mail after January 1, 2003, and has not previously voted in an election within the state shall not be required to present identification if he or she:

(a) Has provided his or her Nebraska driver's license number or the last four digits of his or her social security number and the election commissioner or county clerk verifies the number provided pursuant to subsection (2) of section 32-312.03;

(b) Is a member of the armed forces of the United States who by reason of active duty is absent from his or her place of residence where the member is otherwise eligible to vote;

(c) Is a member of the United States Merchant Marine who by reason of service is away from his or her place of residence where the member is otherwise eligible to vote;

(d) Is a spouse or dependent of a member of the armed forces of the United States or United States Merchant Marine who is absent from his or her place of residence due to the service of that member;

(e) Resides outside the United States and but for such residence would be qualified to vote in the state if the state was the last place in which the person was domiciled before leaving the United States; or

(f) Is elderly or handicapped and has requested to vote by alternative means other than by casting a ballot at his or her polling place on election day.

Source: Laws 2005, LB 566, § 20.

32-319 Transferred to section 32-311.01.

32-320 Acceptable mail-in forms; official registration applications; distribution; proceeds; how credited.

The only mail-in forms which may be used to register to vote shall be the official registration application prescribed by the Secretary of State or the national mail voter registration application prescribed by the federal Election Assistance Commission. The Secretary of State shall provide such official registration applications to all recruitment offices of the United States Armed Forces in the State of Nebraska. The counties and state agencies listed in section 32-310 shall purchase such official registration applications from the Secretary of State. The Secretary of State shall remit proceeds from the sale of

such applications to the State Treasurer for credit to the Election Administration Fund.

Source: Laws 1994, LB 76, § 82; Laws 2003, LB 14, § 2; Laws 2003, LB 358, § 9; Laws 2005, LB 566, § 21.

32-321 Voter registration applications; availability; Secretary of State; designated voter registration agency; mailing deadline; notice to applicant; when required; payment of postage costs.

(1) Any elector may request a voter registration application from the office of the Secretary of State or the election commissioner or county clerk. The Secretary of State and the election commissioner or county clerk shall make registration applications prescribed by the Secretary of State available and may place the applications in public places. The Secretary of State and the election commissioner or county clerk may require that all unused applications be returned to his or her office and may place reasonable limits on the amount of applications requested.

(2) If an elector returns the completed application to the office of the Secretary of State, the office shall deliver the application to the election commissioner or county clerk of the county in which the elector resides not later than ten days after receipt by the office, except that if the application is returned to the office within five days prior to the third Friday preceding any election, it shall be delivered not later than five days after the date it is returned. The deadline for returning a completed application to the office of the Secretary of State is the close of business on the third Friday preceding an election to be registered to vote at such election. A registration application received after the deadline shall not be processed by the election commissioner or county clerk until after the election. The office of the Secretary of State shall be a designated voter registration agency for purposes of section 7 of the National Voter Registration Act of 1993, 42 U.S.C. 1973gg-5, as such section existed on March 11, 2008.

(3) If an elector mails the registration application to the election commissioner or county clerk:

(a)(i) The application shall be postmarked on or before the third Friday before the next election; or

(ii) The application shall be received not later than the second Tuesday before the next election if the postmark is unreadable; and

(b) The application shall be processed by the election office as a proper registration for the voter to be entitled to vote on the day of the next election.

(4) If the registration application arrives after the registration deadline, the application shall not be processed until after the election. Written notice shall be given to any applicant whose registration application failed to meet the registration deadline or was found to be incorrect or incomplete and shall state the specific reason for rejection. If the application is incomplete, the election commissioner or county clerk shall notify the applicant of the failure to provide the required information, including failure to provide identification if required, and provide the applicant with the opportunity to submit an identification document as described in section 32-318.01 prior to the deadline for voter registration or to complete and submit a corrected registration application in a timely manner to allow for the proper registration of the applicant prior to the

next election. All postage costs related to returning registration applications to the election commissioner or county clerk shall be paid by the registrant.

Source: Laws 1994, LB 76, § 83; Laws 1997, LB 764, § 39; Laws 2005, LB 566, § 22; Laws 2008, LB750, § 3.
Effective date March 11, 2008.

32-322 Acknowledgment of registration; when required; duplicate registration; notice required.

Upon receipt by the election commissioner or county clerk of a complete and correct registration application showing that the registrant is qualified to be a registered voter pursuant to sections 32-312.01 to 32-312.05, the registrant shall be a registered voter and the election commissioner or county clerk shall send, by nonforwardable first-class mail, an acknowledgment of registration to the registrant at the postal address shown on the registration application. If an acknowledgment of registration is returned as undeliverable, a second nonforwardable first-class mailing shall be attempted. If a registration application is a duplicate of a registration already on file, the registrant shall be so notified.

Source: Laws 1994, LB 76, § 84; Laws 1997, LB 764, § 40; Laws 2005, LB 566, § 23.

32-323 Validity of registration by mail for petition purposes; when.

Registration by mail shall not constitute a valid registration for purposes of signing any type of petition requiring the validation of the signatures of registered voters until a complete and correct registration application has been received by the election commissioner or county clerk. A signature on a petition shall be considered a valid signature as of the date that the election commissioner or county clerk receives the registration application of the registrant.

Source: Laws 1994, LB 76, § 85; Laws 1997, LB 764, § 41; Laws 2005, LB 566, § 24.

32-324 Change of address; election commissioner or county clerk; duties; acknowledgment of registration; when.

(1) When a person who previously has been registered to vote in another state registers to vote in Nebraska, the election commissioner or county clerk accepting the registration shall notify the appropriate election official in the other state that the voter has registered in Nebraska. The notification shall contain the printed or typewritten name and previous address of the registered voter and the signature or certification of the election commissioner or county clerk.

(2) The election commissioner or county clerk accepting an application for registration from a voter who was previously registered in a different county in Nebraska shall update the voter's voter registration record with the information from the application and shall send an acknowledgment to the voter indicating that the change of registration has been completed. The acknowledgment shall advise the voter of the address of his or her new polling place.

Source: Laws 1994, LB 76, § 86; Laws 1997, LB 764, § 42; Laws 2005, LB 566, § 25.

32-325 Update of voter registration record; deadline; effect.

(1) A registration application completed and signed by a registered voter seeking to update his or her voter registration record shall be completed in person at or delivered or mailed to the office of the election commissioner or county clerk. To avoid additional requirements at the polling place pursuant to section 32-914.01, 32-914.02, or 32-915, an application to update a voter registration record must be:

(a) Completed or delivered by the applicant in person at the office of the election commissioner or county clerk on or before the deadline prescribed in section 32-302; or

(b) Delivered by a personal messenger or personal agent or mailed so that it is received by the election commissioner or county clerk on or before the deadline prescribed in section 32-321.

(2) After verifying the signature on the previous registration of the registered voter, the election commissioner or county clerk shall make the change of name, party affiliation, or address on all pertinent election records. The election commissioner or county clerk shall send an acknowledgment card to the registered voter indicating that the change of registration has been completed and shall include the address of the registered voter's new polling place.

Source: Laws 1994, LB 76, § 87; Laws 1997, LB 764, § 43; Laws 2005, LB 566, § 26.

32-326 Removal of name and cancellation of registration; conditions.

The election commissioner or county clerk shall remove the name of a registered voter from the voter registration register and cancel the registration of such voter if:

(1) The election commissioner or county clerk has received information that the voter is deceased;

(2) The voter requests in writing that his or her name be removed;

(3) The election commissioner or county clerk has received information that the voter has moved from the address at which he or she is registered to vote from the National Change of Address program of the United States Postal Service pursuant to section 32-329 and the voter has not responded to a confirmation notice sent pursuant to section 32-329 and has not voted or offered to vote at any election held prior to and including the second statewide federal general election following the mailing of the confirmation notice;

(4) The election commissioner or county clerk has received information that the registrant has moved out of the state and has registered to vote or voted in another territory or state pursuant to section 32-314; or

(5) The voter has become ineligible to vote as provided in section 32-313.

Source: Laws 1994, LB 76, § 88; Laws 1999, LB 234, § 4; Laws 2005, LB 566, § 27.

32-327 Death of registered voter; removal from registration records; Department of Health and Human Services; duty.

The election commissioner or county clerk may at any time remove from the voter registration register a voter registration of a deceased person when the election commissioner or county clerk has any supporting information of the death of such voter. The Department of Health and Human Services shall

provide, at cost, a record of the deaths of residents which occur in each county every three months to the appropriate election commissioner or county clerk.

Source: Laws 1994, LB 76, § 89; Laws 1997, LB 307, § 14; Laws 1999, LB 234, § 5; Laws 2007, LB296, § 52.

32-328 Voter registration register; precinct list; correction of errors; procedures.

(1) The election commissioner or county clerk shall, upon the personal application of any registered voter or whenever informed of any error and after due investigation, correct any error in the voter registration register. For such purpose, the election commissioner or county clerk may summon witnesses and compel their attendance to appear at the office of the election commissioner or county clerk to give testimony pertaining to residence, qualifications, or any other facts required to be entered in the voter registration register. Such testimony shall be transcribed and become a part of his or her records.

(2) If the name of any registered voter of any precinct does not appear on the precinct list of registered voters through an error and the election commissioner or county clerk informs the precinct inspector or judge of election that credible evidence exists that substantiates that an error has been made, the precinct inspector or judge of election shall enter the correction in the precinct list of registered voters, initial the correction, and authorize the receiving board to issue the proper ballots to the voter and receive his or her vote. All corrections shall be entered on the voter registration register as soon as possible after the election.

Source: Laws 1994, LB 76, § 90; Laws 1999, LB 234, § 6; Laws 2005, LB 566, § 28.

The election commissioner acts quasi-judicially when performing the duties prescribed by this section. State ex rel. Williams v. Moorhead, 96 Neb. 559, 148 N.W. 552 (1914), reversing 95 Neb. 80, 144 N.W. 1055 (1914).

32-329 Registration list; maintenance; voter registration register; verification; training; procedure.

(1) The Secretary of State with the assistance of the election commissioners and county clerks shall perform list maintenance with respect to the computerized statewide voter registration list on a regular basis. The list maintenance shall be conducted in a manner that ensures that:

(a) The name of each registered voter appears in the computerized list;

(b) Only persons who have been entered into the register in error or who are not eligible to vote are removed from the computerized list; and

(c) Duplicate names are eliminated from the computerized list.

(2) The election commissioner or county clerk shall verify the voter registration register by using (a) the National Change of Address program of the United States Postal Service and a confirmation notice pursuant to subsection (3) of this section or (b) the biennial mailing of a nonforwardable notice to each registered voter. The Secretary of State shall provide biennial training for the election commissioners and county clerks responsible for maintaining voter registration lists. No name shall be removed from the voter registration register for the sole reason that such person has not voted for any length of time.

(3) When an election commissioner or county clerk receives information from the National Change of Address program of the United States Postal Service

that a registered voter has moved from the address at which he or she is registered to vote, the election commissioner or county clerk shall immediately update the voter registration register and mail a confirmation notice by forwardable first-class mail. If a nonforwardable notice under subdivision (2)(b) of this section is returned as undeliverable, the election commissioner or county clerk shall mail a confirmation notice by forwardable first-class mail. The confirmation notice shall include a confirmation letter and a preaddressed, postage-paid confirmation card. The confirmation letter shall contain statements substantially as follows:

(a) The election commissioner or county clerk has received information that you have moved to a different residence address from that appearing on the voter registration register;

(b) If you have not moved or you have moved to a new residence within this county, you should return the enclosed confirmation card by the regular registration deadline prescribed in section 32-302. If you fail to return the card by the deadline, you will be required to affirm or confirm your address prior to being allowed to vote. If you are required to affirm or confirm your address, it may result in a delay at your polling place; and

(c) If you have moved out of the county, you must reregister to be eligible to vote. This can be accomplished by mail or in person. For further information, contact your local election commissioner or county clerk.

(4) The election commissioner or county clerk shall maintain for a period of not less than two years a record of each confirmation letter indicating the date it was mailed and the person to whom it was mailed.

(5) If information from the National Change of Address program or the nonforwardable notice under subdivision (2)(b) of this section indicates that the voter has moved outside the jurisdiction and the election commissioner or county clerk receives no response to the confirmation letter and the voter does not offer to vote at any election held prior to and including the second statewide federal general election following the mailing of the confirmation notice, the voter's registration shall be canceled and his or her name shall be deleted from the voter registration register.

Source: Laws 1994, LB 76, § 91; Laws 1997, LB 764, § 44; Laws 1999, LB 234, § 7; Laws 2003, LB 357, § 8; Laws 2005, LB 566, § 29.

32-330 Voter registration register; public record; examination; lists of registered voters; availability.

(1) The voter registration register shall be a public record. Any person may examine the register at the office of the election commissioner or county clerk but shall not be allowed to make copies of the register. The electronic records of the original voter registrations created pursuant to section 32-301 may constitute the voter registration register. The election commissioner or county clerk shall withhold information in the register designated as confidential under section 32-331.

(2) The election commissioner or county clerk shall make available for purchase a list of registered voters that contains the information required under section 32-312 and, if requested, a list that only contains registered voters who have voted in an election held more than sixty days prior to the request for the list. The election commissioner or county clerk shall establish the price of the

lists at a rate that fairly covers the actual production cost of the lists, not to exceed three cents per name. Lists shall be used solely for purposes related to elections, political activities, voter registration, law enforcement, or jury selection. Lists shall not be used for commercial purposes.

(3) Any person who acquires a list of registered voters under subsection (2) of this section shall take and subscribe to an oath in substantially the following form:

I hereby swear that I will use the list of registered voters of .... County, Nebraska, only for the purposes prescribed in section 32-330 and for no other purpose and that I will not permit the use or copying of such list for unauthorized purposes.

I hereby declare under the penalty of election falsification that the statements above are true to the best of my knowledge.

The penalty for election falsification is a Class IV felony.

....

(Signature of person acquiring list)

Subscribed and sworn to before me this .... day of .... 20.. .

....

(Name of officer)

....

(Official title of officer)

(4) The election commissioner or county clerk shall provide, upon request and free of charge, a complete and current listing of all registered voters and their addresses to the Clerk of the United States District Court for the District of Nebraska. Such list shall be provided no later than December 31 of each even-numbered year.

(5) The election commissioner or county clerk shall provide, upon request and free of charge, a complete and current listing of all registered voters and their addresses to the state party headquarters of each political party and to the county chairperson of each political party. Such list shall be provided no later than thirty-five days prior to the statewide primary and statewide general elections.

Source: Laws 1994, LB 76, § 92; Laws 1995, LB 514, § 2; Laws 1997, LB 764, § 45; Laws 1999, LB 234, § 8.

32-331 Confidential records; procedure.

A registered voter may file an affidavit with the election commissioner or county clerk to have the information relating to his or her residence address and telephone number remain confidential. If the registered voter is a program participant under the Address Confidentiality Act, the affidavit shall state that fact. If the registered voter is not a program participant under the act, the affidavit shall state that the county court or district court has issued an order upon a showing of good cause that a life-threatening circumstance exists in relation to the voter or a member of his or her household. The registered voter shall vote under sections 32-938 to 32-951 in elections held after the filing of the affidavit. To terminate the affidavit and withdraw the confidential designation, the registered voter shall notify the election commissioner or county clerk in writing. The registered voter shall provide a valid mailing address to be used

in place of the residence address for election, research, and government purposes. If the registered voter is a program participant under the Address Confidentiality Act, the mailing address shall be as provided in the act. The election commissioner or county clerk may use the mailing address or the word ‘‘confidential’’ or a similar designation in place of the residence address in producing any list, roster, or register required under the Election Act. Those records declared confidential under this section shall be kept in a separate file from the other registered voter information. A county, election commissioner, or county clerk shall be liable in an action for negligence as a result of the disclosure of the confidential information if there is a showing of gross negligence or willfulness.

Source: Laws 1995, LB 514, § 3; Laws 2003, LB 228, § 11; Laws 2005, LB 98, § 4.

Cross References

Address Confidentiality Act, see section 42-1201.

ARTICLE 4

TIME OF ELECTIONS

Section
32-401. Statewide primary election; when held; purposes.
32-402. Other primary election; when held.
32-403. Statewide general election; when held.
32-404. Political subdivisions; elections; how held; notice of filing deadlines; certifications required; forms.
32-405. Special election; when held.

32-401 Statewide primary election; when held; purposes.

The statewide primary election shall be held on the first Tuesday after the second Monday in May in even-numbered years. The statewide primary election shall be held for the purposes of (1) nominating all candidates to be voted for at the statewide general election except (a) candidates who were unopposed at the primary election and not required to be on the ballot and (b) candidates who petition on the ballot or are nominated by their political party, (2) electing delegates to the county, state, and national political party conventions, if applicable, (3) in each presidential election year, voting on a preference for President of the United States, and (4) electing officers in political subdivisions which hold their general elections at the time of the statewide primary election.

Source: Laws 1994, LB 76, § 93.

The liberal construction of the primary law required by this section is to further the real will of the electors as distinguished from that of candidates or would-be candidates. State ex rel. Smith v. Marsh, 120 Neb. 287, 232 N.W. 99 (1930), 72 A.L.R. 285 (1930).

The purpose of the primary election law was to provide an easy method by which a person might become a candidate for state office, either on his own initiative, or by petition of a designated number of electors. State ex rel. Maupin v. Amsberry, 104 Neb. 550, 178 N.W. 176 (1920).

Under former law a candidate for nomination as the candidate of a political party must have been a member of the party, and, where two parties had affiliated for the general election, a candidate could affiliate with both and be the candidate of both. State ex rel. Curyea v. Wells, 92 Neb. 337, 138 N.W. 165 (1912), 41 L.R.A.N.S. 1088 (1912).

The closed primary law enacted in 1911 recognized the existence of political parties and attempted to delegate to the members of each party the right to vote at the primary and general elections for the candidates of their own party without interference from the members of any other political party. State ex rel. Nebraska Rep. State C. Com. v. Wait, 92 Neb. 313, 138 N.W. 159 (1912), 43 L.R.A.N.S. 282 (1912).

Under former statute, a person was permitted to be a candidate of more than one political party in the primary election. State ex rel. Sundean v. Junkin, 80 Neb. 1, 113 N.W. 801 (1907).

The method of electing United States Senators in Nebraska was outlined in the opinion. U.S. v. Seymour, 50 F.2d 930 (8th Cir. 1931).

32-402 Other primary election; when held.

Any primary election other than a primary election provided for in sections 14-204 and 32-401 shall be held on Tuesday four weeks before the general election.

Source: Laws 1994, LB 76, § 94.

32-403 Statewide general election; when held.

The statewide general election shall be held on the first Tuesday following the first Monday in November in each even-numbered year.

Source: Laws 1994, LB 76, § 95.

There is more than one type of general election. This section does not govern time of holding general municipal election. Allen v. Tobin, 155 Neb. 212, 51 N.W.2d 338 (1952).

32-404 Political subdivisions; elections; how held; notice of filing deadlines; certifications required; forms.

(1) When any political subdivision holds an election in conjunction with the statewide primary or general election, the election shall be held as provided in the Election Act. Any other election held by a political subdivision shall be held as provided in the act unless otherwise provided by the charter, code, or bylaws of the political subdivision.

(2) No later than December 1 of each odd-numbered year, the election commissioner or county clerk shall give notice to each political subdivision of the filing deadlines for the statewide primary election. No later than January 5 of each even-numbered year, the governing board of each political subdivision which will hold an election in conjunction with a statewide primary election shall certify to the Secretary of State, the election commissioner, or the county clerk the name of the subdivision, the number of officers to be elected, the length of the terms of office, the vacancies to be filled by election and length of remaining term, and the number of votes to be cast by a registered voter for each office.

(3) No later than July 1 of each even-numbered year, the governing board of each reclamation district, county weed district, village, county under township organization, public power district receiving annual gross revenue of less than forty million dollars, or educational service unit which will hold an election in conjunction with a statewide general election shall certify to the Secretary of State, the election commissioner, or the county clerk the name of the subdivision, the number of officers to be elected, the length of the terms of office, the vacancies to be filled by election and length of remaining term, and the number of votes to be cast by a registered voter for each office.

(4) The Secretary of State shall prescribe the forms to be used for certification to him or her, and the election commissioner or county clerk shall prescribe the forms to be used for certification to him or her.

Source: Laws 1994, LB 76, § 96; Laws 1997, LB 764, § 46; Laws 2004, LB 927, § 1.

32-405 Special election; when held.

Any special election under the Election Act shall be held on the first Tuesday following the second Monday of the selected month unless otherwise specifical-

ly provided. No special election shall be held under the Election Act in April, May, June, October, November, or December of an even-numbered year unless it is held in conjunction with the statewide primary or general election.

Source: Laws 2003, LB 521, § 4.

ARTICLE 5

OFFICERS AND ISSUES

Cross References

Agricultural extension work, county appropriation for support of, see section 2-1604.
Amusement tax levy by municipalities, authorization or discontinuance of, see sections 18-1203 and 18-1204.
Aviation fields, municipal acquisition and improvement, tax levy, bond issue, see sections 18-1502 and 18-1503.
Bond issue elections, see Chapter 10.
City manager plan of government, adoption or abandonment of, see sections 19-605 and 19-606.
Coal development, authorizing county aid for, see sections 57-106 and 57-107.
Commission plan of city government:
Adoption, see section 19-402.
Council members, see sections 19-404 to 19-409.
Discontinuance, see sections 19-432 and 19-433.
Community college boards, see sections 85-1512 and 85-1514.
Community nurse, tax levy for salary and expense of, see sections 71-1638 and 71-1639.
Community redevelopment authority, see section 18-2102.01.
Consolidation of municipalities, see sections 15-111, 15-112, and 17-401 to 17-404.
Constitutional convention, see sections 49-212 to 49-234.
Counties:
Consolidation of, see sections 22-405 and 22-406.
Formation of new, see sections 22-201 to 22-207.
County boundary changes, see sections 22-196 to 22-198.
County commissioners, to determine number of, see sections 23-148 and 23-149.
County fair, establish or dissolve, see sections 2-222, 2-223, and 2-233 to 2-235.
County highway superintendent in commissioner counties under eighteen thousand population, establish or abolish office, see sections 39-1502 and 39-1502.01.
County historical society tax levy, authorizing or terminating, see section 23-355.01.
County hospitals, bond issues for establishment of, see sections 23-3501 to 23-3515.
County road unit system in township counties, adoption or abandonment of, see sections 39-1513 to 39-1515.
County seat relocation, see sections 22-301 and 22-302.
Franchises for public utilities, authorization by municipalities, see sections 14-811, 15-222, 15-502, 16-683, 16-687, 17-528.03, and 18-412 to 18-412.02.
Health districts in counties over two hundred thousand population, establishment and membership, see sections 71-1604 to 71-1607.
Home rule charters for municipalities, adoption or amendment of, see Chapter 19, article 5.
Hospital district bonds, issuance, see sections 23-3555 to 23-3557.
Hospitals or medical clinics in second-class cities or villages, bonds, see section 17-963.
Interstate bridges, authorizing acquisition of by cities of the metropolitan class, see sections 14-1211 and 14-1251.
Jail, authorizing establishment of joint county and city, see section 47-302.
Joint city-county buildings, authorization, see sections 16-6,100.01 to 16-6,100.07.
Joint municipal power plant in second-class cities and villages, approval of, see section 17-911.
Joint second-class city and school district building, approval of, see section 17-157.
Judges, retention election, see sections 24-813 to 24-818.
Juvenile court, see sections 43-2,111 to 43-2,117.
Libraries, local, establishment, support, or discontinuance of, see section 51-201 et seq.
Liquor, sale by package or drink, elections for, see sections 53-121 and 53-122.
Local hospital district elections, see sections 23-3528 to 23-3552.
Lottery, authorize or continue, see sections 9-625 to 9-627.
Market places, establishment by first-class cities, see section 16-698.
Memorials commemorating services of soldiers or sailors, local tax levy for erection of, see sections 80-203 to 80-205.
Merit system for employees of first-class cities, see section 16-218.
Monuments, see sections 80-203 to 80-205.
Municipal economic development programs, see sections 18-2701 to 18-2738.
Museums, local, authorizing establishment and tax levy, see sections 51-501 and 51-502.
Offstreet parking facilities in cities of the first and second class, authorizing, see sections 16-806 and 17-168.
Public buildings, authorizing tax levy for, see sections 23-501 to 23-503.
Resurvey of county, authorizing, see sections 23-301 to 23-303.
Retention election for judges, see sections 24-813 to 24-818.
Separate juvenile courts:
Abolition of, see section 43-2,127.
Establishment of, see section 43-2,112.
State boundary bridge, local bond issue election for, see sections 39-836 to 39-841.
Tax levy in excess of maximum, authorizing, see section 77-3444.
Township form of county government:
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Township supervisor system of county government:

Adoption, see section 23-283.
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(a) OFFICES AND OFFICEHOLDERS

Section
32-501. Residence requirement; restriction; home rule charter; legislative findings and declarations.
32-502. United States Senators; terms; qualifications; partisan ballot.
32-503. United States Representatives in Congress; terms; qualifications; partisan ballot.
32-504. Congressional districts; enumerated.
32-505. Congressional districts; description; basis.
32-506. Governor and Lieutenant Governor; terms; qualifications; partisan ballot.
32-507. State Treasurer; Auditor of Public Accounts; Secretary of State; Attorney General; terms; qualifications; partisan ballot.
32-508. Members of the Legislature; districts; terms; qualifications; nonpartisan ballot.
32-509. Public service commissioners; districts; qualifications; partisan ballot; terms.
32-510. Board of Regents of the University of Nebraska, districts; terms; nonpartisan ballot.
32-511. State Board of Education; districts; terms; qualifications; nonpartisan ballot.
32-512. Public power district; public power and irrigation district; board of directors; nonpartisan ballot; terms; qualifications; qualified voters.
32-513. Natural resources districts; board of directors; terms; subdistricts; qualifications; nonpartisan ballot.
32-514. Community college area board of governors; districts; terms; nonpartisan ballot.
32-515. Educational service unit board; terms; qualifications; nonpartisan ballot.
32-516. Reclamation district; board of directors; nonpartisan ballot; terms.
32-517. County clerk; terms; qualifications; partisan ballot.
32-518. Register of deeds; terms; continuation of office; when; qualifications; partisan ballot.
32-519. County assessor; election; when required; terms; qualifications; partisan ballot.
32-520. County sheriff; terms; qualifications; partisan ballot.
32-521. County treasurer; terms; qualifications; partisan ballot.
32-522. County attorney; terms; qualifications; partisan ballot.
32-523. Public defender; election; when required; terms; qualifications; partisan ballot.
32-524. Clerk of the district court; election; when required; terms; partisan ballot.
32-525. County surveyor; election; when required; terms; qualifications; partisan ballot.
32-526. County engineer; election; when required; terms; qualifications; partisan ballot.
32-527. Repealed. Laws 1999, LB 272, § 118.
32-528. County board of commissioners; terms; qualifications; partisan ballot; nomination and election by district; change of number of commissioners; procedure.
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32-537. City with home rule charter; city council; qualifications; nominating petition or filing fee.
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32-540. Metropolitan utilities district; board of directors; nonpartisan ballot; terms; qualifications.
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(a) OFFICES AND OFFICEHOLDERS

32-501 Residence requirement; restriction; home rule charter; legislative findings and declarations.

No person to be elected to office at any election or nominated at any primary election, except for state officers, shall be required to meet a residence requirement of longer than six months in order to be eligible to be a candidate for such office. The Legislature finds and declares that the election of public officials and the qualifications related thereto are a matter of general statewide concern notwithstanding the provisions of any home rule charter.

Source: Laws 1994, LB 76, § 97.

The provisions of the act creating an office control the election of the officers and their terms of office. Saling v. Bahensky, 97 Neb. 789, 151 N.W. 320 (1915).

32-502 United States Senators; terms; qualifications; partisan ballot.

Two United States Senators shall be elected for terms of six years at the statewide general election. One senator shall be elected in 1994 and every six years thereafter, and one senator shall be elected in 1996 and every six years thereafter. Candidates for the United States Senate shall meet the qualifications found in Article I, section 3, of the Constitution of the United States. The senators shall be elected on the partisan ballot.

Source: Laws 1994, LB 76, § 98.

The method of election of United States senators in Nebraska is outlined in the opinion. U.S. v. Seymour, 50 F.2d 930 (8th Cir. 1931).

32-503 United States Representatives in Congress; terms; qualifications; partisan ballot.

The United States Representatives in Congress shall be elected from the three congressional districts established in section 32-504 for terms of two years at the statewide general election in each even-numbered year. Candidates for the United States House of Representatives shall meet the qualifications found in Article I, section 2, of the Constitution of the United States. The representatives shall be elected on the partisan ballot. The representatives shall be elected in accordance with the laws of the United States.

Source: Laws 1994, LB 76, § 99.

Cited but not discussed. Exon v. Tiemann, 279 F.Supp. 609 (D. Neb. 1968).

32-504 Congressional districts; enumerated.

Based on the 2000 Census of Population by the United States Department of Commerce, Bureau of the Census, the State of Nebraska is hereby divided into three districts for electing Representatives in the Congress of the United States, and each district shall be entitled to elect one representative. The limits and designations of the three districts shall be as follows:

(1) The first district shall contain the counties of Richardson, Nemaha, Otoe, Cass, Johnson, Pawnee, Gage, Lancaster, Saunders, Seward, Butler, Dodge, Washington, Colfax, Madison, Burt, Stanton, Cuming, Thurston, Wayne, Dixon, and Dakota, that part of Sarpy County not included in the second district, and

that part of Cedar County beginning at the intersection of the Cedar-Dixon County line and the northern boundary of Precinct 7, follow such boundary west to the intersection of a north-south line extending north from 574th Avenue, south along such line to 574th Avenue, south on 574th Avenue to 886th Road, west on 886th Road to State Highway 57, north on State Highway 57 to 887th Road, west on 887th Road to the intersection of a north-south line extending north from 570th Avenue, south along such line to 570th Avenue, south on 570th Avenue to 884th Road, west on 884th Road to 566th Avenue, south on 566th Avenue to Bow Creek, follow Bow Creek west to 883rd Road, west on 883rd Road to 564th Avenue, south on 564th Avenue to 882nd Road, south on 882nd Road to 564th Avenue, south on 564th Avenue and continuing south along a north-south line extending south from 564th Avenue to 564th Avenue, south on 564th Avenue to 870th Road, west on 870th Road to 564th Avenue, south on 564th Avenue to the Cedar-Wayne County line, east along the Cedar-Wayne County line to the Cedar-Dixon County line, and north along the Cedar-Dixon County line to the point of beginning;

(2) The second district shall contain Douglas County and that part of Sarpy County beginning at the intersection of the Douglas-Sarpy County line and South 156th Street, south on South 156th Street to Giles Road, east on Giles Road to South 132nd Street, south on South 132nd Street to State Highway 370, east on State Highway 370 to the western boundary of the Papillion-La Vista Public School District, follow such boundary south to Schram Road, east on Schram Road to the intersection of a north-south line extending north from South 120th Street, south along such line to the intersection of an east-west line extending west from Maass Road, east along such line to South 114th Street, north on South 114th Street to Schram Road, east on Schram Road to the southern corporate limits of the city of Papillion, follow the southern corporate limits of the city of Papillion east to State Highway 370, east on State Highway 370 to South 72nd Street, south on South 72nd Street to Capehart Road, east on Capehart Road to South 60th Street, south on South 60th Street and continuing south along a north-south line extending south from South 60th Street to Platteview Road, east on Platteview Road to Dyson Hollow Road, north on Dyson Hollow Road to the southern boundary of the Bellevue Public School District, follow such boundary east to U.S. Highway 75, south on U.S. Highway 75 to the Sarpy-Cass County line, east along the Sarpy-Cass County line to the Nebraska-Iowa state line, north along the Nebraska-Iowa state line to the Douglas-Sarpy County line, and west along the Douglas-Sarpy County line to the point of beginning; and

(3) The third district shall contain the counties of Jefferson, Saline, Thayer, Fillmore, York, Polk, Platte, Pierce, Knox, Antelope, Boone, Nance, Merrick, Hamilton, Clay, Nuckolls, Webster, Adams, Hall, Howard, Greeley, Wheeler, Holt, Boyd, Garfield, Valley, Sherman, Buffalo, Kearney, Franklin, Harlan, Phelps, Furnas, Gosper, Dawson, Custer, Loup, Blaine, Keya Paha, Rock, Brown, Cherry, Thomas, Logan, Lincoln, Frontier, Red Willow, Hitchcock, Hayes, McPherson, Hooker, Grant, Arthur, Keith, Perkins, Chase, Dundy, Deuel, Garden, Sheridan, Cheyenne, Morrill, Box Butte, Dawes, Sioux, Scotts Bluff, Banner, and Kimball and that part of Cedar County not included in the first district.

Source: Laws 1994, LB 76, § 100; Laws 2001, LB 851, § 1.

This act does not violate the one person, one vote standard, and is constitutional. Exon v. Tiemann, 279 F.Supp. 609 (D. Neb. 1968).

32-505 Congressional districts; description; basis.

The descriptions of districts in section 32-504 are taken from the 2000 TIGER/Line files published by the United States Department of Commerce, Bureau of the Census.

Source: Laws 1994, LB 76, § 101; Laws 2001, LB 851, § 2.

32-506 Governor and Lieutenant Governor; terms; qualifications; partisan ballot.

The Governor and Lieutenant Governor shall be elected at the statewide general election in 1994 and each four years thereafter. Such officers shall serve for terms of four years or until their successors are elected and qualified. Candidates for Governor and Lieutenant Governor shall meet the qualifications found in Article IV, sections 1 and 2, of the Constitution of Nebraska. The Governor and Lieutenant Governor shall be elected on the partisan ballot.

Source: Laws 1994, LB 76, § 102.

32-507 State Treasurer; Auditor of Public Accounts; Secretary of State; Attorney General; terms; qualifications; partisan ballot.

The State Treasurer, Auditor of Public Accounts, Secretary of State, and Attorney General shall be elected at the statewide general election in 1994 and each four years thereafter. Such officers shall serve for terms of four years or until their successors are elected and qualified. Candidates for State Treasurer shall meet the qualifications found in Article IV, section 3, of the Constitution of Nebraska. Such officers shall be elected on the partisan ballot.

Source: Laws 1994, LB 76, § 103.

32-508 Members of the Legislature; districts; terms; qualifications; nonpartisan ballot.

The State of Nebraska is divided into forty-nine legislative districts as provided and described in sections 50-1101 to 50-1152. The members of the Legislature from the even-numbered districts shall be elected for terms of four years at the statewide general election in 1994 and each four years thereafter. The members of the Legislature from the odd-numbered districts shall be elected for terms of four years at the statewide general election in 1996 and each four years thereafter. Candidates for the Legislature shall meet the qualifications found in Article III, sections 8 and 9, of the Constitution of Nebraska. The members of the Legislature shall be elected on the nonpartisan ballot.

Source: Laws 1994, LB 76, § 104.

32-509 Public service commissioners; districts; qualifications; partisan ballot; terms.

(1) The State of Nebraska is divided into five public service commissioner districts as provided and described in sections 75-101.01 and 75-101.02. A candidate for the office of public service commissioner shall meet the qualifications found in section 75-101. The commissioners shall be elected on the partisan ballot.

(2) Each public service commissioner shall be elected for a term of six years. One public service commissioner from public service commissioner district number one and one public service commissioner from public service commissioner district number three shall be elected at the statewide general election in 1994 and each six years thereafter. One public service commissioner from public service commissioner district number four and one public service commissioner from public service commissioner district number five shall be elected at the statewide general election in 1992 and each six years thereafter. One public service commissioner from public service commissioner district number two shall be elected at the statewide general election in 1996 and each six years thereafter.

Source: Laws 1994, LB 76, § 105; Laws 2001, LB 855, § 1.

32-510 Board of Regents of the University of Nebraska, districts; terms; nonpartisan ballot.

The State of Nebraska is divided into eight districts for the election of the Board of Regents of the University of Nebraska as provided and described in sections 85-103.01 and 85-103.02. One regent from district number one and one regent from district number two shall be elected at the statewide general election in 1996 and each six years thereafter. One regent from district number six and one regent from district number seven shall be elected at the statewide general election in 1992 and each six years thereafter. One regent from district number three, one regent from district number four, one regent from district number five, and one regent from district number eight shall be elected at the statewide general election in 1994 and each six years thereafter. The regents shall serve for terms of six years or until their successors are elected and qualified. The regents shall be elected on the nonpartisan ballot.

Source: Laws 1994, LB 76, § 106; Laws 2001, LB 854, § 1.

32-511 State Board of Education; districts; terms; qualifications; nonpartisan ballot.

The State of Nebraska is divided into eight districts for the election of the State Board of Education as provided and described in sections 79-311 and 79-312. One member from district number one, one member from district number two, one member from district number three, and one member from district number four shall be elected at the statewide general election in 1996 and each four years thereafter. One member from district number five, one member from district number six, one member from district number seven, and one member from district number eight shall be elected at the statewide general election in 1994 and each four years thereafter. The members shall serve for terms of four years or until their successors are elected and qualified. Candidates for the State Board of Education shall meet the qualifications found in section 79-313. The members shall be elected on the nonpartisan ballot.

Source: Laws 1994, LB 76, § 107; Laws 1996, LB 900, § 1038; Laws 2001, LB 856, § 1.

32-512 Public power district; public power and irrigation district; board of directors; nonpartisan ballot; terms; qualifications; qualified voters.

(1) After the selection of the original board of directors of a public power district as provided for in sections 70-803 and 70-805 or a district as provided

for in sections 70-604 and 70-609, their successors shall be nominated and elected on the nonpartisan ballot, except that in districts receiving annual gross revenue of less than forty million dollars, the candidates for the board of directors shall not appear on the ballot in the primary election. The term of each elected director shall be not more than six years or until his or her successor is elected and qualified. Candidates for the board of directors shall meet the qualifications found in sections 70-610 and 70-619.

(2) Registered voters residing within the chartered territory and registered voters duly certified in accordance with section 70-604.03 shall be qualified to vote in the district as certified pursuant to section 70-611. The registered voters of a subdivision created under section 70-612 may only cast their ballots for candidates for directors to be elected from such subdivision and for candidates for directors to be elected at large from the whole district.

Source: Laws 1994, LB 76, § 108.

32-513 Natural resources districts; board of directors; terms; subdistricts; qualifications; nonpartisan ballot.

Except as provided in section 2-3213, candidates for the board of directors of natural resources districts shall be elected for four-year terms at the statewide general election. The number of directors, the length of their terms, and the subdistrict which they are to represent if any shall be determined by the board of directors pursuant to sections 2-3213 and 2-3214. Candidates for the board of directors shall meet the qualifications found in section 2-3214. District directors shall be elected on the nonpartisan ballot.

Source: Laws 1994, LB 76, § 109.

32-514 Community college area board of governors; districts; terms; nonpartisan ballot.

Candidates for membership on the community college area board of governors shall be elected from the election districts established by the board of governors pursuant to section 85-1512. Two members of the board shall be elected from each election district, and one member shall be elected at large from the area. Board members shall be elected for four-year terms. Board members shall be elected on the nonpartisan ballot.

Source: Laws 1994, LB 76, § 110.

32-515 Educational service unit board; terms; qualifications; nonpartisan ballot.

Candidates for the boards of educational service units, except boards of educational service units with only one member school district, shall be elected to represent the geographical boundaries of the educational service unit as provided in section 79-1217. The terms of members elected in 2008 to represent odd-numbered election districts established pursuant to section 79-1217.01 shall expire in 2011. The terms of members elected in 2008 to represent even-numbered election districts established under such section shall expire in 2013. Successors to the members elected in 2008 shall be elected for terms of four years. Candidates for the board of educational service units shall meet the

qualifications found in section 79-1217. Board members shall be elected on the nonpartisan ballot.

Source: Laws 1994, LB 76, § 111; Laws 1996, LB 900, § 1039; Laws 1999, LB 802, § 11; Laws 2007, LB603, § 2.

32-516 Reclamation district; board of directors; nonpartisan ballot; terms.

After the selection of the original board of directors of a reclamation district as provided for in subdivision (5) of section 46-516, their successors shall be elected at a statewide general election on the nonpartisan ballot. The term of each member of the board thus elected shall be six years or until his or her successor is elected and qualified.

Source: Laws 1994, LB 76, § 112.

32-517 County clerk; terms; qualifications; partisan ballot.

Except as provided in section 22-417, a county clerk shall be elected in each county having a population of four hundred thousand inhabitants or less at the statewide general election in 1994 and each four years thereafter and in counties having a population in excess of four hundred thousand inhabitants at the statewide general election in 1996 and each four years thereafter. The county clerk shall meet the qualifications found in sections 23-1301 and 23-3203 if applicable. The county clerk shall be elected on the partisan ballot.

Source: Laws 1994, LB 76, § 113; Laws 1996, LB 1085, § 44.

32-518 Register of deeds; terms; continuation of office; when; qualifications; partisan ballot.

Except as provided in section 22-417, (1) a register of deeds shall be elected in each county having a population of more than twenty thousand and not more than four hundred thousand inhabitants at the statewide general election in 1962 and each four years thereafter and in counties having a population in excess of four hundred thousand inhabitants at the statewide general election in 1964 and each four years thereafter and (2) if the population of a county which has a separate office of register of deeds pursuant to this section falls below twenty thousand inhabitants after establishing such an office or if a county which has a separate office of register of deeds immediately prior to July 10, 1990, has a population of twenty thousand inhabitants or less, the office of the register of deeds shall continue and the officer shall be elected pursuant to this section as if the county had a population of more than twenty thousand and not more than four hundred thousand inhabitants. The term of the register of deeds shall be four years or until his or her successor is elected and qualified. The register of deeds shall meet the qualifications found in section 23-1501. The register of deeds shall be elected on the partisan ballot.

Source: Laws 1994, LB 76, § 114; Laws 1996, LB 1085, § 45.

The County Manager Act, held unconstitutional, did not abolish the office of register of deeds in counties where that form of government was adopted. The 1933 amendment to this section did not repeal the County Manager Act. State ex rel. O'Connor v. Tusa, 130 Neb. 528, 265 N.W. 524 (1936).

Under former law this section authorized the election of a register of deeds in only those counties having the required population, as determined by the last preceding state or national census, at the date of the election. State ex rel. Miller v. Lewis, 38 Neb. 191, 56 N.W. 885 (1893).

32-519 County assessor; election; when required; terms; qualifications; partisan ballot.

(1) Except as provided in sections 22-417 and 77-1340, at the statewide general election in 1990 and each four years thereafter, a county assessor shall

be elected in each county having a population of more than three thousand five hundred inhabitants and more than one thousand two hundred tax returns. The county assessor shall serve for a term of four years.

(2) The county board of any county shall order the submission of the question of electing a county assessor in the county to the registered voters of the county at the next statewide general election upon presentation of a petition to the county board (a) conforming to the provisions of section 32-628, (b) not less than sixty days before any statewide general election, (c) signed by at least ten percent of the registered voters of the county secured in not less than two-fifths of the townships or precincts of the county, and (d) asking that the question be submitted to the registered voters in the county. The form of submission upon the ballot shall be as follows: For election of county assessor; Against election of county assessor. If a majority of the votes cast on the question are against the election of a county assessor in such county, the duties of the county assessor shall be performed by the county clerk and the office of county assessor shall either cease with the expiration of the term of the incumbent or continue to be abolished if no such office exists at such time. If a majority of the votes cast on the question are in favor of the election of a county assessor, the office shall continue or a county assessor shall be elected at the next statewide general election.

(3) The county assessor shall meet the qualifications found in sections 23-3202 and 23-3204. The county assessor shall be elected on the partisan ballot.

Source: Laws 1994, LB 76, § 115; Laws 1996, LB 1085, § 46.

Under this section, the office of county assessor in a county which has elected to abolish it, continues only during the incumbency of the county assessor then holding office, and immediately upon his resignation, the county clerk becomes ex officio county assessor. Hatcher & Co. v. Gosper County, 95 Neb. 543, 145 N.W. 993 (1914).

32-520 County sheriff; terms; qualifications; partisan ballot.

A county sheriff shall be elected in each county at the statewide general election in 1990 and each four years thereafter. The term of the county sheriff shall be four years or until his or her successor is elected and qualified. The county sheriff shall meet the qualifications found in sections 23-1701 and 23-1701.01. The county sheriff shall be elected on the partisan ballot.

Source: Laws 1994, LB 76, § 116.

32-521 County treasurer; terms; qualifications; partisan ballot.

A county treasurer shall be elected in each county at the statewide general election in 1990 and each four years thereafter. The term of the county treasurer shall be four years or until his or her successor is elected and qualified. The county treasurer shall meet the qualifications found in section 23-1601.01. The county treasurer shall be elected on the partisan ballot.

Source: Laws 1994, LB 76, § 117.

32-522 County attorney; terms; qualifications; partisan ballot.

Except as provided in section 23-1201.01, a county attorney shall be elected in each county at the statewide general election in 1990 and each four years thereafter. The term of the county attorney shall be four years or until his or her successor is elected and qualified. Candidates for the office of county attorney

shall meet the qualifications found in sections 23-1201.01 and 23-1201.02. The county attorney shall be elected on the partisan ballot.

Source: Laws 1994, LB 76, § 118.

Office of county attorney is to be treated as a legislative office as distinguished from a constitutional office. Fitzgerald v. Kuppinger, 163 Neb. 286, 79 N.W.2d 547 (1956).

The term of office of a county attorney is not limited to four years, but continues until a successor is elected, or appointed, and qualified. State ex rel. Schroeder v. Swanson, 121 Neb. 459, 237 N.W. 407 (1931).

Under the Constitution, Article IX, section 4, the Legislature has power to create the office of county attorney. Dinsmore v. State, 61 Neb. 418, 85 N.W. 445 (1901).

Although county attorneys now have the same duties and powers as district attorneys formerly had, a county attorney is a county officer and the county court has original jurisdiction over contests of election for that office. Bell v. Templin, 26 Neb. 249, 41 N.W. 1093 (1889).

32-523 Public defender; election; when required; terms; qualifications; partisan ballot.

Except as otherwise provided in sections 23-3401 and 23-3404, the public defender shall, in counties having a population in excess of one hundred thousand inhabitants which have not elected a public defender prior to July 10, 1984, be elected at the next statewide general election following July 10, 1984, or the year in which the county attains a population of one hundred thousand inhabitants and shall, in other counties, be elected at the first statewide general election of county officers following approval by the county board and every four years thereafter. The term of the public defender shall be four years or until his or her successor is elected and qualified. The public defender shall meet the qualifications found in section 23-3401. The public defender shall be elected on the partisan ballot.

Source: Laws 1994, LB 76, § 119.

32-524 Clerk of the district court; election; when required; terms; partisan ballot.

(1) Except as provided in section 22-417:

(a) In counties having a population of seven thousand inhabitants or more, there shall be elected one clerk of the district court at the statewide general election in 1962 and every four years thereafter; and

(b) In counties having a population of less than seven thousand inhabitants, there shall be elected a clerk of the district court at the first statewide general election following a determination by the county board and the district judge for the county that such officer should be elected and each four years thereafter. When such a determination is not made in such a county, the county clerk shall be ex officio clerk of the district court and perform the duties by law devolving upon that officer.

(2) In any county upon presentation of a petition to the county board (a) not less than sixty days before the statewide general election in 1976 or every four years thereafter, (b) signed by registered voters of the county equal in numbers to at least fifteen percent of the total vote cast for Governor at the most recent gubernatorial election in the county, secured in not less than two-fifths of the townships or precincts of the county, and (c) asking that the question of not electing a clerk of the district court in the county be submitted to the registered voters therein, the county board, at the next statewide general election, shall order the submission of the question to the registered voters of the county. The form of submission upon the ballot shall be as follows:

For election of a clerk of the district court;

Against election of a clerk of the district court.

(3) If a majority of the votes cast on the question are against the election of a clerk of the district court in such county, the duties of the clerk of the district court shall be performed by the county clerk and the office of clerk of the district court shall either cease with the expiration of the term of the incumbent or continue to be abolished if no such office exists at such time.

(4) If a majority of the votes cast on the question are in favor of the election of a clerk of the district court, the office shall continue or a clerk of the district court shall be elected at the next statewide general election as provided in subsection (1) of this section.

(5) The term of the clerk of the district court shall be four years or until his or her successor is elected and qualified. The clerk of the district court shall be elected on the partisan ballot.

Source: Laws 1994, LB 76, § 120; Laws 1996, LB 1085, § 47.

Method of giving notice of appeal in this particular case from freeholders' board, in a county where by law county clerk is ex officio clerk of the district court, held sufficient. Elson v. Harbert, 190 Neb. 437, 208 N.W.2d 703 (1973).

The United States census reports are not conclusive evidence, but are prima facie evidence of the population in any given territory unless overcome by other competent evidence. State ex rel. Blessing v. Davis, 66 Neb. 333, 92 N.W. 740 (1902).

The language of this section, providing for an election in a designated year and every four years thereafter, refers to regular elections and not to the filling of vacancies. State ex rel. Francl v. Dodson, 21 Neb. 218, 31 N.W. 788 (1887).

This section refers to the population of each county ascertained as of the date of election, from the best evidence obtainable, and not exclusively from a previous census. State ex rel. McBride v. Long, 17 Neb. 502, 23 N.W. 337 (1885).

The office of clerk of the district court is not separate from the office of county clerk in counties containing less than the required population at the date of election. State ex rel. Bd. of County Commissioners of Hamilton County v. Whittemore, 12 Neb. 252, 11 N.W. 310 (1882).

Under this section, an election may be held only in the designated year and every four years thereafter and only in counties having the required population in the designated years. State ex rel. Graybill v. Whittemore, 11 Neb. 175, 9 N.W. 93 (1881); State ex rel. Newman v. Stauffer, 11 Neb. 173, 8 N.W. 432 (1881).

The office of clerk of the district court does not exist in counties having less than the required population at the date of election, but the county clerk of such counties is an ex officio clerk of the district court. State ex rel. Welna v. Steuffer, 10 Neb. 506, 6 N.W. 604 (1880).

32-525 County surveyor; election; when required; terms; qualifications; partisan ballot.

Except as provided in section 22-417, when there is a qualified surveyor within a county who will accept the office of county surveyor if elected, a county surveyor on either a full-time or part-time basis, as determined by the county board in accordance with section 23-1901, shall be elected in each county having a population of less than one hundred fifty thousand inhabitants at the statewide general election in 1990 and each four years thereafter. The term of the county surveyor shall be four years or until his or her successor is elected and qualified. The county surveyor shall meet the qualifications found in sections 23-1901 and 23-1901.01. The county surveyor shall be elected on the partisan ballot.

Source: Laws 1994, LB 76, § 121; Laws 1996, LB 1085, § 48.

32-526 County engineer; election; when required; terms; qualifications; partisan ballot.

Except as provided in section 22-417, a county engineer shall be elected in each county having a population of one hundred fifty thousand inhabitants or more at the statewide general election in 1990 and each four years thereafter. The term of the county engineer shall be four years or until his or her successor

is elected and qualified. The county engineer shall meet the qualifications found in section 23-1901. The county engineer shall be elected on the partisan ballot.

Source: Laws 1994, LB 76, § 122; Laws 1996, LB 1085, § 49.

32-527 Repealed. Laws 1999, LB 272, § 118.

32-528 County board of commissioners; terms; qualifications; partisan ballot; nomination and election by district; change of number of commissioners; procedure.

(1) In counties having a county board of three commissioners, two commissioners shall be elected at the statewide general election in 1994 and each four years thereafter, and one commissioner shall be elected at the statewide general election in 1996 and each four years thereafter. In counties having a county board of five commissioners, three commissioners shall be elected at the statewide general election in 1994 and each four years thereafter, and two commissioners shall be elected at the statewide general election in 1996 and each four years thereafter. In counties having a county board of seven or more commissioners, one commissioner shall be elected in each odd-numbered commissioner district at the statewide general election in 1994 and each four years thereafter, and one commissioner shall be elected in each even-numbered commissioner district at the statewide general election in 1996 and each four years thereafter.

(2) Except for commissioners first elected after the county adopts the commissioner form of government or has increased the number of commissioners, the term of each county commissioner shall be four years or until his or her successor is elected and qualified. At the first election held to choose the board of commissioners in any county having three commissioners, the person having the highest number of votes shall serve for four years and the two receiving the next highest number of votes shall serve for two years, and if any three or more persons have the same number of votes, their terms of office shall be determined by the county canvassing board. The county commissioners shall meet the qualifications found in section 23-150. Nothing in this section shall be construed to prohibit the reelection of a commissioner holding office if the commissioner is reelected to represent his or her respective district. The county commissioners shall be elected on the partisan ballot.

(3)(a) In counties having not more than one hundred fifty thousand inhabitants, one commissioner shall be nominated and elected from each district by the registered voters of the district.

(b) Until 2010, in counties having a population of more than one hundred fifty thousand but not more than three hundred thousand inhabitants, one commissioner shall be nominated from each district by the registered voters of the district and shall be elected by the registered voters of the entire county. Beginning in 2010 in counties having a population of more than one hundred fifty thousand but not more than three hundred thousand inhabitants, one commissioner shall be nominated and elected from each district by the registered voters of the district as provided in subsection (5) of this section.

(c) In counties having more than three hundred thousand inhabitants, one commissioner shall be nominated and elected from each district by the registered voters of the district.

(4) In counties in which a majority has voted to have five commissioners as provided in section 23-148, the three commissioners of such county whose terms of office will expire after the election shall continue in office until the expiration of the terms for which they were elected and until their successors are elected and qualified. Two commissioners shall be appointed pursuant to section 32-567 to serve until the first Thursday after the first Tuesday in January following the next statewide general election. At the next statewide general election, commissioners shall be elected to fill the positions of any commissioners appointed under this section. At the first primary election after such appointments, filings shall be accepted for terms of two years and for terms of four years so that two commissioners will be elected to four-year terms at one election and three commissioners will be elected to four-year terms at the next election.

(5) In counties having more than one hundred fifty thousand but not more than three hundred thousand inhabitants which are changing from nominating by district and electing at large to nominating and electing by district as provided in subdivision (3)(b) of this section, the commissioners shall continue in office until the expiration of the terms for which they were elected and until their successors are elected and qualified. At the primary election in 2010, one commissioner in such counties shall be nominated from each odd-numbered district. At the ensuing general election, one commissioner shall be elected from each odd-numbered district. At the primary election in 2012, one commissioner in such counties shall be nominated from each even-numbered district. At the ensuing general election, one commissioner shall be elected from each even-numbered district.

Source: Laws 1994, LB 76, § 124; Laws 2008, LB268, § 2.
Effective date July 18, 2008.

Term of county commissioner is four years. Cavey v. Reigle, 101 Neb. 807, 165 N.W. 153 (1917); State ex rel. Fitch v. McFarland, 98 Neb. 854, 154 N.W. 719 (1915); Calling v. Gilland, 97 Neb. 788, 151 N.W. 322 (1915).

The election of more than one commissioner is not forbidden if terms of two commissioners have expired or will the succeeding January. State ex rel. Calling v. Smith, 101 Neb. 805, 165 N.W. 152 (1917).

This section expresses legislative construction of former conflicting statutes. De Larm v. Van Camp, 98 Neb. 857, 154 N.W. 717 (1915).

In counties not under township organization, the term of office of a county commissioner is four years and is controlled by the act that created the office and prescribed the term thereof. Saling v. Bahensky, 97 Neb. 789, 151 N.W. 320 (1915).

32-529 County board of supervisors; districts; terms; qualifications; partisan ballot.

At the first general election after the adoption of township organization by a county, one supervisor shall be elected in each supervisor district. Thereafter one supervisor shall be elected in each odd-numbered supervisor district at the general election two years after the first general election and each four years thereafter, and one supervisor shall be elected in each even-numbered supervisor district at the general election four years after the first general election and each four years thereafter. Each county supervisor shall be nominated and elected by the registered voters of the district from which he or she is elected. Except for supervisors first elected after the county has adopted township organization, the term of each county supervisor shall be four years or until his or her successor is elected and qualified. The county supervisors shall meet the qualifications found in section 23-268. The county supervisors shall be elected on the partisan ballot.

Source: Laws 1994, LB 76, § 125.

County supervisors are elected for four years, but have staggered terms of office. Foote v. County of Adams, 163 Neb. 406, 80 N.W.2d 179 (1956).

The 1891 amendment to the election laws did not repeal or change the laws relating to the election of township officers or temporary organization, but merely provided for future elections. Albert v. Twohig, 35 Neb. 563, 53 N.W. 582 (1892).

This section, as enacted in 1879, referred to the first general election after the adoption of township organization at which the county officers named were to be elected. State ex rel. Crossley v. Hedlund, 16 Neb. 566, 20 N.W. 876 (1884).

32-530 Township officers; terms; qualifications; nonpartisan ballot.

After the initial appointments as provided for in sections 23-214 and 23-215, the officers of the township board shall be elected in counties under township government at the statewide general election in 1994 and every four years thereafter. Except for officers first appointed after the county has adopted township organization, the term of each officer shall be four years or until his or her successor is elected and qualified. The three candidates receiving the highest number of votes at the general election shall be the officers of the township board, and the three officers shall determine by majority vote which officer shall serve as township clerk, township treasurer, and chairperson of the township board. The township officers shall meet the qualifications found in sections 23-214 and 23-215. The township officers shall be elected on the nonpartisan ballot.

Source: Laws 1994, LB 76, § 126; Laws 1997, LB 764, § 47; Laws 2003, LB 461, § 2.

32-531 County weed district board; terms; qualifications; nonpartisan ballot.

After the initial appointments to the county weed district board in counties in which the members are elected, the two members from cities, villages, or townships shall thereafter be elected at the statewide general election in 1994 and each four years thereafter, and the three members from rural areas shall be elected at the statewide general election in 1996 and each four years thereafter. After the initial appointments, the term of each member shall be four years or until his or her successor is elected and qualified. The members shall meet the qualifications found in section 2-953.01. The members shall be elected on the nonpartisan ballot.

Source: Laws 1994, LB 76, § 127.

32-532 Village board of trustees; terms; qualifications.

The members of a village board of trustees shall be elected at the statewide general election as provided in section 17-202 and each four years thereafter. Except as provided in such section, the term of each board member shall be four years or until his or her successor is elected and qualified. The board members shall meet the qualifications found in section 17-203.

Source: Laws 1994, LB 76, § 128; Laws 1995, LB 194, § 7.

32-533 Cities of the second class; officers; terms.

Commencing with the primary election in 1976 and every two years thereafter, all elected officers in all cities of the second class shall be nominated at the statewide primary election and elected at the statewide general election. All elected officers in a city of the second class shall serve for terms of four years or until their successors are elected and qualified.

Source: Laws 1994, LB 76, § 129.

32-534 Certain cities of the first class; officers; wards; terms; qualifications.

(1) In a city of the first class except a city having adopted the commissioner or city manager plan of government, a mayor shall be elected at large and council members shall be elected by ward or at large and by ward as provided in section 32-554. If members are elected by ward, one or two council members shall be elected from each ward, except that there shall be at least four council members, and two council members shall be required for each ward in any city having fewer than four wards. The council may provide for the election of the treasurer and clerk as provided in section 16-302.01.

(2) All elected officers in a city of the first class shall serve for terms of four years or until their successors are elected and qualified. The council members shall be nominated at the statewide primary election and elected at the statewide general election. The council members shall meet the qualifications found in section 16-302.01.

Source: Laws 1994, LB 76, § 130; Laws 2001, LB 730, § 2; Laws 2002, LB 970, § 2.

32-535 Cities of the primary class; city council; terms.

The members of the city council of a city of the primary class shall be elected at the general city election as provided in section 15-301. The term of each council member shall be four years or until his or her successor is elected and qualified.

Source: Laws 1994, LB 76, § 131.

32-536 Cities of the metropolitan class; city council; terms; districts; qualifications.

In a city of the metropolitan class, seven council members shall be elected to the city council for terms of four years at the general city election in 1993 pursuant to section 14-201. One council member shall be nominated and elected from each of the districts into which the city is divided pursuant to section 14-201.03. The council members shall meet the qualifications found in sections 14-204 and 14-230.

Source: Laws 1994, LB 76, § 132.

32-537 City with home rule charter; city council; qualifications; nominating petition or filing fee.

(1) In a city which adopts a home rule charter pursuant to sections 19-501 to 19-503 and Article XI, sections 2 to 5, of the Constitution of Nebraska, the number of city council members shall be determined by the home rule charter. The council members of a city of the metropolitan class which adopts a home rule charter shall meet the qualifications found in sections 14-204 and 14-230.

(2) Any city having a home rule charter may provide in such charter for a nominating petition or filing fee or both for any person desiring to be a candidate for the office of council member or mayor.

Source: Laws 1994, LB 76, § 133.

32-538 City with city manager plan of government; city council; members; wards; terms; change in number; procedure.

(1) In a city which adopts the city manager plan of government pursuant to sections 19-601 to 19-610, the number of city council members shall be determined by the class and population of the city. In cities having one thousand or more but not more than forty thousand inhabitants, there shall be five members, and in cities having more than forty thousand but less than two hundred thousand inhabitants, there shall be seven members, except that in cities having between twenty-five thousand and forty thousand inhabitants, the city council may by ordinance provide for seven members. Council members shall be elected from the city at large unless the city council by ordinance provides for the election of all or some of its council members by wards, the number and boundaries of which are provided for in section 16-104. Council members shall serve for terms of four years or until their successors are elected and qualified. The council members shall meet the qualifications found in sections 19-613 and 19-613.01.

The first election under an ordinance changing the number of council members or their manner of election shall take place at the next regular city election. Council members whose terms of office expire after the election shall continue in office until the expiration of the terms for which they were elected and until their successors are elected and qualified. At the first election under an ordinance changing the number of council members or their manner of election, one-half or the bare majority of council members elected at large, as the case may be, who receive the highest number of votes shall serve for four years and the other or others, if needed, for two years. At such first election, one-half or the bare majority of council members, as the case may be, who are elected by wards shall serve for four years and the other or others, if needed, for two years, as provided in the ordinance. If only one council member is to be elected at large at such first election, such member shall serve for four years.

(2) Commencing with the statewide primary election in 1976, and every two years thereafter, those candidates whose terms will be expiring shall be nominated at the statewide primary election and elected at the statewide general election.

Source: Laws 1994, LB 76, § 134; Laws 2001, LB 71, § 2; Laws 2001, LB 730, § 3.

32-539 City with commission plan of government; city council; members; nonpartisan ballot; mayor and council members; terms.

(1) In a city which adopts the commission plan of government pursuant to sections 19-401 to 19-433, the number of city council members shall be determined by the class and population of the city. In cities having two thousand or more but not more than forty thousand inhabitants, there shall be five members, in cities of the primary class, there shall be five members, and in cities of the metropolitan class, there shall be seven members. Council members shall be elected from the city at large. In cities of the primary class, three excise members shall be elected in addition to the five council members. Nomination and election of all council members shall be by nonpartisan ballot. The mayor shall be elected for a four-year term.

(2) In cities containing two thousand or more but not more than forty thousand inhabitants, at the city council election in 1980, the council member elected as the commissioner of the department of public works and the council member elected as the commissioner of the department of parks and recreation

shall each serve a term of four years. If a city elects to adopt the commission plan of government after 1980, the council member elected as the commissioner of the department of public works and the council member elected as the commissioner of the department of public accounts and finances shall each serve a term of four years and the council member elected as the commissioner of the department of streets, public improvements, and public property and the council member elected as the commissioner of the department of parks and recreation shall each serve a term of two years. Upon the expiration of such terms, all council members shall serve terms of four years and until their successors are elected and qualified.

(3) Commencing with the statewide primary election in 2000, and every two years thereafter, candidates shall be nominated at the statewide primary election and elected at the statewide general election except as otherwise provided in section 19-405.

Source: Laws 1994, LB 76, § 135; Laws 1999, LB 250, § 3.

32-540 Metropolitan utilities district; board of directors; nonpartisan ballot; terms; qualifications.

In each metropolitan utilities district service area, two of the members of the board of directors shall be chosen at large by the registered voters within the district at the time of the statewide primary and statewide general elections held in the even-numbered years, except that at the primary and general elections held in 1978 and every six years thereafter, three members, one of whom shall be known as the outside member, shall be elected at large by the registered voters within the district. Nomination and election of all directors shall be by nonpartisan ballot. Members of the board shall hold office for a period of six years from the first Tuesday after the first Monday in January following their election or until their successors are elected and qualified. The directors shall meet the qualifications found in sections 14-2102 and 14-2103.

Source: Laws 1994, LB 76, § 136.

32-541 Class I school district; school board members; terms; qualifications.

Class I school districts which have voted to have a six-member school board pursuant to section 79-548 may elect the board members at the statewide primary election. The members of the school board serving when it is decided to elect at the statewide primary election shall continue in office until the first Tuesday in June following the next statewide primary election, at which election a six-member board shall be elected. The three members receiving the highest number of votes shall be elected for terms of four years, and the three members receiving the next highest number of votes shall be elected for terms of two years. Each member's term of office shall begin on the first Tuesday in June following his or her election and, except as otherwise provided in this section, shall continue for four years or until the member's successor is elected and qualified. The members shall meet the qualifications found in section 79-543.

Source: Laws 1994, LB 76, § 137; Laws 1996, LB 900, § 1040.

32-542 Class II school district; school board members; terms; qualifications.

Three school board members shall be elected for each Class II school district at each statewide general election, except that when a Class II school district is created by a Class I school district which determines by a majority vote to establish a high school pursuant to section 79-406, a six-member board shall be elected at the next statewide general election and the three members receiving the highest number of votes shall be elected for terms of four years, and the three members receiving the next highest number of votes shall be elected for terms of two years. Each member's term of office shall begin on the date of the first regular meeting of the board in January following the statewide general election at which he or she is elected and, except as otherwise provided in this section, shall continue for four years or until the member's successor is elected and qualified. The term of a board member holding office on January 1, 1997, which term would otherwise expire before the first regular meeting of the board in January following the statewide general election, shall be extended to the first regular meeting of the board in January following the date his or her term would otherwise expire. The school board members of a Class II school district shall meet the qualifications found in section 79-543.

Source: Laws 1994, LB 76, § 138; Laws 1996, LB 900, § 1041; Laws 1996, LB 967, § 1; Laws 2005, LB 126, § 7; Referendum 2006, No. 422.

32-543 Class III school district; board of education members; terms; qualifications.

(1) If a caucus is held for nominations under section 79-549 for a Class III school district, the board of education shall consist of six members to be elected by the registered voters of the school district at the statewide primary election. Two members shall be elected at each election for a term of six years. The members shall meet the qualifications found in section 79-543.

(2) Except as provided in subsection (1) of this section, members of the board of education of a Class III school district shall be nominated at the statewide primary election and elected at the statewide general election. The board of education of a Class III school district shall have six or nine members as provided in section 79-549 or 79-550, and the members shall be nominated and elected at large or by district or ward as provided in section 32-554 or nominated by district or ward and elected at large as provided in section 79-550. The number of members to be nominated at the statewide primary election and elected at the statewide general election and the terms for which they will be nominated and elected shall be determined by the election commissioner or county clerk with the aid of the elected secretary of the board of education of the district. The terms of office of members of such board shall expire on the first Thursday after the first Tuesday in January. Terms shall be staggered so that three members shall be elected to each six-member board and four or five members shall be elected to each nine-member board at each general election for terms of four years. When it becomes necessary to establish the staggering of terms by electing members for terms of different duration at the same election, candidates receiving the greatest number of votes shall be elected for the longest terms. The members shall meet the qualifications found in section 79-543.

Source: Laws 1994, LB 76, § 139; Laws 1996, LB 900, § 1042; Laws 1997, LB 595, § 1; Laws 1997, LB 764, § 48; Laws 2006, LB 1024, § 4.

32-544 Class IV school district; board of education members; districts; terms; nonpartisan ballot; qualifications.

Candidates for the board of education of a Class IV school district shall be nominated and elected by district as provided in section 32-552 for four-year terms at the same time as members of the city council of the city in which the district is located. A member of the board shall be elected from each district pursuant to such section. Candidates shall be nominated and elected upon a nonpartisan ballot. At the general city election in 1979 and each four years thereafter, one member shall be elected from each even-numbered district. At the general city election in 1981 and each four years thereafter, one member shall be elected from each odd-numbered district. The members shall meet the qualifications found in section 79-543.

Source: Laws 1994, LB 76, § 140; Laws 1996, LB 900, § 1043.

32-545 Class V school district; board of education members; districts; qualifications; terms; nonpartisan ballot.

A member of the board of education of a Class V school district shall be elected from each district provided for in section 32-552. The members shall meet the qualifications found in section 79-552. At each statewide general election, six members of the board shall be elected to serve for four years from and including the first Monday of the January following their election or until their successors are elected and qualified. Candidates shall be nominated at the statewide primary election upon a nonpartisan ballot. At the statewide general election in 1976 and each four years thereafter, one member shall be elected from each even-numbered district. At the statewide general election in 1978 and each four years thereafter, one member shall be elected from each odd-numbered district. The members shall meet the qualifications found in section 79-543.

Source: Laws 1994, LB 76, § 141; Laws 1996, LB 900, § 1044.

32-546 Class VI school district; school board members; terms; nomination; qualifications.

Members of the school board of a Class VI school district shall be elected at the statewide primary election. The term of office for members shall begin on the second Monday in June following their election and shall continue for four years or until their successors are elected and qualified. Persons may be nominated either by petition or by direct filing. The members shall meet the qualifications found in section 79-543.

Source: Laws 1994, LB 76, § 142; Laws 1996, LB 900, § 1045.

32-546.01 Learning community coordinating council; members; election; appointment; vacancies; terms; per diem; expenses.

(1) Each learning community shall be governed by a learning community coordinating council consisting of eighteen voting members, with twelve members elected on a nonpartisan ballot from six numbered election districts and with six members appointed from such election districts pursuant to this section. Each voter shall be allowed to cast votes for one candidate to represent the election district in which the voter resides. The two candidates receiving the most votes shall be elected. A candidate shall reside in the election district for

which he or she is a candidate. No primary election for the office of learning community coordinating council shall be held.

(2) The initial elected members shall be elected at the statewide general election immediately following the certification of the establishment of the learning community, and subsequent members shall be elected at subsequent statewide general elections. Except as provided in this section, such elections shall be conducted pursuant to the Election Act.

(3) Vacancies in office for elected members shall occur as set forth in section 32-560. Whenever any such vacancy occurs, the remaining elected members of such council shall appoint an individual residing within the geographical boundaries of the election district for the balance of the unexpired term.

(4) Members elected to represent odd-numbered districts in the first election for the learning community coordinating council shall be elected for two-year terms. Members elected to represent even-numbered districts in the first election for the learning community coordinating council shall be elected for four-year terms. Members elected in subsequent elections shall be elected for four-year terms and until their successors are elected and qualified.

(5) The appointed members shall be appointed in November of each even-numbered year after the general election. Appointed members shall be school board members of school districts in the learning community either elected to take office the following January or continuing their current term of office for the following two years. For learning communities to be established the following January pursuant to orders issued pursuant to section 79-2102, the Secretary of State shall hold a meeting of the school board members of the school districts in such learning community to appoint one member from such school boards to represent each of the election districts on the coordinating council of such learning community. For subsequent appointments, the current appointed members of the coordinating council shall hold a meeting of the school board members of such school districts to appoint one member from such school boards to represent each of the election districts on the coordinating council of the learning community. The appointed members shall be selected by the school board members of the school districts in the learning community who reside in the election district to be represented pursuant to a secret ballot, shall reside in the election district to be represented, and shall be appointed for two-year terms and until their successors are appointed and qualified.

(6) Vacancies in office for appointed members shall occur upon the resignation, death, or disqualification from office of an appointed member. Disqualification from office shall include ceasing membership on the school board for which membership qualified the member for the appointment to the learning community coordinating council or ceasing to reside in the election district represented by such member of the learning community coordinating council. Whenever such vacancy occurs, the remaining appointed members shall hold a meeting of the school board members of the school districts in such learning community to appoint a member from such school boards who lives in the election district to be represented to serve for the balance of the unexpired term.

(7) Each learning community coordinating council shall also have a nonvoting member from each member school district which does not have either an elected or an appointed member who resides in the school district on the

council. Such nonvoting members shall be appointed by the school board of the school district to be represented to serve for two-year terms, and notice of the nonvoting member selected shall be submitted to the Secretary of State by such board prior to December 31 of each even-numbered year. Each such nonvoting member shall be a resident of the appointing school district and shall not be a school administrator employed by such school district. Whenever a vacancy occurs, the school board of such school district shall appoint a new nonvoting member and submit notice to the Secretary of State and to the learning community coordinating council.

(8) Members of a learning community coordinating council shall take office on the first Thursday after the first Tuesday in January following their election or appointment, except that members appointed to fill vacancies shall take office immediately following administration of the oath of office. Each voting member shall be paid a per diem in an amount determined by such council up to two hundred dollars per day for official meetings of the council and the achievement subcouncil for which he or she is a member, up to a maximum of twelve thousand dollars per fiscal year, and shall be eligible for reimbursement of reasonable expenses related to service on the learning community coordinating council as provided in sections 81-1174 to 81-1177.

Source: Laws 2007, LB641, § 49; Laws 2008, LB1154, § 3.
Effective date July 18, 2008.

32-547 City airport authority board; members; terms; qualifications.

Each airport authority board created pursuant to the Cities Airport Authorities Act in cities of the primary, first, and second classes and in villages shall consist of five members. Except for members initially appointed pursuant to section 3-502, members of the board shall serve for terms of six years and shall be nominated and elected in the manner provided by law for the election of officers of the city concerned and shall take office at the same time as the officers of such city. One member shall be elected at the first general city election after creation of the authority, two members at the second general city election after creation of the authority, and two members at the third general city election after the creation of the authority. The members shall meet the qualifications found in such section.

Source: Laws 1994, LB 76, § 143.

Cross References

Cities Airport Authorities Act, see section 3-514.

32-548 County airport authority board; members; terms; qualifications.

Each airport authority board created pursuant to sections 3-601 to 3-622 shall consist of five members. Except for members initially appointed pursuant to section 3-611, members shall serve for terms of six years and shall be nominated and elected in the manner provided by law for election of nonpartisan officers of the county. Two members shall be elected at the first general election after creation of the authority, two members at the second general election after creation of the authority, and one member at the third general election after the creation of the authority. The members shall meet the qualifications found in section 3-611.

Source: Laws 1994, LB 76, § 144.

32-549 Joint airport authority board; members; terms; qualifications.

Each airport authority board created pursuant to the Joint Airport Authorities Act shall consist of at least five members from districts as established in section 3-703. Except for members initially appointed pursuant to such section, members of the board shall serve for terms of six years and shall be nominated and elected in the manner provided by law for nonpartisan officers. The terms of all elected members shall commence on the first Thursday after the first Tuesday in January following their election. One member shall be elected at the first general election after creation of the authority, two members at the second general election after creation of the authority, and two members at the third general election after the creation of the authority. The members shall meet the qualifications found in such section.

Source: Laws 1994, LB 76, § 145.

Cross References

Joint Airport Authorities Act, see section 3-716.

32-550 Local hospital district board of directors; terms; nonpartisan ballot.

Two members of a local hospital district board of directors shall be elected at the first statewide primary election after the initial appointment of members pursuant to section 23-3534, and three members shall be elected at the second statewide primary election after such initial appointment. Members shall be elected from the hospital district at large for terms which begin on the first Tuesday in June following their election. Except as otherwise provided in this section, each member shall serve for a term of four years or until his or her successor is elected and qualified. The members shall be elected on the nonpartisan ballot.

Source: Laws 1994, LB 76, § 146.

32-551 Repealed. Laws 2007, LB 248, § 7.

(b) LOCAL ELECTIONS

32-552 Election districts; adjustment of boundaries; when; procedure.

(1) At least five months prior to an election, the governing board of any political subdivision requesting the adjustment of the boundaries of election districts shall provide written notification to the election commissioner or county clerk of the need and necessity of his or her office to perform such adjustments.

(2) After the next federal decennial census, the election commissioner of the county in which the greater part of a Class IV school district is situated shall, subject to review by the school board, divide the school district into seven numbered districts, substantially equal in population as determined by the most recent federal decennial census. The election commissioner shall consider the location of schools within the district and their boundaries. The election commissioner shall adjust the boundaries of the election districts, subject to final review and adjustment by the school board, to conform to changes in the territory and population of the school district and also following each federal decennial census. Except when specific procedures are otherwise provided, section 32-553 shall apply to all Class IV school districts.

(3) The election commissioner of the county in which the greater part of a Class V school district is situated shall divide the school district into twelve numbered districts of compact and contiguous territory and of as nearly equal population as may be practical. The election commissioner shall adjust the boundaries of such districts, subject to final review and adjustment by the school board, to conform to changes in the territory of the school district and also following each federal decennial census.

Source: Laws 1994, LB 76, § 148; Laws 1997, LB 764, § 49; Laws 2002, LB 935, § 5.

Read together, this section and section 32-553 authorize an election commissioner to draw or adjust the boundaries of school districts following a federal decennial census only as is necessary to maintain substantial population equality within the districts. This section and section 32-553 do not authorize an election commissioner to take into account political considerations when adjusting boundaries following a federal decennial census. State ex rel. Steinke v. Lautenbaugh, 263 Neb. 652, 642 N.W.2d 132 (2002).

32-553 Political subdivision; redistrict; when; procedure.

(1) When any political subdivision except a public power district nominates or elects members of the governing board by districts, such districts shall be substantially equal in population as determined by the most recent federal decennial census. Any such political subdivision which has districts in place on the date the census figures used in drawing district boundaries for the Legislature are required to be submitted to the state by the United States Department of Commerce, Bureau of the Census, shall, if necessary to maintain substantial population equality as required by this subsection, have new district boundaries drawn within six months after the passage and approval of the legislative bill providing for reestablishing legislative districts. Any such political subdivision in existence on the date the census figures used in drawing district boundaries for the Legislature are required to be submitted to the state by the United States Department of Commerce, Bureau of the Census, and which has not established any district boundaries shall establish district boundaries pursuant to this section within six months after such date. If the deadline for drawing or redrawing district boundary lines imposed by this section is not met, the procedures set forth in section 32-555 shall be followed.

(2) The governing board of each such political subdivision shall be responsible for drawing its own district boundaries and shall, as nearly as possible, follow the precinct lines created by the election commissioner or county clerk after each federal decennial census, except that the election commissioner of any county in which a Class IV or V school district is located shall draw district boundaries for such school district as provided in this section and section 32-552.

Source: Laws 1994, LB 76, § 149; Laws 1997, LB 595, § 2; Laws 2001, LB 71, § 3.

This section does not limit redrawing of district boundaries to only once every 10 years. Chambers v. Lautenbaugh, 263 Neb. 920, 644 N.W.2d 540 (2002).

Read together, section 32-552 and this section authorize an election commissioner to draw or adjust the boundaries of school districts following a federal decennial census only as is necessary to maintain substantial population equality within the districts. Section 32-552 and this section do not authorize an election commissioner to take into account political considerations when adjusting boundaries following a federal decennial census. State ex rel. Steinke v. Lautenbaugh, 263 Neb. 652, 642 N.W.2d 132 (2002).

32-554 Village, county, school district, or certain cities; elections at large or by district or ward; procedure.

(1)(a) Any city not under a home rule charter, village, county, or school district nominating and electing members to its governing board at large may

at a general election submit the question of nominating and electing members to its governing board by district or ward.

(b) Any city not under a home rule charter, village, county having not more than three hundred thousand inhabitants, or school district nominating and electing members to its governing board by district or ward may at a general election submit the question of nominating and electing members to its governing board at large.

(c) Any city of the first class, except a city having adopted the commissioner or city manager plan of government, nominating and electing members to its governing body by ward may at a general election submit the question of nominating and electing some of the members to its governing body by ward and some at large either by ordinance by a vote of a majority of the members of the governing body or by petition of the registered voters of the city. No more than three members of the city council may be elected on an at-large basis, and at least four members of the city council shall be elected by ward. The ordinance or petition shall specify the number of at-large members to be elected. At the first election in which one or more at-large members are to be elected to the city council, the members shall be elected to serve for initial terms of office of the following lengths:

(i) If one at-large member is to be elected, he or she shall serve for a four-year term;

(ii) If two at-large members are to be elected, the candidate receiving the highest number of votes shall be elected to serve for a four-year term and the other elected member shall be elected to serve for a two-year term; and

(iii) If three at-large members are to be elected, the two candidates receiving the highest number of votes shall be elected to serve for four-year terms and the other elected member shall be elected to serve for a two-year term. Following the initial term of office, all at-large council members shall be elected to serve for four-year terms. No candidate may file as both an at-large candidate and a candidate by ward at the same election.

(2) Petitions for submission of the question shall be signed by registered voters of the city, village, county, or school district desiring to change the procedures for electing the governing board of the city, village, county, or school district. The petition or petitions shall be signed by registered voters equal in number to twenty-five percent of the votes cast for the person receiving the highest number of votes in the city, village, county, or school district at the preceding general election for electing the last member or members to its governing board. Each sheet of the petition shall have printed the full and correct copy of the question as it will appear on the official ballot. The petitions shall be filed with the county clerk or election commissioner not less than seventy days prior to the date of the general election, and no signatures shall be added or removed from the petitions after they have been so filed. Petitions shall be verified as provided in section 32-631. If the petition or petitions are found to contain the required number of valid signatures, the county clerk or election commissioner shall place the question on a separate ballot to be issued to the registered voters of the city, village, county, or school district entitled to vote on the question.

(3)(a) Any city, village, county, or school district voting to change from nominating and electing the members of its governing board by district or ward to nominating and electing some or all of such members at large shall notify the

public and instruct the filing officer to accept the appropriate filings on an at-large basis. Candidates to be elected at large shall be nominated and elected on an at-large basis at the next primary and general election following submission of the question.

(b) Any city, village, county, or school district voting to change from nominating and electing the members of its governing board at large to nominating and electing by district or ward shall notify the public and instruct the filing officer to accept all filings by district or ward. Candidates shall be nominated and elected by district or ward at the next primary and general election following submission of the question. When district or ward elections have been approved by the majority of the electorate, the governing board of any city, village, county, or school district approving such question shall establish districts substantially equal in population as determined by the most recent federal decennial census except as provided in subsection (2) of section 32-553.

(4) Except as provided in section 14-201, each city not under a home rule charter, village, county, and school district which votes to nominate and elect members to its governing board by district or ward shall establish districts or wards so that approximately one-half of the members of its governing board may be nominated and elected from districts or wards at each election. Districts or wards shall be created not later than October 1 in the year following the general election at which the question was voted upon. If the governing board fails to draw district boundaries by October 1, the procedures set forth in section 32-555 shall be followed.

Source: Laws 1994, LB 76, § 150; Laws 1997, LB 595, § 3; Laws 1997, LB 764, § 50; Laws 2001, LB 730, § 4; Laws 2003, LB 444, § 4; Laws 2005, LB 566, § 30.

32-555 City, village, county, or school district; failure to redistrict; county attorney or election commissioner; duties; penalty.

(1) Except as provided in subsection (4) of this section, if the governing board of any city, village, county, or school district which nominates or elects members to the board by district or ward fails to draw district boundaries by the date established in subsection (1) of section 32-553 or subsection (4) of section 32-554, the county attorney of the county in which the board is located shall file an action in the district court for the purpose of ordering the board to draw district boundaries. If within six months after the receipt of such order the board does not comply, the members of the board shall be subject to removal and the court shall order the Secretary of State to draw district boundaries in accordance with the most recent federal decennial census. Any vacancy resulting from such removal from office shall be filled as provided by law.

(2) If the county attorney fails to file the action required by subsection (1) of this section, he or she shall be subject to removal from office. If the county attorney fails to file such action, any citizen within the jurisdiction of the governing board may file the action. The court shall order the board to pay any costs and attorney's fees involved in such action.

(3) If an election commissioner required to draw district boundaries for any county having more than three hundred thousand inhabitants pursuant to sections 23-151 and 32-553 fails to do so, the election commissioner shall be subject to (a) suit by the county attorney for the purpose of ordering the

drawing of district boundaries, (b) removal from office pursuant to section 32-214 for failure to comply with an order to draw district boundaries within six months of receipt of such order, and (c) suit by any citizen for the purpose of ordering the drawing of district boundaries and shall be obligated to pay any costs and attorney's fees involved in any such action.

(4) If the county board of any county having more than three hundred thousand inhabitants fails to complete the process of drawing district boundaries as provided for in sections 23-151 and 32-553, the procedures set forth in subdivision (3)(b) of section 23-151 shall be followed.

Source: Laws 1994, LB 76, § 151; Laws 1997, LB 595, § 4; Laws 2001, LB 71, § 4.

32-555.01 Learning community; districts; redistricting.

The election commissioners of the applicable counties, pursuant to certification of the establishment of a learning community pursuant to section 79-2102, shall divide the territory of the new learning community into six numbered districts for the purpose of electing members to the learning community coordinating council in compliance with section 32-553. Such districts shall be compact and contiguous and substantially equal in population. The newly established election districts shall be certified to the Secretary of State on or before November 1 immediately following such certification. The newly established election districts shall apply beginning with the election of the first council members for such learning community. Following the drawing of initial election districts pursuant to this section, additional redistricting thereafter shall be undertaken by the learning community coordinating council according to section 32-553.

Source: Laws 2007, LB641, § 37.

32-556 City, village, and school elections; requirements; applicability of act.

All city, village, and school issues and offices shall be combined on the statewide primary and general election ballots whenever possible. The issuance of separate ballots shall be avoided in a statewide election if city, village, or school offices or issues can reasonably be combined with the nonpartisan ballot and state law does not require otherwise. All city and village elections involving the election of officers, except cities with home rule charters, shall be held in accordance with the Election Act and in conjunction with the statewide primary or general election. All city elections in cities with home rule charters shall be held in accordance with the home rule charter except as otherwise provided in the Election Act and may be held in conjunction with the statewide primary or general election. If the home rule charter is silent as to any subject covered by the act, the act shall apply.

Source: Laws 1994, LB 76, § 152.

32-557 City, village, and school officers; partisan ballot; when allowed; requirements.

All elective city, village, and school officers shall be nominated and elected on a nonpartisan ballot unless a city or village provides for a partisan ballot by ordinance. No ordinance providing for nomination and election on a partisan ballot shall permit affiliation with any party not recognized as a political party for purposes of the Election Act. Such ordinance providing for nomination and

election on a partisan ballot shall be adopted and effective not less than sixty days prior to the filing deadline.

Source: Laws 1994, LB 76, § 153.

32-558 City, village, and school elections; ballots; results; certificates of nomination or election.

City, village, and school district ballots shall be prepared for each city, village, or school election. The election commissioner, county clerk, or city or village clerk may certify and deliver all ballots, including ballots for early voting, across county lines to the election commissioner, county clerk, or city or village clerk in the adjoining county. The election commissioner, county clerk, or city or village clerk shall certify the results and shall issue certificates of nomination or election to the successful candidates.

Source: Laws 1994, LB 76, § 154; Laws 2005, LB 98, § 5.

32-559 Political subdivision; special election; procedure.

Except as provided in section 77-3444, any issue to be submitted to the registered voters at a special election by a political subdivision shall be certified by the clerk of the political subdivision to the election commissioner or county clerk at least fifty days prior to the election. A special election may be held by mail as provided in sections 32-952 to 32-959. Any other special election under this section shall be subject to section 32-405.

In lieu of submitting the issue at a special election, any political subdivision may submit the issue at a statewide primary or general election or at any scheduled county election, except that no such issue shall be submitted at a statewide election or scheduled county election unless the issue to be submitted has been certified by the clerk of the political subdivision to the election commissioner or county clerk by March 1 for the primary election and by September 1 for the general election. After the election commissioner or county clerk has received the certification of the issue to be submitted, he or she shall be responsible for all matters relating to the submission of the issue to the registered voters, except that the clerk of the political subdivision shall be responsible for the publication or posting of any required special notice of the submission of such issue other than the notice required to be given of the statewide election issues. The election commissioner or county clerk shall prepare the ballots and issue ballots for early voting and shall also conduct the submission of the issue, including the receiving and counting of the ballots on the issue. The election returns shall be made to the election commissioner or county clerk. The ballots shall be counted and canvassed at the same time and in the same manner as the other ballots. Upon completion of the canvass of the vote by the county canvassing board, the election commissioner or county clerk shall certify the election results to the governing body of the political subdivision. The canvass by the county canvassing board shall have the same force and effect as if made by the governing body of the political subdivision.

Source: Laws 1994, LB 76, § 155; Laws 1996, LB 964, § 3; Laws 1998, LB 306, § 4; Laws 2003, LB 521, § 4; Laws 2005, LB 98, § 6.

Cross References

School bonds, special elections, see sections 10-703 and 10-703.01.

(c) VACANCIES

32-560 Elective office; vacancy; when.

Every elective office shall be vacant, except as provided in section 32-561, upon the happening of any one of the following events at any time before the expiration of the term of such office:

(1) Resignation of the incumbent;

(2) Death of the incumbent;

(3) Removal of the incumbent from office;

(4) Decision of a competent tribunal declaring the office of the incumbent vacant;

(5) Incumbent ceasing to be a resident of the state, district, county, township, or precinct in which the duties of his or her office are to be exercised or for which he or she may have been elected;

(6) Failure to elect at an election when there is no incumbent to continue in office until his or her successor is elected and qualified;

(7) The candidate who received the highest number of votes is ineligible, disqualified, deceased, or for any other reason unable to assume the office for which he or she was a candidate;

(8) Forfeiture of office as provided by law;

(9) Conviction of a felony or of any public offense involving the violation of the oath of office of the incumbent; or

(10) Incumbent of a high elective office assuming another elective office as provided in subsections (2) through (4) of section 32-604.

Source: Laws 1994, LB 76, § 156; Laws 1997, LB 221, § 1; Laws 1997, LB 764, § 51; Laws 2002, LB 251, § 1.

Cross References

Political subdivisions, civil offices, applicability of provisions, see section 13-404.
State civil offices, applicability of provisions, see section 81-2901.

1. Right to hold over
2. Vacancies by removal
3. Miscellaneous

1. Right to hold over

A sheriff appointed by the county board, to fill a vacancy caused by the death of the incumbent, is an incumbent to continue in office until his successor is elected and qualified under subdivision (6) of this section. State ex rel. Boone County Attorney v. Willott, 103 Neb. 798, 174 N.W. 429 (1919).

The county commissioners, elected at the first election for officers of a new county, hold their offices only until their successors are elected, at the next general election, and have qualified. State ex rel. Nichols v. Field, 26 Neb. 393, 41 N.W. 988 (1889).

2. Vacancies by removal

Question as to the removal by a district judge of his family residence from the judicial district ipso facto creating a vacancy in the office of district judge was raised but not decided. Wustrack v. Hall, 95 Neb. 384, 145 N.W. 835 (1914).

Redistricting of county, where there was no removal by incumbent, does not vacate office of commissioner. State ex rel. Connolly v. Haverly, 62 Neb. 767, 87 N.W. 959 (1901).

The removal of a county commissioner from the district in which he was elected vacates his office even though he may continue to reside within the county. State ex rel. Malloy v. Skirving, 19 Neb. 497, 27 N.W. 723 (1886).

3. Miscellaneous

This section is silent about compensation. Hogan v. Garden County, 268 Neb. 631, 686 N.W.2d 356 (2004).

This provision preserves office for the holder thereof engaged in military service upon his return under certain conditions. State ex rel. Johnson v. Chase, 147 Neb. 758, 25 N.W.2d 1 (1946).

Conduct on the part of nominee for the office of presidential elector which clearly indicates that his intention, if elected, is to vote for the candidates of another political party, creates a vacancy in the office of each as a candidate, and a judicial determination of the existence of the vacancy is necessary. State ex rel. Nebraska Rep. State C. Com. v. Wait, 92 Neb. 313, 138 N.W. 159 (1912), 43 L.R.A.N.S. 282 (1912).

The general law providing for the filling of vacancies was intended as a regulation for all vacancies and includes offices created after its enactment unless full provision is contained in the law creating the office. State ex rel. Mortensen v. Furse, 89 Neb. 652, 131 N.W. 1030 (1911).

An office does not become vacant for failure to elect a successor if there is an incumbent to continue in office until his successor is elected and qualified. State ex rel. Shaw v. Rosewater, 79 Neb. 450, 113 N.W. 206 (1907).

This section and section 11-115 are in pari materia and should be construed together. Section 11-115 merely provides another cause of vacancy in addition to those included within this section. State ex rel. Berge v. Lansing, 46 Neb. 514, 64 N.W. 1104 (1895), 35 L.R.A. 124 (1895).

The ineligibility of a candidate declared elected does not create a vacancy where there is an incumbent to continue in office. Richards v. McMillin, 36 Neb. 352, 54 N.W. 566 (1893).

The words ceasing to be a resident of refer to an absence with an intention to remain away indefinitely as distinguished from a temporary absence for a definite period. Prather v. Hart, 17 Neb. 598, 24 N.W. 282 (1885).

32-561 Elective officer; military or naval service; no vacancy; exception; acting officer; appointment; powers; compensation.

(1) The acceptance of a commission to any military or naval office or the enlistment in or induction into the military or naval service of the United States which may require an incumbent in an elective office, except the office of member of the Legislature, to exercise military or naval duties within or without the state for any period of time within the term for which such person has been elected or appointed shall not create a vacancy of such office. While the incumbent exercises such military or naval duties within or without this state, he or she shall not be (a) entitled to receive any compensation, perquisites, or emoluments of the elective office, (b) required to keep and maintain an official bond or equivalent commercial insurance policy in force, or (c) responsible for the acts and defalcations of an acting officer duly appointed and qualified to take the place of the incumbent in such office during the time the incumbent is in such military or naval office or is inducted into or enlists in the military or naval service.

(2) If the incumbent accepts a commission to any military or naval office or enlists in or is inducted into the military or naval service of the United States, the county board, the governing body of the city, village, or other political subdivision, or the Governor or other appointive power, officer, or agency of the state in or under which such incumbent holds office may appoint an acting officer for such office for the period during which the elected or appointed incumbent will be absent by reason of the exercise of such military or naval duties or during the period of the term for which the incumbent has been elected or appointed. The acting officer so appointed shall qualify for such office in the manner provided by law and shall, during the time of such service as such acting officer, be entitled to all the compensation, perquisites, and emoluments of such office, including the power to appoint a deputy in the manner provided by law.

Source: Laws 1994, LB 76, § 157; Laws 2004, LB 884, § 16.

Elected county officials are required to give individual official bonds. Blanket bond is not sufficient. Foote v. County of Adams, 163 Neb. 406, 80 N.W.2d 179 (1956).

This provision preserves office for the holder thereof engaged in military service upon his return under certain conditions. State ex rel. Johnson v. Chase, 147 Neb. 758, 25 N.W.2d 1 (1946).

Action of acting county attorney could not be collaterally attacked. Canada v. Jones, 170 F.2d 606 (8th Cir. 1948).

32-562 Resignations; how made.

The resignation of the incumbent of an elective office may be made as follows:

(1) By the Governor to the Legislature if in session or, if not, to the Secretary of State;

(2) By United States Senators and Representatives in the Congress of the United States, by incumbents elected by all the registered voters of the state, by judges of the Supreme Court, Court of Appeals, district courts, separate juvenile

courts, Nebraska Workers' Compensation Court, and county courts, and by Regents of the University of Nebraska to the Governor;

(3) By members of the Legislature to the presiding officer of the Legislature if in session, who shall immediately transmit information of the same to the Governor, or if such body is not in session, to the Governor;

(4) By all county officers to the county board or the county clerk;

(5) By members of the county board to the county clerk;

(6) By all township officers to the township clerk;

(7) By the township clerk to the township board;

(8) By all city or village officers to the city council or village board;

(9) By all school board members to the school board;

(10) By all officers holding appointments to the officer or body by whom they were appointed; and

(11) By all elective officers for which no other method is provided to the body on which they serve.

Such resignation shall be in writing and shall not take effect until accepted by the board or officer to whom the resignation is tendered.

Source: Laws 1994, LB 76, § 158; Laws 2008, LB312, § 1.
Effective date July 18, 2008.

The resignation of a city attorney does not take effect until accepted by the mayor and council. Darnell v. City of Broken Bow, 139 Neb. 844, 299 N.W. 274 (1941).

The resignation of a township supervisor should be addressed to the township clerk. State ex rel. Godard v. Taylor, 26 Neb. 580, 42 N.W. 729 (1889).

32-563 Vacancies; pending appointment or election; possession and control of office; persons authorized.

When a vacancy occurs and before the election or appointment and qualification of a successor, possession shall be taken of all things pertaining to the office and the functions of the office shall be exercised as follows:

(1) Of any of the county offices, by the deputy if there is one and, if not, by a replacement appointed by the county board to perform the functions of the office until a permanent successor is duly appointed or elected; and

(2) Of any of the state offices, by the Governor or, in his or her absence or inability at the time of the occurrence, as follows:

(a) Of the Secretary of State by the State Treasurer;

(b) Of the Auditor of Public Accounts by the Secretary of State; and

(c) Of the State Treasurer by the Secretary of State or Auditor of Public Accounts.

The officer performing the functions of the State Treasurer shall make and sign an inventory of the money and warrants in the care of the office and transmit it to the Governor if he or she is in the state, and the Secretary of State shall take the keys of the safes and desks after depositing the books, papers, money, and warrants in such safes and desks and shall keep the key to the office.

Source: Laws 1994, LB 76, § 159.

32-564 Representatives in Congress; vacancy; how filled; special election; procedure.

(1) Except as otherwise provided in subsection (2) of this section:

(a) If a vacancy occurs in the office of Representative in Congress on or after August 1 in an even-numbered year and prior to the statewide general election in such year, the Governor shall order a special election to be held in conjunction with such statewide general election. The only candidates who may appear on the ballot for such office at such special election are those who were nominated at the statewide primary election in such year, those who comply with section 32-616, and those who comply with section 32-627 to fill a vacancy on the ballot if such a vacancy exists. The candidate receiving the most votes at such special election shall serve for the remainder of the vacated term and for the succeeding term of office;

(b) If a vacancy occurs in the office of Representative in Congress on or after the day of the statewide general election and prior to the end of the term of the office which is vacated, no special election shall be called; and

(c) If a vacancy occurs in such office at any time other than as described in subdivision (a) or (b) of this subsection, the Governor shall order a special election to be held within ninety days after the vacancy occurs. Each political party which polled at least five percent of the entire vote in the district in which the vacancy occurs may select a candidate following the applicable procedures in subsection (2) of section 32-627, except that the certificate and filing fee shall be submitted at least sixty-five days prior to the day of the election. Any candidate so selected shall have his or her name placed on the ballot with the appropriate political party designation. Any other person may have his or her name placed on the ballot without a political party designation by filing petitions pursuant to sections 32-617 and 32-618 and paying the filing fee as provided by section 32-608, except that the deadline for filing the petitions and paying the fee shall be sixty-five days prior to the day of the election. The candidate receiving the most votes at such special election shall serve for the remainder of the vacated term.

(2)(a) If the Speaker of the United States House of Representatives announces that there are more than one hundred vacancies in the House of Representatives requiring special elections according to 2 U.S.C. 8, as such section existed on July 18, 2008, and there is any vacancy in the office of Representative in Congress representing Nebraska, the Governor shall issue a writ of election. The writ of election shall specify the date of a special election to fill such vacancy to be held within forty-nine days after the Speaker's announcement.

(b) The Secretary of State shall notify the chairperson and secretary of each political party which polled at least five percent of the entire vote in the district in which the vacancy occurs that the party may select a candidate following the applicable procedures in subsection (2) of section 32-627, except that the certificate and filing fee shall be submitted within seven days after notification by the Secretary of State. Any candidate so selected shall have his or her name placed on the ballot with the appropriate political party designation.

(c) The ballot for any voter meeting the criteria of section 32-939 shall be transmitted to such voter within fifteen days after the Speaker's announcement and shall be accepted if received by the election commissioner or county clerk within forty-five days after transmission to the voter.

(d) The candidate receiving the most votes at such special election shall serve for the remainder of the vacated term.

Source: Laws 1994, LB 76, § 160; Laws 2005, LB 682, § 1; Laws 2008, LB856, § 1.
Effective date July 18, 2008.

32-565 United States Senator; vacancy; how filled.

(1) When a vacancy occurs in the representation of the State of Nebraska in the Senate of the United States, the office shall be filled by the Governor. The Governor shall appoint a suitable person possessing the qualifications necessary for senator to fill such vacancy.

(2)(a) If the vacancy occurs sixty days or less prior to a statewide general election and if the term vacated expires on the following January 3, the appointee shall serve until the following January 3.

(b) If the vacancy occurs sixty days or less prior to a statewide general election and if the term extends beyond the following January 3, the appointee shall serve until January 3 following the second statewide general election next succeeding his or her appointment and at such election a senator shall be elected to serve the unexpired term if any.

(3) If the vacancy occurs more than sixty days prior to a statewide general election, the appointee shall serve until January 3 following the statewide general election and at such election a senator shall be elected to serve the unexpired term if any.

Source: Laws 1994, LB 76, § 161; Laws 1997, LB 764, § 52.

32-566 Legislature; vacancy; how filled.

When a vacancy occurs in the Legislature, the office shall be filled by the Governor. The Governor shall appoint a suitable person possessing the qualifications necessary for a member of the Legislature. If the vacancy occurs within sixty days of a regular general election and if the term vacated expires on the first Tuesday following the first Monday in the following January, the appointee shall serve until the first Tuesday following the first Monday in January, and if the term extends beyond the first Tuesday following the first Monday in the following January, the appointee shall serve until the first Tuesday following the first Monday in January following the second regular general election next succeeding his or her appointment. If the vacancy occurs more than sixty days before a regular general election, the appointee shall serve until the first Tuesday following the first Monday in January following such regular general election and at the regular general election a member of the Legislature shall be elected to serve the unexpired term.

Source: Laws 1994, LB 76, § 162.

32-567 Vacancies; offices listed; how filled.

Vacancies in office shall be filled as follows:

(1) In state and judicial district offices and in the membership of any board or commission created by the state when no other method is provided, by the Governor;

(2) In county offices, by the county board;

(3) In the membership of the county board, by the county clerk, county attorney, and county treasurer;

(4) In township offices, by the township board or, if there are two or more vacancies on the township board, by the county board;

(5) In offices in public power and irrigation districts, according to section 70-615;

(6) In offices in natural resources districts, according to section 2-3215;

(7) In offices in community college areas, according to section 85-1514;

(8) In offices in educational service units, according to section 79-1217;

(9) In offices in hospital districts, according to section 23-3534;

(10) In offices in metropolitan utilities districts, according to section 14-2104;

(11) In membership on airport authority boards, according to section 3-502, 3-611, or 3-703, as applicable;

(12) In membership on the board of trustees of a road improvement district, according to section 39-1607;

(13) In membership on the council of a municipal county, by the council; and

(14) For learning community coordinating councils, according to section 32-546.01.

Unless otherwise provided by law, all vacancies shall be filled within forty-five days after the vacancy occurs unless good cause is shown that the requirement imposes an undue burden.

Source: Laws 1994, LB 76, § 163; Laws 1996, LB 900, § 1046; Laws 2001, LB 142, § 38; Laws 2007, LB641, § 1.

Cross References

Public Service Commission, vacancy, how filled, see section 75-103.
State Board of Education, vacancy, how filled, see section 79-314.

1. State offices
2. County and precinct offices
3. Township offices
4. Municipal offices

1. State offices

All vacancies in the office of railway commissioner should be filled by appointment by the Governor until the next general election at which a commissioner can be elected for the unexpired term. State ex rel. Mortensen v. Furse, 89 Neb. 652, 131 N.W. 1030 (1911).

Under former law, when a vacancy in the office of district judge was caused by the resignation of an incumbent more than thirty days before a general election, the Governor could fill the vacancy by appointment until the election, at which time the vacancy should be filled by election. State ex rel. Bates v. Thayer, 31 Neb. 82, 47 N.W. 704 (1891).

2. County and precinct offices

When a new position is created, and the act creating it does not provide otherwise, the position is vacant from the instant of its creation. State ex rel. Redmond v. Smith, 207 Neb. 21, 295 N.W.2d 297 (1980).

Upon an increase in number of county commissioner districts, appointment of additional commissioners should be made pending the next general election. Ludwig v. Board of County Commissioners, 170 Neb. 600, 103 N.W.2d 838 (1960).

Section 23-207, and not this section, governs vacancies in the office of county supervisor. State ex rel. Hunker v. West, 62 Neb. 461, 87 N.W. 176 (1901).

Under former law, a vacancy in the office of county judge should be filled by election where the unexpired term exceeded one year. State ex rel. Berge v. Lansing, 46 Neb. 514, 64 N.W. 1104 (1895), 35 L.R.A. 124 (1895).

The office of clerk of the district court is a county office and, under this section, the county board has the power to fill a vacancy therein. State ex rel. Dodson v. Meeker, 19 Neb. 444, 27 N.W. 427 (1886).

3. Township offices

A vacancy in the office of township supervisor may be filled in the manner provided by this section or by the electors at a special town meeting. State ex rel. Godard v. Taylor, 26 Neb. 580, 42 N.W. 729 (1889).

This section governs vacancies in town offices created by the erection of new towns, and, where the town offices are all vacant, it is the duty of the county clerk to fill the vacancies by appointment. State ex rel. Davis v. Forney, 21 Neb. 223, 31 N.W. 802 (1887).

4. Municipal offices

Vacancies in the office of councilman in cities of the second class are to be filled by appointment by the mayor and council, and an appointment made by the councilman without the concurrence of the mayor is void. State ex rel. Einstein v. Northup, 79 Neb. 822, 113 N.W. 540 (1907).

A vacancy in the office of supervisor of a city in a county under township organization can be filled by appointment by the mayor and council. State ex rel. Truesdell v. Plambeck, 36 Neb. 401, 54 N.W. 667 (1893).

Vacancies in the office of city treasurer should be filled by appointment by the mayor and council until the next general election for city purposes. State ex rel. Sexauer v. Buck, 13 Neb. 273, 13 N.W. 406 (1882).

32-568 Cities and villages; vacancy; how filled.

(1) If any vacancy occurs in the office of city council member of a city of the metropolitan class, the remaining members of the council shall appoint a person to fill such vacancy from the district in which the vacancy occurred for the remainder of the term. The person thus appointed shall qualify and give bond as by law provided for council members elected to such office. A vacancy in the office of mayor of a city of the metropolitan class shall be filled as provided by local law.

(2) The city council of a city of the primary class may provide for filling any vacancies that occur in any elective office by appointment by the mayor, with the advice and consent of the council, to hold office until the next general city election. In case of vacancy in the office of mayor of a city of the primary class or his or her absence or disability, the president of the council shall exercise the powers and duties of the office until such vacancy is filled or disability removed or, in case of temporary absence, until the mayor returns, and such acting mayor shall perform such other duties as may be required by law.

(3) In a city of the first class except a city which has adopted the commissioner or city manager plan of government, any vacancy on the council resulting from causes other than expiration of the term shall be filled by appointment by the mayor with the consent of the city council to hold office for the remainder of the term. When there is a vacancy in the office of the mayor in a city of the first class, the president of the city council shall serve as mayor for the unexpired term. In case of any temporary absence or disability on the part of the mayor, the president of the council shall exercise the powers and duties of the office of mayor until such disability is removed, or in case of temporary absence until the mayor returns, and shall perform such other duties as may be required by law.

(4) Any vacancy on the city council of a city of the second class shall be filled as provided in section 32-569. In the case of any vacancy in the office of mayor, or in case of his or her disability or absence, the president of the council shall exercise the office of mayor for the unexpired term, until such disability is removed, or in case of temporary absence, until the mayor returns. If the president of the council assumes the office of mayor for the unexpired term, there shall be a vacancy on the council.

(5) A vacancy on the board of trustees of a village shall be filled as provided in section 32-569, except that the board of trustees of a village situated in more than one county shall have power to fill by appointment any vacancy that may occur in their number.

(6) If any vacancy occurs in the office of council member in a city under the commission plan of government, the vacancy shall be filled as provided in section 32-569. If an incumbent in a city under the commission plan of government files for a city office other than the office he or she holds, the office he or she holds shall become vacant as of the date of the commencement of the term of the office for which he or she has filed. If such vacancy results in an

unexpired term, such vacancy shall be filled by election for the remainder of the unexpired term. In a city under the commission plan of government, the vice president of the city council shall perform the duties of the mayor of the city in the absence or inability of the mayor to serve. If a vacancy occurs in the office of mayor by death or otherwise, the vice president shall perform the duties of mayor of the city until such time as the council shall fill such vacancy, which shall be done at the first council meeting after such vacancy occurs or as soon thereafter as may be practicable.

(7) If a vacancy occurs in the office of council member in a city under a city manager plan, a successor council member shall be elected at the next regular city election to serve for the remainder of the term, except that a majority of the remaining members of the council shall appoint a registered voter to serve as council member until the successor is so elected and has qualified. If the council members are elected by ward, the council member elected or appointed to fill the vacancy shall be a registered voter of the ward in which the vacancy exists. If for any reason the seats of a majority of the council become vacant, the Secretary of State shall conduct a special election to fill the vacancies for the unexpired portion of each term. A vacancy in any office to which the council elects shall be filled by the council for the unexpired term.

(8) Vacancies in city offices in any city under home rule charter shall be filled as provided in the home rule charter.

Source: Laws 1994, LB 76, § 164; Laws 1997, LB 734, § 2; Laws 1997, LB 764, § 53; Laws 2006, LB 1067, § 1.

32-569 Vacancies in city and village elected offices; procedure for filling.

(1)(a) Except as otherwise provided in subsection (2) or (3) of this section or section 32-568, vacancies in city and village elected offices shall be filled by the mayor and council or board of trustees for the balance of the unexpired term. Notice of a vacancy, except a vacancy resulting from the death of the incumbent, shall be in writing and presented to the council or board of trustees at a regular or special meeting and shall appear as a part of the minutes of such meeting. The council or board of trustees shall at once give public notice of the vacancy by causing to be published in a newspaper of general circulation within the city or village or by posting in three public places in the city or village the office vacated and the length of the unexpired term.

(b) The mayor or chairperson of the board shall call a special meeting of the council or board of trustees or place the issue of filling such vacancy on the agenda at the next regular meeting at which time the mayor or chairperson shall submit the name of a qualified registered voter to fill the vacancy for the balance of the unexpired term. The regular or special meeting shall occur upon the death of the incumbent or within four weeks after the meeting at which such notice of vacancy has been presented. The council or board of trustees shall vote upon such nominee, and if a majority votes in favor of such nominee, the vacancy shall be declared filled. If the nominee fails to receive a majority of the votes, the nomination shall be rejected and the mayor or chairperson shall at the next regular or special meeting submit the name of another qualified registered voter to fill the vacancy. If the subsequent nominee fails to receive a majority of the votes, the mayor or chairperson shall continue at such meeting to submit the names of qualified registered voters in nomination and the council or board of trustees shall continue to vote upon such nominations at

such meeting until the vacancy is filled. The mayor shall cast his or her vote for or against the nominee in the case of a tie vote of the council. All council members and trustees present shall cast a ballot for or against the nominee. Any member of the city council or board of trustees who has been appointed to fill a vacancy on the council or board shall have the same rights, including voting, as if such person were elected.

(2) The mayor and council or chairperson and board of trustees may, in lieu of filling a vacancy in a city or village elected office as provided in subsection (1) of this section or subsection (3) of section 32-568, call a special city election to fill such vacancy.

(3) If vacancies exist in the offices of a majority of the members of a city council or village board, the Secretary of State shall conduct a special city election to fill such vacancies.

Source: Laws 1994, LB 76, § 165; Laws 1997, LB 734, § 3; Laws 2006, LB 1067, § 2.

32-570 School board; vacancy; how filled.

(1) A vacancy in the membership of a school board shall occur as set forth in section 32-560 or when a member is absent from the district for a continuous period of sixty days at one time or from more than two consecutive regular meetings of the board unless excused by a majority of the remaining members of the board.

(2) A person appointed to fill a vacancy on the school board of a Class I school district by the remaining members of the board shall hold office until the beginning of the next school year. A board member of a Class I school district elected to fill a vacancy at a regular or special school district meeting shall serve for the remainder of the unexpired term or until a successor is elected and qualified.

(3) Except as provided in subsection (4) of this section, a vacancy in the membership of a school board of a Class II, III, IV, V, or VI school district resulting from any cause other than the expiration of a term shall be temporarily filled by appointment of a qualified registered voter by the remaining members of the board. A registered voter shall be nominated at the next primary election and elected at the following general election for the remainder of the unexpired term. A registered voter appointed or elected pursuant to this subsection shall meet the same requirements as the member whose office is vacant.

(4) Any vacancy in the membership of a school board of a school district which does not nominate candidates at a primary election and elect members at the following general election shall be temporarily filled by appointment of a qualified registered voter by the remaining members of the board. A registered voter shall be nominated and elected to fill the vacancy for the remainder of the term in the manner provided for nomination and election of board members in the district.

(5) If any school board fails to fill a vacancy on the board, the vacancy may be filled by election at a special election or school district meeting called for that purpose. Such election or meeting shall be called in the same manner and subject to the same procedures as other special elections or school district meetings.

(6) If there are vacancies in the offices of a majority of the members of a school board, the Secretary of State shall conduct a special school district election to fill such vacancies.

Source: Laws 1994, LB 76, § 166; Laws 1999, LB 272, § 15.

32-571 Vacancy; appointments; how made; term; filing; qualifications.

Appointments made pursuant to sections 32-565 to 32-570 and 32-573 shall be in writing and shall continue for the unexpired term and until a successor is elected and qualified except as otherwise provided in such sections. The written appointment shall be filed with the Secretary of State or county or township clerk. No person shall be appointed to fill a vacancy unless he or she has the qualifications required to be elected to such office at the time of the appointment unless otherwise specifically provided. Appointments made to fill vacancies created as the result of the recall process shall be subject to subsection (5) of section 32-1308.

Source: Laws 1994, LB 76, § 167; Laws 2003, LB 181, § 3; Laws 2005, LB 682, § 2; Laws 2008, LB312, § 2.
Effective date July 18, 2008.

The term of office of a sheriff appointed by the county board to fill a vacancy caused by the death of the incumbent, continues until a successor is elected and qualified. State ex rel. Boone County Attorney v. Willott, 103 Neb. 798, 174 N.W. 429 (1919).

The words general election when used with reference to city elections and without any qualifying words mean the election for municipal officers in general. State ex rel. Castle v. Schroeder, 79 Neb. 759, 113 N.W. 192 (1907).

Under former law, a vacancy in the office of county judge should be filled by election where the unexpired term exceeded one year. State ex rel. Berge v. Lansing, 46 Neb. 514, 64 N.W. 1104 (1895), 35 L.R.A. 124 (1895).

Where the county treasurer-elect is not eligible to hold office, the incumbent is entitled to hold over and become his own successor. Richards v. McMillin, 36 Neb. 352, 54 N.W. 566 (1893).

Under former law, the term of office of a district judge, appointed to fill a vacancy caused by the resignation of an incumbent, expired when his successor had been elected and qualified. State ex rel. Bates v. Thayer, 31 Neb. 82, 47 N.W. 704 (1891).

Where, by separate act, specific provision is made for the filling of a vacancy in a county office, this section does not apply. State ex rel. Hull v. Walker, 30 Neb. 501, 46 N.W. 648 (1890).

Where a vacancy occurs in the office of county judge, it is the duty of the county board to appoint some person to discharge the duties of the office until an election is held at which the vacancy can be filled. Prather v. Hart, 17 Neb. 598, 24 N.W. 282 (1885).

32-572 Officers for a fixed term; service until successor qualified; vacancy.

(1) Every officer elected or appointed for a fixed term shall hold office until his or her successor is elected or appointed and is qualified. The fixed term shall end and the successor, whether elected or appointed, shall qualify on the day for taking office as provided by law. This section shall not be construed in any way to prevent the removal or suspension of such officer during or after his or her term in cases provided by law.

(2) The appointment to fill any vacancy if the elective or appointive officer fails to qualify shall be made as provided in sections 32-566 to 32-570 and 32-573. If the vacancy is created by the elective or appointive officer on or before the day for taking office, the incumbent shall remain in office until his or her successor is appointed and qualified and sworn into office, and the swearing in shall not be more than one calendar month from the day for taking office as provided by law. The appointing board or officer shall have the authority to appoint any qualified registered voter to fill the vacancy.

Source: Laws 1994, LB 76, § 168; Laws 2002, LB 251, § 2; Laws 2003, LB 181, § 4.

Provisions for holding over until a successor is elected and qualified prolong term of a rightful incumbent for a reasonable time only to allow successor to qualify. Stasch v. Weber, 188 Neb. 710, 199 N.W.2d 391 (1972).

Provision for holding office until appointment of successor does not apply to cases of resignation. State ex rel. Strom v. Marsh, 162 Neb. 593, 77 N.W.2d 163 (1956).

Officer appointed to fill vacancy continues to serve until his successor is appointed and qualified. State ex rel. Johnson v. Hagemeister, 161 Neb. 475, 73 N.W.2d 625 (1955).

A candidate for the office of county attorney, who has been elected and has accepted a certificate of election, has not qualified until he has taken an oath of office and has executed an official bond. State ex rel. Schroeder v. Swanson, 121 Neb. 459, 237 N.W. 407 (1931).

The term of office of a sheriff, appointed by the county board to fill a vacancy caused by the death of the incumbent, continues until a successor is elected and qualified. State ex rel. Boone County Attorney v. Willott, 103 Neb. 798, 174 N.W. 429 (1919).

The Legislature has authority to extend the term of office as to all offices created by statute, and, in such cases, the incumbents hold office during the extended term. State ex rel. Martin v. Ryan, 91 Neb. 696, 136 N.W. 1077 (1912).

The failure of an incumbent to qualify anew within the time required by section 11-117, where he is otherwise entitled to hold over, creates a vacancy. State ex rel. Roche v. Cosgrove, 34 Neb. 386, 51 N.W. 974 (1892).

32-573 Board of Regents of the University of Nebraska; vacancy; how filled.

(1) When a vacancy occurs in the Board of Regents of the University of Nebraska, the office shall be filled by the Governor. The Governor shall appoint a suitable person possessing the qualifications necessary for a member of the Board of Regents.

(2)(a) If the vacancy occurs more than seventy-five days before a statewide general election, the appointee shall serve until the first Thursday following the first Tuesday in January following such general election and at such general election a member of the Board of Regents shall be elected to serve the unexpired term if any.

(b) If the vacancy occurs within seventy-five days before a statewide general election and if the term vacated expires on the first Thursday following the first Tuesday in January following such general election, the appointee shall serve the unexpired term.

(c) If the vacancy occurs within seventy-five days before a statewide general election and if the term vacated extends beyond the first Thursday following the first Tuesday in January following such general election, the appointee shall serve until the first Thursday following the first Tuesday in January following the second general election next succeeding his or her appointment and at such election a member of the Board of Regents shall be elected to serve the unexpired term if any.

Source: Laws 2003, LB 181, § 2.

ARTICLE 6

FILING AND NOMINATION PROCEDURES

Section

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32-601 Political subdivision; offices to be filled; filing deadlines; notices required.

Each political subdivision shall notify the election commissioner or county clerk of the offices to be filled no later than January 5 of any election year as provided in subsection (2) of section 32-404. The election commissioner or county clerk shall give notice of the offices to be filled by election and the filing deadlines for such offices by publication in at least one newspaper of general circulation in the county once at least fifteen days prior to such deadlines.

Source: Laws 1994, LB 76, § 169.

32-602 Candidate; general requirements.

(1) Any person seeking an elective office shall be a registered voter at the time of filing for the office pursuant to section 32-606 or 32-611.

(2) Any person filing for office shall meet the constitutional and statutory requirements of the office for which he or she is filing. If a person is filing for a partisan office, he or she shall be a registered voter affiliated with the appropriate political party if required pursuant to section 32-702. If the person is required to sign a contract or comply with a bonding or equivalent commercial insurance policy requirement prior to holding such office, he or she shall be at least nineteen years of age at the time of filing for the office.

(3) The governing body of the political subdivision swearing in the officer shall determine whether the person meets all requirements prior to swearing in the officer.

Source: Laws 1994, LB 76, § 170; Laws 2004, LB 884, § 17.

32-603 Candidacy for two or more elected offices at same election; prohibited; exception; filing officer; duties.

(1) No candidate for member of the Legislature or an elective office described in Article IV, section 1 or 20, or Article VII, section 3 or 10, of the Constitution of Nebraska shall be eligible to file as a candidate, to petition on the ballot as a candidate, to accept a nomination by a political party or by party convention, caucus, or committee to fill a vacancy, or to be a declared write-in candidate for more than one elective office to be filled at the same election except for the position of delegate to a county, state, or national political party convention. No candidate for any other high elective office as defined in subsection (6) of section 32-604 shall be eligible to file as a candidate, to petition on the ballot as a candidate, to accept a nomination by a political party or by party convention, caucus, or committee to fill a vacancy, or to be a declared write-in candidate for more than one high elective office to be filled at the same election. Any such person who has filed for a high elective office shall withdraw such filing prior to filing for any other elective office to be filled at the same election except for the position of delegate to a county, state, or national political party convention. Any such person who has won a nomination in a primary election and who is nominated to any additional offices by a write-in vote or by a political party convention or committee shall decline one of the nominations pursuant to section 32-623 and shall do so within seven days after receiving any subsequent nomination. If the candidate fails to take such action, any subsequent nomination shall be declared void. Any filing made in violation of this section shall be void, and the Secretary of State, election commissioner, or county clerk shall not place the name of any person on the ballot for any office for which such person filed in violation of this section.

(2) If a filing officer determines that a candidate has filed for more than one office in violation of subsection (1) of this section, the filing officer shall notify the Secretary of State, the Secretary of State shall determine the order of the filings and notify the candidate that the subsequent filing is invalid, and the candidate's name shall not be printed on the ballot for such office. The Secretary of State shall notify the filing officers of the counties involved of the action taken on such subsequent filing.

(3) When the name of a candidate appears on the ballot for more than one office during an election in violation of subsection (1) of this section, the filing officer when possible shall correct the error by removing the candidate's name from the ballot and reprinting corrected ballots. When it is not possible to print a corrected set of ballots in time for the election, all votes cast for such candidate as a candidate for the subsequent office appearing on the ballot shall not be counted, and no certificate of nomination or election shall be issued to such candidate for such subsequent office.

Source: Laws 1994, LB 76, § 171; Laws 1997, LB 221, § 2.

If an individual files to run for two offices in the same general election contrary to the provisions of this section, the second filing by inference withdraws the first. State ex rel. Chambers v. Beermann, 229 Neb. 696, 428 N.W.2d 883 (1988).

This section applies to general, not primary, elections. State ex rel. Chambers v. Beermann, 229 Neb. 696, 428 N.W.2d 883 (1988).

This section prohibits an individual from running for reelection to the Nebraska Legislature and for the U.S. Senate in the same general election. State ex rel. Chambers v. Beermann, 229 Neb. 696, 428 N.W.2d 883 (1988).

32-604 Multiple office holding; when allowed.

(1) Except as provided in subsection (2) or (4) of this section, no person shall be precluded from being elected or appointed to or holding an elective office

for the reason that he or she has been elected or appointed to or holds another elective office.

(2) No person serving as a member of the Legislature or in an elective office described in Article IV, section 1 or 20, or Article VII, section 3 or 10, of the Constitution of Nebraska shall simultaneously serve in any other elective office, except that such a person may simultaneously serve in another elective office which is filled at an election held in conjunction with the annual meeting of a public body.

(3) Whenever an incumbent serving as a member of the Legislature or in an elective office described in Article IV, section 1 or 20, or Article VII, section 3 or 10, of the Constitution of Nebraska assumes another elective office, except an elective office filled at an election held in conjunction with the annual meeting of a public body, the office first held by the incumbent shall be deemed vacant.

(4) No person serving in a high elective office shall simultaneously serve in any other high elective office, except that a county attorney may serve as the county attorney for more than one county if appointed under subsection (2) of section 23-1201.01.

(5) Notwithstanding subsections (2) through (4) of this section, any person holding more than one high elective office upon September 13, 1997, shall be entitled to serve the remainder of all terms for which he or she was elected or appointed.

(6) For purposes of this section, (a) elective office has the meaning found in section 32-109 and includes an office which is filled at an election held in conjunction with the annual meeting of a public body created by an act of the Legislature but does not include a member of a learning community coordinating council appointed pursuant to subsection (5) or (7) of section 32-546.01 and (b) high elective office means a member of the Legislature, an elective office described in Article IV, section 1 or 20, or Article VII, section 3 or 10, of the Constitution of Nebraska, or a county, city, learning community, or school district elective office.

Source: Laws 1994, LB 76, § 172; Laws 1997, LB 221, § 3; Laws 2003, LB 84, § 2; Laws 2007, LB641, § 2; Laws 2008, LB1154, § 4. Effective date July 18, 2008.

32-605 Defeated candidate; prohibited acts; exception.

No candidate defeated at a primary election shall be permitted to file an affidavit declaring a write-in candidacy, file by petition, or file a nomination, if nominated by party convention or committee, for the following general election for the same office except as provided in section 32-616 or 32-625.

Source: Laws 1994, LB 76, § 173; Laws 2002, LB 251, § 3.

A candidate for nomination for the office of Governor, who is defeated at the primary election, is not eligible to be a candidate by petition for the office of United States Senator at the following election. State ex rel. O'Sullivan v. Swanson, 127 Neb. 806, 257 N.W. 255 (1934).

A candidate for the nomination for the office of Secretary of State, who is defeated in the primary election is not eligible to be a candidate by petition for the office of Auditor of Public Accounts at the following general election. State ex rel. Driscoll v. Swanson, 127 Neb. 715, 256 N.W. 872 (1934).

32-606 Candidate filing form; deadline for filing.

(1) Any candidate may place his or her name on the primary election ballot by filing a candidate filing form prescribed by the Secretary of State as

provided in section 32-607. If a candidate for an elective office is an incumbent, the deadline for filing the candidate filing form shall be February 15 prior to the date of the primary election. No incumbent who resigns from elective office prior to the expiration of his or her term shall file for any office after February 15 of that election year. All other candidates shall file for office by March 1 prior to the date of the primary election. A candidate filing form may be transmitted by facsimile for the offices listed in subdivision (1) of section 32-607 if (a) the transmission is received in the office of the filing officer by the filing deadline and (b) the original filing form is mailed to the filing officer with a legible postmark bearing a date on or prior to the filing deadline and is in the office of the filing officer no later than seven days after the filing deadline.

(2) Any candidate for a township office in a county under township organization, the board of trustees of a village, the board of directors of a reclamation district, the county weed district board, the board of directors of a public power district receiving annual gross revenue of less than forty million dollars, the school board of a Class II school district, a learning community coordinating council, or the board of an educational service unit may place his or her name on the general election ballot by filing a candidate filing form prescribed by the Secretary of State as provided in section 32-607. If a candidate for an elective office is an incumbent, the deadline for filing the candidate filing form shall be July 15 prior to the date of the general election. No incumbent who resigns from elective office prior to the expiration of his or her term shall file for any office after July 15 of that election year. All other candidates shall file for office by August 1 prior to the date of the general election. A candidate filing form may be transmitted by facsimile for the offices listed in subdivision (1) of section 32-607 if (a) the transmission is received in the office of the filing officer by the filing deadline and (b) the original filing form is mailed to the filing officer with a legible postmark bearing a date on or prior to the filing deadline and is in the office of the filing officer no later than seven days after the filing deadline.

(3) Any city having a home rule charter may provide for filing deadlines for any person desiring to be a candidate for the office of council member or mayor.

Source: Laws 1994, LB 76, § 174; Laws 1996, LB 967, § 2; Laws 1997, LB 764, § 54; Laws 1999, LB 802, § 12; Laws 2007, LB641, § 3.

Under former act candidate was required to file not less than forty days before the primary election. Fitzgerald v. Kuppinger, 163 Neb. 286, 79 N.W.2d 547 (1956).

City councilman could file for office of member of Legislature within time herein prescribed. State ex rel. Strom v. Marsh, 162 Neb. 593, 77 N.W.2d 163 (1956).

Under the statute, a candidate's nominating papers must be actually received and filed in the proper office before the time for filing has expired. State ex rel. Wood v. Marsh, 120 Neb. 296, 232 N.W. 103 (1930).

Under former law this section required that all nominating papers be filed at least forty days before the primary election, and the time for filing cannot be extended by custom or practice so as to include nominating papers postmarked before but not received until after the time for filing had expired. State ex rel. Smith v. Marsh, 120 Neb. 287, 232 N.W. 99 (1930), 72 A.L.R. 285 (1930).

32-607 Candidate filing forms; contents; filing officers.

All candidate filing forms shall contain the following statement: I hereby swear that I will abide by the laws of the State of Nebraska regarding the results of the primary and general elections, that I am a registered voter and qualified to be elected, and that I will serve if elected. Candidate filing forms shall be filed with the following filing officers:

(1) For candidates for national, state, or congressional office, directors of public power and irrigation districts, directors of reclamation districts, directors of natural resources districts, members of the boards of educational service units, members of governing boards of community colleges, delegates to national conventions, and other offices filled by election held in more than one county and judges desiring retention, in the office of the Secretary of State;

(2) For officers elected within a county, in the office of the election commissioner or county clerk. If the candidate is not a resident of the county, he or she shall submit a certificate of registration obtained under section 32-316 with the candidate filing form;

(3) For officers in school districts which include land in adjoining counties, in the office of the election commissioner or county clerk of the county in which the greatest number of registered voters entitled to vote for the officers reside. If the candidate is not a resident of the county, he or she shall submit a certificate of registration obtained under section 32-316 with the candidate filing form; and

(4) For city or village officers, in the office of the city or village clerk, except that in the case of joint elections, the filing may be either in the office of the election commissioner or county clerk or in the office of the city or village clerk with deputized personnel. When the city or village clerk is deputized to take filings, he or she shall return all filings to the office of the election commissioner or county clerk by the end of the next business day following the filing deadline.

Source: Laws 1994, LB 76, § 175; Laws 1997, LB 764, § 55; Laws 1999, LB 571, § 2; Laws 2007, LB603, § 3.

32-608 Filing fees; payment; amount; not required; when; refund; when allowed.

(1) Except as provided in subsection (4) or (5) of this section, a filing fee shall be paid by or on behalf of each candidate prior to filing for office. For candidates who file in the office of the Secretary of State as provided in subdivision (1) of section 32-607, the filing fee shall be paid to the Secretary of State who shall remit the fee to the State Treasurer for credit to the Election Administration Fund. For candidates for any city or village office, the filing fee shall be paid to the city or village treasurer of the city or village in which the candidate resides. For candidates who file in the office of the election commissioner or county clerk, the filing fee shall be paid to the election commissioner or county clerk in the county in which the office is sought. The election commissioner or county clerk shall remit the fee to the county treasurer. The fee shall be placed in the general fund of the county, city, or village. No candidate filing forms shall be filed until the proper payment or the proper receipt showing the payment of such filing fee is presented to the filing officer. On the day of the filing deadline, the city or village treasurer's office shall remain open to receive filing fees until the hour of the filing deadline.

(2) Except as provided in subsection (4) or (5) of this section, the filing fees shall be as follows:

(a) For the office of United States Senator, state officers, including members of the Legislature, Representatives in Congress, county officers, and city or village officers, except the mayor or council members of cities having a home rule charter, a sum equal to one percent of the annual salary such candidate

will receive if he or she is elected and qualifies for the office for which he or she files as a candidate;

(b) For directors of public power and irrigation districts in districts receiving annual gross revenue of forty million dollars or more, twenty-five dollars, and in districts receiving annual gross revenue of less than forty million dollars, ten dollars;

(c) For directors of reclamation districts, ten dollars; and

(d) For Regents of the University of Nebraska, members of the State Board of Education, and directors of metropolitan utilities districts, twenty-five dollars.

(3) All declared write-in candidates shall pay the filing fees that are required for the office at the time that they present the write-in affidavit to the filing officer. Any undeclared write-in candidate who is nominated or elected by write-in votes shall pay the filing fee required for the office within ten days after the canvass of votes by the county canvassing board and shall file the receipt with the person issuing the certificate of nomination or the certificate of election prior to the certificate being issued.

(4) No filing fee shall be required for any candidate filing for an office in which a per diem is paid rather than a salary or for which there is a salary of less than five hundred dollars per year. No filing fee shall be required for any candidate for membership on a school board, on the board of an educational service unit, on the board of governors of a community college area, on the board of directors of a natural resources district, or on the board of trustees of a sanitary and improvement district.

(5) No filing fee shall be required of any candidate completing an affidavit requesting to file for elective office in forma pauperis. A pauper shall mean a person whose income and other resources for maintenance are found under assistance standards to be insufficient for meeting the cost of his or her requirements and whose reserve of cash or other available resources does not exceed the maximum available resources that an eligible individual may own. Available resources shall include every type of property or interest in property that an individual owns and may convert into cash except:

(a) Real property used as a home;

(b) Household goods of a moderate value used in the home; and

(c) Assets to a maximum value of three thousand dollars used by a recipient in a planned effort directed towards self-support.

(6) If any candidate dies prior to an election, the spouse of the candidate may file a claim for refund of the filing fee with the proper governing body prior to the date of the election. Upon approval of the claim by the proper governing body, the filing fee shall be refunded.

Source: Laws 1994, LB 76, § 176; Laws 1997, LB 764, § 56; Laws 1998, LB 896, § 9; Laws 1998, LB 1161, § 12; Laws 1999, LB 272, § 16; Laws 1999, LB 802, § 13; Laws 2003, LB 537, § 1; Laws 2004, LB 323, § 2.

Where no objection was made within three days after the nominating papers had been filed, the failure to present a county treasurer's receipt to the Secretary of State, as required by this section, did not invalidate the nomination. State ex rel. Maupin v. Amsberry, 104 Neb. 550, 178 N.W. 176 (1920).

32-609 Candidate filing form; designation of political affiliation prohibited; when.

The candidate filing form filed pursuant to sections 32-606 and 32-607 by each candidate for the State Board of Education, member of the Legislature, Regent of the University of Nebraska, director of a public power and irrigation district, reclamation district, or natural resources district, every other nonpartisan office created by law, member of a school board of a Class IV or V school district, and candidate for elective office of a city of the first or second class or a village shall not in any way refer to or designate the political affiliation of the candidate except as otherwise provided pursuant to section 32-557.

Source: Laws 1994, LB 76, § 177; Laws 1997, LB 764, § 57; Laws 1999, LB 272, § 17.

The nonpartisan judiciary act was a statute complete in itself and related to an independent subject. State ex rel. Zeilinger v. Thompson, 134 Neb. 739, 279 N.W. 462 (1938); State ex rel. Acton v. Penrod, 102 Neb. 734, 169 N.W. 266 (1918).

The purpose of the 1923 amendment to another act was to eliminate the apparent conflict that had previously existed with regard to the manner of electing county superintendents. McQuiston v. Griffith, 128 Neb. 260, 258 N.W. 553 (1935).

The nonpartisan judiciary act was independent legislation and constitutional although it materially changed certain provisions of the election laws without referring to the sections changed. State ex rel. Kaspar v. Lehmkuhl, 127 Neb. 812, 257 N.W. 229 (1934).

The nonpartisan judiciary act did not contemplate write-in candidates for such offices. State ex rel. Oleson v. Minor, 105 Neb. 228, 180 N.W. 84 (1920).

The nonpartisan judiciary act incorporates by reference all provisions of the general election laws which do not conflict with the act. State ex rel. Hughes v. Hogeboom, 103 Neb. 603, 173 N.W. 589 (1919).

32-610 Partisan elections; candidate; requirements.

No person shall be allowed to file a candidate filing form as a partisan candidate or to have his or her name placed upon a primary election ballot of a political party unless (1) he or she is a registered voter of the political party if required pursuant to section 32-702 and (2) at the last election the political party polled at least five percent of the entire vote in the state, county, political subdivision, or district in which the candidate seeks the nomination for office. A candidate filing form filed in violation of this section shall be void.

Source: Laws 1994, LB 76, § 178.

Names of candidates for President and Vice President cannot be placed on ballot unless appropriate action is taken by political party organized in this state. State ex rel. Beeson v. Marsh, 150 Neb. 233, 34 N.W.2d 279 (1948).

A candidate is not entitled to have his name placed upon the primary ballot unless his party polled the vote required by this section at the last election, or is a newly formed party. State ex rel. Nelson v. Marsh, 123 Neb. 423, 243 N.W. 277 (1932).

32-611 Nomination by registered voters; affidavit; requirements; candidate filing form; when required.

Twenty-five registered voters of the same political party may seek to have a person's name placed on the primary election ballot as a partisan candidate by filing an affidavit stating that they are registered voters, the political party with which they are registered, the name of the proposed candidate, and that the proposed candidate is a registered voter of the same political party. The affidavit shall be filed in the same manner and with the same filing officer as provided for candidate filing forms. The proposed candidate shall, within five days from the date of the filing of the affidavit, file a candidate filing form as provided in section 32-607 stating that he or she is a registered voter and is affiliated with the political party named in the affidavit. If the candidate filing form is not filed within such five-day period, the name of the candidate shall not be placed upon the primary election ballot.

Source: Laws 1994, LB 76, § 179.

32-612 Change of political party affiliation; requirements for candidacy; prohibited acts.

(1) A change of political party affiliation by a registered voter so as to affiliate with the political party named in the candidate filing form or in an affidavit as a write-in candidate pursuant to section 32-615 after the first Friday in December prior to the statewide primary election shall not be effective to meet the requirements of section 32-610 or 32-611 or subsection (4) of this section, except that any person may change his or her political party affiliation after the first Friday in December prior to the statewide primary election to become a candidate of a new political party which has successfully completed the petition process required by section 32-716.

(2) No registered voter, candidate, or proposed candidate shall swear falsely as to political party affiliation or shall swear that he or she affiliates with two or more political parties. Any candidate who swears falsely as to political party affiliation or swears that he or she affiliates with two or more political parties shall not be the candidate of such party and shall not be entitled to assume the office for which he or she filed even if he or she receives a majority or plurality of the votes therefor at the following general election.

(3) The name of a candidate shall not appear printed on more than one political party ballot. A candidate who is a registered voter of one political party shall not accept the nomination of another political party.

(4) In order to count write-in votes on a political party ballot in the primary election, the candidate who receives the votes must be a registered voter of that political party unless the political party allows candidates not affiliated with the party by not adopting a rule under section 32-702.

Source: Laws 1994, LB 76, § 180; Laws 1997, LB 764, § 58; Laws 2007, LB646, § 4.

A candidate for a newly formed political party need not comply with the provisions of this section. State ex rel. Chambers v. Beermann, 229 Neb. 696, 428 N.W.2d 883 (1988).

32-613 President; nominating petition; consent of candidate required; form of petition.

Any petition to place a person's name on the primary election ballot for President of the United States shall contain the names of not less than one hundred voters registered with the appropriate political party from each congressional district of the state. The name of the candidate for President shall be placed upon the ballot only when written consent of such person has been filed with the Secretary of State not less than sixty days before the primary election. The form of the petition shall comply with the requirements of section 32-628 and shall as nearly as possible conform to the form prescribed by the Secretary of State.

Source: Laws 1994, LB 76, § 181; Laws 1997, LB 764, § 59.

32-614 President; petition candidates or advocated or recognized candidates; placing on ballot; affidavit of rejection of candidacy; purged candidate, when.

The names of persons in the political party (1) who are presented by petition of their supporters to be party candidates for President of the United States or (2) who have been determined by the Secretary of State to be generally advocated or recognized as candidates in national news media throughout the United States shall be printed on the primary election ballot for the office of

President of the United States. If a person does not want his or her name on the Nebraska primary election ballot, he or she shall, by March 10 of the presidential election year, execute and file an affidavit with the Secretary of State stating without qualification that he or she is not now and does not intend to become a candidate for office of President of the United States at the next presidential election in Nebraska or any other state. If a presidential candidate files such affidavit removing his or her name and subsequently becomes a presidential candidate in another state, the candidate's affidavit in Nebraska shall be purged and shall have no force and effect. The Secretary of State shall then place such candidate's name on the primary election ballot.

Source: Laws 1994, LB 76, § 182; Laws 1997, LB 764, § 60.

32-615 Write-in candidate; requirements.

Any candidate engaged in or pursuing a write-in campaign shall file a notarized affidavit of his or her intent together with the receipt for any filing fee with the filing officer as provided in section 32-608 no later than ten days prior to the election. A candidate who has been defeated as a candidate in the primary election or defeated as a write-in candidate in the primary election shall not be eligible as a write-in candidate for the same office in the general election unless a vacancy on the ballot exists pursuant to section 32-625. A candidate who files a notarized affidavit shall be entitled to all write-in votes for the candidate even if only the last name of the candidate has been written if such last name is reasonably close to the proper spelling.

Source: Laws 1994, LB 76, § 183; Laws 2002, LB 251, § 4; Laws 2003, LB 537, § 2.

32-616 Nomination for general election; other methods.

(1) Any registered voter who was not a candidate in the primary election may have his or her name placed on the general election ballot for a partisan office by filing petitions as prescribed in sections 32-617 to 32-621 or by nomination by political party convention or committee.

(2) Any candidate who was defeated in the primary election and any registered voter who was not a candidate in the primary election may have his or her name placed on the general election ballot if a vacancy exists on the ballot under subsection (2) of section 32-625 and the candidate files for the office by petition as prescribed in sections 32-617 and 32-618 or files as a write-in candidate as prescribed in section 32-615.

Source: Laws 1994, LB 76, § 184; Laws 1997, LB 764, § 61; Laws 2002, LB 251, § 5.

32-617 Nomination by petition; requirements; procedure.

(1) Petitions for nomination for partisan and nonpartisan offices shall conform to the requirements of section 32-628. Petitions shall state the office to be filled and the name and address of the candidate. Petitions for partisan office shall also indicate the party affiliation of the candidate. Petitions shall be signed by registered voters residing in the district or political subdivision in which the officer is to be elected and shall be filed with the filing officer in the same manner as provided for candidate filing forms in section 32-607. Petition signers and petition circulators shall conform to the requirements of sections 32-629 and 32-630. No petition for nomination shall be filed unless there is

attached thereto a receipt showing the payment of the filing fee required pursuant to section 32-608. Such petitions shall be filed by September 1 in the year of the general election.

(2) The filing officer shall verify the signatures according to section 32-631. Within three days after the signatures on a petition for nomination have been verified pursuant to such section and the filing officer has determined that pursuant to section 32-618 a sufficient number of registered voters signed the petitions, the filing officer shall notify the candidate so nominated by registered or certified mail, and the candidate shall, within five days after the date of receiving such notification, file with such officer his or her acceptance of the nomination or his or her name will not be printed on the ballot.

(3) A candidate placed on the ballot by petition shall be termed a candidate by petition. The words BY PETITION shall be printed upon the ballot after the name of each candidate by petition.

Source: Laws 1994, LB 76, § 185; Laws 2003, LB 537, § 3.

Where no objection was made within three days after the nominating papers had been filed, the failure to present a county treasurer's receipt to the Secretary of State, as required by this section, did not invalidate the nomination. State ex rel. Maupin v. Amsberry, 104 Neb. 550, 178 N.W. 176 (1920).

32-618 Nomination by petition; number of signatures required.

(1) The number of signatures of registered voters needed to place the name of a candidate upon the nonpartisan ballot for the general election shall be as follows:

(a) For each nonpartisan office other than members of the Board of Regents of the University of Nebraska and board members of a Class III school district, at least ten percent of the total number of registered voters voting for Governor or President of the United States at the immediately preceding general election in the district or political subdivision in which the officer is to be elected, not to exceed two thousand. If the district in which the petitions are circulated comprises two or more counties, at least twenty-five signatures shall be obtained in each county which has at least one hundred registered voters in the district;

(b) For members of the Board of Regents of the University of Nebraska, at least ten percent of the total number of registered voters voting for Governor or President of the United States at the immediately preceding general election in the regent district in which the officer is to be elected, not to exceed one thousand. If the regent district in which the petitions are circulated comprises more than two counties, at least twenty-five signatures shall be obtained in each of two-fifths of the counties comprising the district; and

(c) For board members of a Class III school district, at least twenty percent of the total number of votes cast for the board member receiving the highest number of votes at the immediately preceding general election in the school district.

(2) The number of signatures of registered voters needed to place the name of a candidate upon the partisan ballot for the general election shall be as follows:

(a) For each partisan office to be filled by the registered voters of the entire state, at least four thousand, and at least fifty signatures shall be obtained in each of one-third of the counties in the state; and

(b) For each partisan office to be filled by the registered voters of a county or political subdivision, at least twenty percent of the total vote for Governor or

President of the United States at the immediately preceding general election within the county or political subdivision, not to exceed two thousand.

The number of signatures shall not be required to exceed one-fourth of the total number of registered voters voting for the office at the immediately preceding general election when the nomination is for a partisan office to be filled by the registered voters of a county.

Source: Laws 1994, LB 76, § 186; Laws 1997, LB 764, § 62; Laws 2003, LB 181, § 5; Laws 2003, LB 461, § 3; Laws 2007, LB298, § 1.

This section does not apply to nomination by petition of candidates for office of presidential elector. State ex rel. Beeson v. Marsh, 150 Neb. 233, 34 N.W.2d 279 (1948).

A candidate for the nomination for the office of Secretary of State who is defeated in the primary election is not eligible to be a candidate by petition for the office of Auditor of Public Accounts at the following general election. State ex rel. Driscoll v. Swanson, 127 Neb. 715, 256 N.W. 872 (1934).

This section sets out a method by which a candidate, not entitled to have his name placed on the primary ballot, may have his name placed on the general election ballot as a candidate by petition. State ex rel. Nelson v. Marsh, 123 Neb. 423, 243 N.W. 277 (1932).

This section applies to elections in general but is not applicable to elections under the nonpartisan judiciary act. State ex rel. Acton v. Penrod, 102 Neb. 734, 169 N.W. 266 (1918).

32-619 Governor; selection of running mate; when.

Any candidate for the office of Governor circulating petitions or having petitions circulated in his or her behalf after the primary election and prior to the general election shall, prior to the circulation of such petitions, select the person whom he or she wishes to be his or her Lieutenant Governor for ballot purposes and have such person's name placed on the petitions. The written consent required under section 32-619.01 of the Lieutenant Governor candidate shall be submitted when the petitions are submitted for verification.

Source: Laws 1994, LB 76, § 187; Laws 1997, LB 764, § 63; Laws 2001, LB 768, § 3.

32-619.01 Governor; selection of running mate; filing; procedure.

The candidate for Governor of each political party receiving the highest number of votes in the primary election shall select a candidate for Lieutenant Governor of the same political party by filing an affidavit indicating his or her choice with the Secretary of State. The candidate for Lieutenant Governor shall file a written consent with the Secretary of State. Both the affidavit and the written consent shall be filed on or before September 1 for the names to be on the general election ballot. The written consent shall be in lieu of a candidate filing form, and no filing fees shall be required for the candidate for Lieutenant Governor.

Source: Laws 2001, LB 768, § 2.

32-620 President and Vice President; candidates; certification; new political party; how treated; requirements.

Partisan candidates for the offices of President and Vice President of the United States on the general election ballot shall be certified to the Governor and Secretary of State by the national nominating convention as provided by law. Candidates for the offices of President and Vice President of the United States of newly established political parties or of nonpartisan status may obtain general election ballot position by filing with the Secretary of State:

(1) An application containing:

(a) The name or names to be printed on the ballot;

(b) The status of the candidacy, whether nonpartisan or partisan;

(c) The written consent of the designated vice-presidential candidate to have his or her name printed on the ballot; and

(d) The names and addresses of the persons who will represent the applicant as presidential elector candidates together with the written consent of such persons to become candidates; and

(2) A petition signed by not less than two thousand five hundred registered voters. Such petitions shall conform to the requirements of section 32-628 and shall not be circulated until after the date of the primary election in that election year. Registered voters who voted in the primary election of any political party that held a presidential preference primary election that year shall be ineligible to sign the petitions of any other candidate for president.

Source: Laws 1994, LB 76, § 188; Laws 1997, LB 764, § 64.

This statute is unconstitutional as relates to requirements for independent candidates for President and Vice President of United States. MacBride v. Exon, 558 F.2d 443 (8th Cir. 1977).

Although Nebraska's statutes unconstitutionally deny an independent candidate access to appear on the ballot in presidential elections, the court directed the independent be included upon a determination he was a serious candidate, truly independent, with a satisfactory level of community support. McCarthy v. Exon, 424 F.Supp. 1143 (D. Neb. 1976).

32-621 New political party; candidates; filing fee; petition of nomination.

When a new political party has been properly established under section 32-716 prior to the general election and after the primary election of the same year, all candidates except candidates for President or Vice President of the United States shall pay the filing fee as provided in section 32-608, file a candidate filing form with the filing officer as provided in section 32-607 no later than September 1 prior to the general election accompanied by a petition of nomination containing the names of not less than twenty-five registered voters of the political party obtained from the appropriate jurisdiction, and comply with the Nebraska Political Accountability and Disclosure Act.

Source: Laws 1994, LB 76, § 189; Laws 1997, LB 764, § 65.

Cross References

Nebraska Political Accountability and Disclosure Act, see section 49-1401.

Certificate of nomination for a new party may be filed with Secretary of State. State ex rel. Beeson v. Marsh, 150 Neb. 233, 34 N.W.2d 279 (1948).

A new political party, formed after the time when it would have been possible for it to participate in the primary election, may participate in the general election. Morrissey v. Wait, 92 Neb. 271, 138 N.W. 186 (1912).

32-622 Candidates; withdrawal after filing; notice, to whom given; extension of time for declination.

(1) If any person who has filed for elective office pursuant to subsection (1) of section 32-606 notifies the filing officer in writing duly acknowledged by March 1 before the primary election that he or she declines to be a candidate, the name shall not be printed on the primary election ballot, but no declination shall be effective after such date. A filing of nomination pursuant to section 32-611 shall extend the time for declination until March 6 before the primary election.

(2) If any person who has filed for elective office pursuant to subsection (2) of section 32-606 notifies the filing officer in writing duly acknowledged by August 1 before the general election that he or she declines to be a candidate, the name shall not be printed on the general election ballot, but no declination shall be effective after such date.

(3) Any election commissioner or county clerk receiving notice of declination for a candidate who originally filed with the Secretary of State shall immediately notify the office of the Secretary of State by telephone and forward the declination statement.

Source: Laws 1994, LB 76, § 190; Laws 1999, LB 802, § 14.

Under former law question as to the right of an applicant for a place on a party ballot at a primary election to withdraw less than thirty days preceding the election was raised but not decided. State ex rel. Johnson v. Marsh, 120 Neb. 297, 232 N.W. 104 (1930).

Under former law declinations of nominations, filed after the time provided by the statute, were valid if the certificates of nomination to fill the vacancy were filed within the time prior to the election that was prescribed by the statute. State ex rel. Eastham v. Dewey, 73 Neb. 396, 102 N.W. 1015 (1904).

32-623 Declination of nomination; deadline; notice, to whom given, vacancy, how filled.

If any person nominated for elective office notifies the filing officer with whom the candidate filing form or other acceptance of nomination was filed by filing a statement, in writing and duly acknowledged, that he or she declines such nomination on or before September 1 before the election, the person's name shall not be printed on the ballot, but no declination shall be effective after such date. The filing officer shall inform one or more persons whose names are attached to the nomination if the candidate was nominated by a political party convention or committee or, if nominated at a primary election, the chairperson or secretary of the campaign or political party committee of his or her political party if there is one and, if not, at least three of the prominent members of the candidate's political party in the state that such candidate has declined the nomination by mailing or delivering to them personally notice of such fact, and three days shall be given such party committee or convention to nominate a person to fill such vacancy. In lieu of filing a declination with the Secretary of State, the person so nominated may file a declination with the election commissioner or county clerk in the county in which he or she resides. Any election commissioner or county clerk receiving such a declination shall within five days after its receipt forward a copy of the written declination statement to the Secretary of State. The Secretary of State shall make notifications required by this section for all individuals for whom he or she receives a copy of the written declination statement.

Source: Laws 1994, LB 76, § 191.

Under former law question as to the right of an applicant for a place on a party ballot at a primary election to withdraw less than thirty days preceding the election was raised but not decided. State ex rel. Johnson v. Marsh, 120 Neb. 297, 232 N.W. 104 (1930).

Under former law declinations of nominations, filed after the time provided by the statute, were valid if the certificates of nomination to fill the vacancy were filed within the time prior to the election that was prescribed by the statute. State ex rel. Eastham v. Dewey, 73 Neb. 396, 102 N.W. 1015 (1904).

32-624 Candidate filing forms; objections; notice; actions authorized; filing officer; powers and duties.

A candidate filing form which appears to conform with sections 32-606 and 32-607 shall be deemed to be valid unless objections are made in writing within seven days after the filing deadline. If an objection is made, notice shall be mailed to all candidates who may be affected thereby. Any political party committee may institute actions in court based upon fraud or crime resorted to in connection with the candidate filing forms or the acceptance of a nomination. No county committee shall have the authority to bring such action as to candidates for congressional or state office or as to candidates to be elected from legislative districts composed of more than one county. A state political

party committee may institute actions to determine the legality of any candidate for a state or congressional office or for any district office if the district composes more than one county. Objections to the use of the name of a political party may also be made and passed upon in the same manner as objections to a candidate filing form or other acceptance of nomination.

The filing officer with whom the candidate filing form was filed shall determine the validity of such objection, and his or her decision shall be final unless an order is made in the matter by a judge of the county court, district court, Court of Appeals, or Supreme Court on or before the fifty-fifth day preceding the election. Such order may be made summarily upon application of any political party committee or other interested party and upon such notice as the court or judge may require. The decision of the Secretary of State or the order of the judge shall be binding on all filing officers.

Source: Laws 1994, LB 76, § 192; Laws 2002, LB 1054, § 17.

1. Constitutionality
2. Nature of proceedings
3. Filing of objections
4. Miscellaneous

1. Constitutionality

This section does not violate the separation of powers provision of the Constitution. State ex rel. Meissner v. McHugh, 120 Neb. 356, 233 N.W. 1 (1930).

2. Nature of proceedings

An original proceeding in the Supreme Court under this section is not a mandamus proceeding, although somewhat akin thereto, and, in respect to relief asked, resembles a proceeding to obtain a mandatory injunction. State ex rel. Smith v. Marsh, 120 Neb. 287, 232 N.W. 99 (1930), 72 A.L.R. 285 (1930).

This section is valid and confers power upon the county court and judges of the district and Supreme Court to summarily review the action of the officer with whom the original certificate of nomination was filed, and to make such order therein as the law requires. State ex rel. Offill v. Hallowell, 77 Neb. 610, 110 N.W. 717 (1906).

3. Filing of objections

The Secretary of State may, by his own action, raise objections to a certificate of nomination or nomination statement and then enter an order sustaining his own objections. State ex rel. Chambers v. Beermann, 229 Neb. 696, 428 N.W.2d 883 (1988).

Although no transcript of the proceedings before the Secretary of State is required to be filed, a proceeding in court under this section is essentially appellate, and the objections that may be made are limited to those set up in the hearing before the Secretary of State. State ex rel. Brazda v. Marsh, 141 Neb. 817, 5 N.W.2d 206 (1942).

A proceeding under this section may be brought to object to the filing of a candidate whose nominating papers were not actually received and filed until the time for filing had expired. State ex rel. Wood v. Marsh, 120 Neb. 296, 232 N.W. 103 (1930).

Objections to the placing of a candidate's name on the primary ballot because a county treasurer's receipt showing payment of the filing fee was not presented to the Secretary of State must be filed within three days after the nominating papers were filed. State ex rel. Maupin v. Amsberry, 104 Neb. 550, 178 N.W. 176 (1920).

Where written objections are not filed in the manner and within the time prescribed by this section, the action of the State Central Committee in filing certificates of nomination to fill vacancies cannot be questioned. State ex rel. Nebraska Rep. State C. Com. v. Wait, 92 Neb. 313, 138 N.W. 159 (1912), 43 L.R.A.N.S. 282 (1912).

Objections to certificates of nomination can be filed only within the time prescribed by the statute. State ex rel. Casper v. Piper, 50 Neb. 40, 69 N.W. 383 (1896).

4. Miscellaneous

Opinion rendered in special statutory proceeding is not an opinion of the Supreme Court. State ex rel. Strom v. Marsh, 162 Neb. 593, 77 N.W.2d 163 (1956).

This section authorizes a special action for judicial review of the action of the Secretary of State in passing upon nomination statements of candidates for public office. State ex rel. Quinn v. Marsh, 141 Neb. 436, 3 N.W.2d 892 (1942).

The filing of a candidate who is not a good-faith candidate for office, but who files for the purpose of creating confusion among the electors, due to the similarity of his and other candidates' names, may be refused. State ex rel. Johnson v. Marsh, 120 Neb. 297, 232 N.W. 104 (1930).

When a protest has been filed, it is within the province of the Secretary of State both to investigate matters of form and to determine whether a convention such as the statute contemplates, was held. State ex rel. Stephens v. Marsh, 117 Neb. 579, 221 N.W. 708 (1928).

Certificates of nomination, which apparently conform to the law, are deemed valid unless objected to, and the ballots should be prepared with the candidates designated thereon the same as on the certificates of nomination. State ex rel. Crawford v. Norris, 37 Neb. 299, 55 N.W. 1086 (1893).

32-625 Vacancy on ballot; how filled.

(1) If there is a vacancy on the ballot for a nonpartisan office after the time for filing and before the primary election, the vacancy may only be filled by a petition candidate after the primary election pursuant to sections 32-617 and 32-618.

(2) A vacancy shall exist on the ballot for the general election when (a) any person ceases to be a candidate for the office for which he or she filed a candidate filing form in the primary election and the number of candidates for office is less than twice the number of positions to be filled, (b) no person was nominated for the office in the primary election, or (c) one of the candidates who received a certificate of nomination for a nonpartisan office as a result of a primary election is ineligible, disqualified, deceased, or for any other reason unable to assume the office for which he or she was a candidate. If such a vacancy exists for a nonpartisan office, such vacancy may be filled by filing petitions for nomination pursuant to such sections no later than September 1 prior to the general election.

Source: Laws 1994, LB 76, § 193; Laws 2002, LB 251, § 6.

32-626 Repealed. Laws 2002, LB 251, § 9.

32-627 Partisan office; vacancy on ballot; how filled.

(1) If a vacancy on the ballot arises for any partisan office except President and Vice President of the United States before a general election, the vacancy shall be filled by the majority vote of the proper committee of the same political party. If the vacancy exists for an office serving only a particular district of the state, only those members of the political party committee who reside within that district shall participate in selecting the candidate to fill the vacancy. No vacancy on the ballot shall be deemed to have occurred if a political party makes no nomination of a candidate at the primary election for the office. If a vacancy on the ballot arises for Governor, the vacancy shall be filled by the majority vote of the proper committee of the same political party, and the candidate for Governor shall select a person of the same political party to be the candidate for Lieutenant Governor on the general election ballot. If a vacancy on the ballot arises for the Lieutenant Governor on or before September 1, the candidate for Governor shall select a new candidate for Lieutenant Governor in the same manner as required in section 32-619.01.

(2) The chairperson and secretary of the executive committee for the political party shall make and file with the filing officer a certificate setting forth the cause of the vacancy, the name of the person so nominated, the office for which he or she was nominated, the name of the person for which the new nominee is to be substituted, the place of residence of the person so nominated, the street and number of the residence or place of business of the person so nominated if such person resides in a city, and the name of the political party with which the person so nominated affiliates which such committee represents. The certificate shall be signed by the chairperson and secretary with the name and places of their residences and sworn to by them before some officer authorized to administer oaths. If there is no executive committee of the political party, then a mass convention of the political party shall fill the vacancy and the chairperson and secretary of such convention shall make and file with the filing officer a certificate in form and manner substantially as is required to be filed by the chairperson and secretary of the executive committee under this subsection. The certificate shall be filed by September 1 for a general election and have the same force and effect as the candidate filing form provided for in section 32-607. The filing fee charged to candidates for such offices shall accompany the filing of the certificate.

Source: Laws 1994, LB 76, § 195; Laws 2001, LB 768, § 4.

32-628 Petitions; requirements.

(1) All petitions prepared or filed pursuant to the Election Act or any petition which requires the election commissioner or county clerk to verify signatures by utilizing the voter registration register shall provide a space at least two and one-half inches long for written signatures, a space at least two inches long for printed names, and sufficient space for date of birth and street name and number, city or village, and zip code. Lines on each petition shall not be less than one-fourth inch apart. Petitions may be designed in such a manner that lines for signatures and other information run the length of the page rather than the width. Petitions shall provide for no more than twenty signatures per page.

(2) For the purpose of preventing fraud, deception, and misrepresentation, every sheet of every petition containing signatures shall have upon it, above the signatures, the statements contained in this subsection, except that a petition for recall of an elected official shall also have the additional information specified in subsection (2) of section 32-1304. The statements shall be printed in boldface type in substantially the following form:

WARNING TO PETITION SIGNERS—VIOLATION OF ANY OF THE FOLLOWING PROVISIONS OF LAW MAY RESULT IN THE FILING OF CRIMINAL CHARGES: Any person who signs any name other than his or her own to any petition or who is not qualified to sign the petition shall be guilty of a Class I misdemeanor. Any person who falsely swears to a circulator's affidavit on a petition, who accepts money or other things of value for signing a petition, or who offers money or other things of value in exchange for a signature upon any petition shall be guilty of a Class IV felony.

(3) Every sheet of a petition which contains signatures shall have upon it, below the signatures, an affidavit as provided in this subsection, except that the affidavit for a petition for recall of an elected official shall also include the additional language specified in subsection (3) of section 32-1304. The affidavit shall be in substantially the following form:

STATE OF NEBRASKA)

) ss.

COUNTY OF ....)

.........................., (name of circulator) being first duly sworn, deposes and says that he or she is the circulator of this petition containing .... signatures, that he or she is an elector of the State of Nebraska, that each person whose name appears on the petition personally signed the petition in the presence of the affiant, that the date to the left of each signature is the correct date on which the signature was affixed to the petition and that the date was personally affixed by the person signing such petition, that the affiant believes that each signer has written his or her name, street and number or voting precinct, and city, village, or post office address correctly, that the affiant believes that each signer was qualified to sign the petition, and that the affiant stated to each signer the object of the petition as printed on the petition before he or she affixed his or her signature to the petition.

Circulator . . . .

Address . . . .

Subscribed and sworn to before me, a notary public, this ...... day of .... 20.... at ...., Nebraska.

Notary Public . . . .

(4) Each sheet of a petition shall have upon its face and in plain view of persons who sign the petition a statement in letters not smaller than sixteen-point type in red print on the petition. If the petition is circulated by a paid circulator, the statement shall be as follows: This petition is circulated by a paid circulator. If the petition is circulated by a circulator who is not being paid, the statement shall be as follows: This petition is circulated by a volunteer circulator.

Source: Laws 1994, LB 76, § 196; Laws 1995, LB 337, § 3; Laws 1997, LB 460, § 1; Laws 1999, LB 234, § 9; Laws 2002, LB 1054, § 18; Laws 2003, LB 444, § 5; Laws 2008, LB39, § 1.
Effective date July 18, 2008.

The portion of this section which reads ''Any circulator circulating petitions under sections 32-702 to 32-713 shall not be hired and salaried for the express purpose of circulating petitions'' violates the first amendment and is for that reason void and of no force or effect. State v. Radcliffe, 228 Neb. 868, 424 N.W.2d 608 (1988).

Where actual and exact date on which the signature of an elector was signed is readily apparent, the omission or faulty rendition of the date should be treated as a clerical or technical error. State ex rel. Morris v. Marsh, 183 Neb. 521, 162 N.W.2d 262 (1968).

When a certificate of a circulator has been impeached by proof of fraud, all signatures appearing on any petition circulated by him must be rejected until proved genuine. Barkley v. Pool, 103 Neb. 629, 173 N.W. 600 (1919).

32-629 Petitions; signers; qualifications; exception; circulators; qualifications.

(1) Except as otherwise provided in section 32-1404 for initiative and referendum petitions, only a registered voter of the State of Nebraska shall qualify as a valid signer of a petition and may sign petitions under the Election Act.

(2) Only an elector of the State of Nebraska shall qualify as a valid circulator of a petition and may circulate petitions under the Election Act.

Source: Laws 1994, LB 76, § 197; Laws 2003, LB 444, § 6; Laws 2008, LB39, § 2.
Effective date July 18, 2008.

32-630 Petitions; signers and circulators; duties; prohibited acts.

(1) Each person who signs a petition shall, at the time of and in addition to signing, personally affix the date, print his or her last name and first name in full, and affix his or her date of birth and address, including the street and number or a designation of a rural route or voting precinct and the city or village or a post office address. A person signing a petition may use his or her initials in place of his or her first name if such person is registered to vote under such initials. No signer shall use ditto marks as a means of personally affixing the date or address to any petition. A wife shall not use her husband's first name when she signs a petition but shall personally affix her first name and her last name by marriage or her surname. Any signature using ditto marks as a means of personally affixing the date or address of any petition or any signature using a spouse's first name instead of his or her own shall be invalid.

(2) Each circulator of a petition shall personally witness the signatures on the petition and shall sign the circulator's affidavit.

(3) No person shall:

(a) Sign any name other than his or her own to any petition;

(b) Knowingly sign his or her name more than once for the same petition effort or measure;

(c) Sign a petition if he or she is not a registered voter and qualified to sign the same except as provided in section 32-1404;

(d) Falsely swear to any signature upon any such petition;

(e) Accept money or other thing of value for signing any petition;

(f) Offer money or other thing of value in exchange for a signature upon any petition; or

(g) Pay a circulator based on the number of signatures collected.

Source: Laws 1994, LB 76, § 198; Laws 1997, LB 460, § 2; Laws 2003, LB 444, § 7; Laws 2008, LB39, § 3.
Effective date July 18, 2008.

Where petition circulator has sworn to properly executed statutory form of affidavit that he is qualified voter, presumption raises that he is qualified elector; presumption does not disappear simply because full Christian name is not signed. State ex rel. Morris v. Marsh, 183 Neb. 521, 162 N.W.2d 262 (1968).

32-631 Petitions; signature verification; procedure.

(1) All petitions that are presented to the election commissioner or county clerk for signature verification shall be retained in the election office and shall be open to public inspection. Upon receipt of the pages of a petition, the election commissioner or county clerk shall issue a written receipt indicating the number of pages of the petition in his or her custody to the person presenting the petition for signature verification. Petitions may be destroyed twenty-two months after the election to which they apply.

(2) The election commissioner or county clerk shall determine the validity and sufficiency of such petition by comparing the names, dates of birth if applicable, and addresses of the signers with the voter registration records to determine if the signers were registered voters on the date of signing the petition. If it is determined that a signer has affixed his or her signature more than once to any petition and that only one person is registered by that name, the election commissioner or county clerk shall strike from the pages of the petition all but one such signature. Only one of the duplicate signatures shall be added to the total number of valid signatures. All signatures, dates of birth, and addresses shall be presumed to be valid if the election commissioner or county clerk has found the signers to be registered voters on or before the date on which the petition was signed. This presumption shall not be conclusive and may be rebutted by any credible evidence which the election commissioner or county clerk finds sufficient.

(3) If the election commissioner or county clerk verifies signatures in excess of one hundred ten percent of the number necessary for the issue to be placed on the ballot, the election commissioner or county clerk may cease verifying signatures and certify the number of signatures verified to the person who delivered the petitions for verification.

(4) If the number of signatures verified does not equal or exceed the number necessary to place the issue on the ballot 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 petition page number and line number where the signature is found. If the signature or address is challenged for a reason other than the nonregistration of the signer, the election commissioner or county clerk shall set forth the reasons for the challenge of the signature.

Source: Laws 1994, LB 76, § 199; Laws 1997, LB 460, § 3; Laws 1997, LB 764, § 66; Laws 2003, LB 444, § 8.

32-632 Petition; removal of name; procedure.

Any person may remove his or her name from a petition by an affidavit signed and sworn to by such person before the election commissioner, the county clerk, or a notary public. The affidavit shall be presented to the Secretary of State, election commissioner, or county clerk prior to or on the day of the petition filing deadline.

Source: Laws 1994, LB 76, § 200; Laws 1997, LB 764, § 67.

ARTICLE 7

POLITICAL PARTIES

Section

32-701. President; preference vote.
32-702. Partisan primary election; candidate; affiliation required; when.
32-703. Delegates to national convention; selection or election; national party rules; state political party; duty.
32-704. Candidates; delegate to national convention; filing form; contents; Secretary of State; duties.
32-705. Delegates to national convention; certificates of election; Secretary of State shall issue.
32-706. Alternate delegates to national convention; procedure for selection; certification.
32-707. County postprimary conventions; time; place; transaction of business.
32-708. County postprimary conventions; basis of representation; selection of delegates to state and congressional district conventions.
32-709. County conventions; delegates; precinct caucuses.
32-710. State postprimary conventions; when held; organization; platform; selection of presidential electors.
32-711. Congressional district postprimary conventions; time; place; delegates; transaction of business.
32-712. President and Vice President; candidates; certification of names and addresses; time; Secretary of State; place names on ballot.
32-713. Presidential electors; notice of appointment; meeting.
32-714. Presidential electors; vacancies; how filled; meeting; procedure.
32-715. Presidential electors; compensation.
32-716. New political party; formation; petition; requirements.
32-717. New political party; validity of petition signatures; certification of establishment; copy of constitution and bylaws; filed.
32-718. New political party for congressional district, county, or city; formation; procedures.
32-719. County, congressional district, and state conventions; individual vote; unit voting prohibited.
32-720. Division of political party ballot; preference; how determined.
32-721. Candidate at special election; nomination by convention or committee; certificates of nomination; time of filing.

32-701 President; preference vote.

When candidates for the office of President of the United States are to be nominated, every registered voter of a political party shall have the opportunity

to vote his or her preference on his or her party nominating ballot for his or her choice for one person to be the candidate of his or her political party for President of the United States by writing the name of the person of his or her choice for President in the blank space to be left upon the ballot for such purpose and making a cross or mark in the square or oval opposite the written name or by making a cross or mark in the square or oval opposite the printed name of the person of his or her choice.

Source: Laws 1994, LB 76, § 201.

The expression of a preference for President by those voting at primary election does not control presidential electors, and is only morally binding on delegates to national party conventions. State ex rel. Nebraska Rep. State C. Com. v. Wait, 92 Neb. 313, 138 N.W. 159 (1912), 43 L.R.A.N.S. 282 (1912).

32-702 Partisan primary election; candidate; affiliation required; when.

Any political party may, by the adoption of a rule, require that any individual whose name is placed on such party's partisan primary election ballot be a registered voter affiliated with such party.

Source: Laws 1994, LB 76, § 202.

32-703 Delegates to national convention; selection or election; national party rules; state political party; duty.

In each presidential election year, the total number of delegates and alternate delegates representing this state at the national conventions of the political parties and their method of selection or election shall be determined by the rules of the national political party holding the convention. The Secretary of State in consultation with the Attorney General shall have the authority to do all things necessary in the administration of the Election Act, including ballot preparation, separation of ballots, and ballot instructions, to comply with and carry out the intent of national political party rules and court decisions. Whenever the act is in conformity with national political party rules as to the election of delegates, the election procedures found in the act shall be followed. The state political party shall furnish a copy of the national political party rules regarding selection of delegates to the Secretary of State no later than February 1 of each presidential election year.

Source: Laws 1994, LB 76, § 203; Laws 1997, LB 764, § 68.

32-704 Candidates; delegate to national convention; filing form; contents; Secretary of State; duties.

The filing form for nomination of a candidate for election as a delegate to the national convention of a political party shall (1) contain a statement of the candidate's preference for the candidacy for the office of President of the United States or that he or she is uncommitted, (2) include a pledge that the candidate, if elected, will use his or her best efforts at the convention for the candidate indicated as his or her preference for the office of President until (a) such candidate receives less than thirty-five percent of the votes for nomination by such convention or releases the delegate from such pledge or (b) two convention nominating ballots have been taken, and (3) be filed with the Secretary of State. No filing form for nomination shall be accepted unless signed by the candidate. The Secretary of State shall prescribe the filing form for nomination.

Source: Laws 1994, LB 76, § 204.

The expression of a preference for President by those voting at primary election does not control presidential electors, and is only morally binding on delegates to national party conventions. State ex rel. Nebraska Rep. State C. Com. v. Wait, 92 Neb. 313, 138 N.W. 159 (1912), 43 L.R.A.N.S. 282 (1912).

32-705 Delegates to national convention; certificates of election; Secretary of State shall issue.

The Secretary of State shall issue certificates of election to persons elected as delegates to national conventions of the political parties. The certificate shall show the number of votes received in the state by each candidate of the political party for President represented by such delegate.

Source: Laws 1994, LB 76, § 205.

32-706 Alternate delegates to national convention; procedure for selection; certification.

Alternate delegates to the national political convention of a political party shall be selected in accordance with procedures adopted by the state central committee of each political party. A statement setting forth such procedure and certifying its adoption shall be filed in the office of the Secretary of State by the state chairperson of the political party not later than February 15 of each presidential election year. The names of those selected as alternate delegates shall be certified to the Secretary of State by the state chairperson immediately following their selection.

Source: Laws 1994, LB 76, § 206.

32-707 County postprimary conventions; time; place; transaction of business.

(1) The county postprimary convention of a political party shall be held in the courthouse or other suitable place at the county seat any time during the first ten days in June following the statewide primary election at an hour and place to be designated by the chairperson of the county central committee of a political party. The county central committee chairperson shall, after appropriate consultation with the central committee, certify the date, time, and location of the convention to the election commissioner or county clerk not later than the first Tuesday in May preceding the primary election. The election commissioner or county clerk shall issue certificates of election to each person elected delegate to the county postprimary convention of a political party and shall notify each person elected of the time and place of the holding of such county postprimary convention. The county central committee chairperson shall cause to be published, at least fifteen days prior to the date of the county postprimary convention, an official notice of the date, time, and place of the convention in at least one newspaper of general circulation within the county.

(2) The election commissioner or county clerk shall deliver to the temporary secretary of each county postprimary convention of a political party the roll, properly certified, showing the name and address of each delegate elected to such convention. Upon receipt of such roll, the convention shall organize and proceed with the transaction of business which is properly before it. A county chairperson, secretary, treasurer, and other officials may be elected. The authority reposed in delegates to the county postprimary convention by reason of their election shall be deemed personal in its nature, and no such delegate may, by power of attorney, by proxy, or in any other way, authorize any person in such delegate's name or on such delegate's behalf to appear at such county

postprimary convention, cast ballots at the convention, or participate in the organization or transaction of any business of the convention. In case of a vacancy in the elected delegates, such elected delegates present shall have the power to fill any vacancy from the qualified registered voters of the precinct in which the vacancy exists.

Source: Laws 1994, LB 76, § 207; Laws 1997, LB 764, § 69.

32-708 County postprimary conventions; basis of representation; selection of delegates to state and congressional district conventions.

The county central committee of a political party shall fix the representation in the county postprimary conventions for the various precincts of the county on the basis of the vote cast for the political party's candidate for President of the United States at the preceding presidential election. Each precinct shall be entitled to at least two delegates to the county postprimary convention. If any precinct does not have a full quota of delegates at the county postprimary convention, the delegates at the convention may fill the quota from the registered voters of such precinct. The county postprimary convention shall select delegates to the state and congressional district conventions of a political party. If the county central committee fails to fix the representation at the county postprimary convention by proper certification to the election commissioner or county clerk of the respective counties by February 1 of each election year, there shall be two delegates from each precinct.

Source: Laws 1994, LB 76, § 208.

32-709 County conventions; delegates; precinct caucuses.

Delegates to county conventions of political parties may be elected at precinct caucuses held in each presidential election year. The state central committee of each political party shall set the date for the caucus, and the county chairperson for each party shall issue the call. Each county chairperson shall file with the election commissioner or county clerk notice of the meeting place of such caucus at least ten days prior to the date of the caucus. The state central committee of each party shall draft rules of procedure to be followed at each caucus.

For purposes of this section, caucus shall mean a meeting of the legal voters of any political party assembled for the purpose of choosing delegates to the county convention.

Source: Laws 1994, LB 76, § 209.

32-710 State postprimary conventions; when held; organization; platform; selection of presidential electors.

Each political party shall hold a state postprimary convention biennially on a date to be fixed by the state central committee but not later than September 1. Candidates for elective offices may be nominated at such conventions. Such nominations shall be certified to the Secretary of State by the chairperson and secretary of the convention. The certificates shall have the same force and effect as nominations in primary elections. The convention shall formulate and promulgate a state platform, select a state central committee, select electors for President and Vice President of the United States, and transact the business which is properly before it. One presidential elector shall be chosen from each congressional district, and two presidential electors shall be chosen at large.

The officers of the convention shall certify the names of the electors to the Governor and Secretary of State.

Source: Laws 1994, LB 76, § 210; Laws 1997, LB 764, § 70.

Political parties at their conventions select candidates for office of presidential electors. State ex rel. Beeson v. Marsh, 150 Neb. 233, 34 N.W.2d 279 (1948).

This statute is unconstitutional as relates to requirements for independent candidates for President and Vice President of United States. MacBride v. Exon, 558 F.2d 443 (8th Cir. 1977).

Although Nebraska's statutes unconstitutionally deny an independent candidate access to appear on the ballot in presidential elections, the court directed the independent be included upon a determination he was a serious candidate, truly independent, with a satisfactory level of community support. McCarthy v. Exon, 424 F.Supp. 1143 (D. Neb. 1976).

32-711 Congressional district postprimary conventions; time; place; delegates; transaction of business.

Each political party shall hold a congressional district postprimary convention in even-numbered years. The convention shall be held at the same place as and immediately after the adjournment of the state postprimary convention. The delegates selected to the state postprimary convention for the district shall be the delegates to the congressional district postprimary convention. The congressional district postprimary convention shall transact the business which is properly before it.

Source: Laws 1994, LB 76, § 211.

32-712 President and Vice President; candidates; certification of names and addresses; time; Secretary of State; place names on ballot.

Not later than September 8 prior to any general election at which candidates for President and Vice President of the United States are to be voted upon by the registered voters of the state, the appropriate officers of the various national political party conventions shall certify the names and addresses of such candidates selected by convention to the Secretary of State. The Secretary of State shall then take appropriate steps to place the names of the presidential and vice-presidential candidates on the ballot.

Source: Laws 1994, LB 76, § 212; Laws 2008, LB857, § 1.
Effective date July 18, 2008.

Although Nebraska's statutes unconstitutionally deny an independent candidate access to appear on the ballot in presidential elections, the court directed the independent be included upon a determination he was a serious candidate, truly independent, with a satisfactory level of community support. McCarthy v. Exon, 424 F.Supp. 1143 (D. Neb. 1976).

32-713 Presidential electors; notice of appointment; meeting.

The certificates of appointment for presidential electors shall be served by the Governor on each person appointed. The Governor shall notify the presidential electors to be at the State Capitol at noon on the first Monday after the second Wednesday in December after appointment and report to the Governor at his or her office in the capitol as being in attendance. The Governor shall serve the certificates of appointment by registered or certified mail. The presidential electors shall convene at 2 p.m. of such Monday at the Governor's office in the capitol.

Source: Laws 1994, LB 76, § 213.

Governor appoints presidential electors in accordance with return of state canvassing board. State ex rel. Beeson v. Marsh, 150 Neb. 233, 34 N.W.2d 279 (1948).

32-714 Presidential electors; vacancies; how filled; meeting; procedure.

The Governor shall provide each presidential elector with a list of all the electors. If any elector is absent or if there is a deficiency in the proper number

of electors, those present shall elect from the citizens of the state so many persons as will supply the deficiency and immediately issue a certificate of election, signed by those present or a majority of them, to the person or persons so chosen. In case of failure to elect by 3 p.m. of such day, the Governor shall fill the vacancies by appointment. After all vacancies are filled, the college of electors shall proceed with the election of a President of the United States and a Vice President of the United States and certify their votes in conformity with the Constitution and laws of the United States. Each at-large presidential elector shall cast his or her ballot for the presidential and vice-presidential candidates who received the highest number of votes in the state. Each congressional district presidential elector shall cast his or her ballot for the presidential and vice-presidential candidates who received the highest number of votes in his or her congressional district.

Source: Laws 1994, LB 76, § 214.

This section provides procedures for meeting of presidential electors. State ex rel. Beeson v. Marsh, 150 Neb. 233, 34 N.W.2d 279 (1948).

32-715 Presidential electors; compensation.

The Secretary of State shall incorporate in his or her budget the sum of five hundred dollars for the payment of requests for payment or reimbursement presented by the presidential electors of the electoral college. The electors shall receive compensation of five dollars for each day of attendance and shall be reimbursed for mileage as provided in section 81-1176.

Source: Laws 1994, LB 76, § 215; Laws 1997, LB 764, § 71.

32-716 New political party; formation; petition; requirements.

(1) Any person, group, or association desiring to form a new political party shall present to the Secretary of State petitions containing signatures totaling not less than one percent of the total votes cast for Governor at the most recent general election for such office. The signatures of registered voters on such petitions shall be so distributed as to include registered voters totaling at least one percent of the votes cast for Governor in the most recent gubernatorial election in each of the three congressional districts in this state. Petition signers and petition circulators shall conform to the requirements of sections 32-629 and 32-630. The petitions shall be filed with the Secretary of State no later than February 1 before any statewide primary election for the new political party to be entitled to have ballot position in the primary election of that year. If the new political party desires to be established and have ballot position for the general election and not in the primary election of that year, the petitions shall be filed with the Secretary of State on or before August 1 of that year. Prior to the circulation of petitions to form a new political party, a sample copy of the petitions shall be filed with the Secretary of State by the person, group, or association seeking to establish the new party. The sample petition shall be accompanied by the name and address of the person or the names and addresses of the members of the group or association sponsoring the petition to form a new political party.

(2) The petition shall conform to the requirements of section 32-628. The Secretary of State shall prescribe the form of the petition for the formation of a new political party. The petition shall be addressed to and filed with the Secretary of State and shall state its purpose and the name of the party to be

formed. Such name shall not be or include the name of any political party then in existence or any word forming any part of the name of any political party then in existence, and in order to avoid confusion regarding party affiliation of a candidate or registered voter, the name of the party to be formed shall not include the word ''independent'' or ''nonpartisan''. The petition shall contain a statement substantially as follows:

We, the undersigned registered voters of the State of Nebraska and the county of ...., being severally qualified to sign this petition, respectfully request that the above-named new political party be formed in the State of Nebraska, and each for himself or herself says: I have personally signed this petition on the date opposite my name; I am a registered voter of the State of Nebraska and county of .... and am qualified to sign this petition; and my date of birth and city, village, or post office address and my street and number or voting precinct are correctly written after my name.

Source: Laws 1994, LB 76, § 216; Laws 1997, LB 460, § 4; Laws 2006, LB 940, § 1.

A candidate for a newly formed political party need not comply with the provisions of section 32-515. State ex rel. Chambers v. Beermann, 229 Neb. 696, 428 N.W.2d 883 (1988).

This section authorizes and outlines the procedure for formation of new political parties. State ex rel. Beeson v. Marsh, 150 Neb. 233, 34 N.W.2d 279 (1948).

The method that the statute provides for the formation of a new political party is mandatory. State ex rel. Nelson v. Marsh, 123 Neb. 423, 243 N.W. 277 (1932).

Under the prior law, a state convention to form a new political party required five hundred electors to be present at a mass convention. State ex rel. Stephens v. Marsh, 117 Neb. 579, 221 N.W. 708 (1928).

This statute is unconstitutional as relates to requirements for independent candidates for President and Vice President of United States. MacBride v. Exon, 558 F.2d 443 (8th Cir. 1977).

Portion of subsection (1) of this section governing formation of new political parties which required signatures equal to one percent of persons voting in most recent gubernatorial race to be distributed among at least one-fifth of counties in state and which required signers of petitions for formation of new parties to pledge to support party, to support its candidates, and to change their registration to affiliate with petitioning party was unconstitutional and void. Portion of subsection (3) of this section requiring petition circulators to be registered voters and residents of state and county in which they were circulating petitions to get party on ballot was valid exercise of state's power to protect its compelling interest in maintaining integrity of election process. Libertarian Party of Nebraska v. Beermann, 598 F.Supp. 57 (D. Neb. 1984).

32-717 New political party; validity of petition signatures; certification of establishment; copy of constitution and bylaws; filed.

Within ten days after all the petitions to form a new political party which contain signatures are filed with the Secretary of State, he or she shall determine the validity and sufficiency of such petitions and signatures. Clerical and technical errors in a petition shall be disregarded if the forms prescribed by the Secretary of State are substantially followed. If the petitions are determined to be sufficient and valid, the Secretary of State shall issue a certification establishing the new political party. Copies of such certification shall be issued to the person, group, or association forming the new political party. Within twenty days after the certification of establishment of the new political party by the Secretary of State, the person, group, or association forming the new political party or its new officers shall file with the Secretary of State the constitution and bylaws of such party along with a certified list of the names and addresses of the officers of the new political party.

Source: Laws 1994, LB 76, § 217.

32-718 New political party for congressional district, county, or city; formation; procedures.

New political parties may be formed for a congressional district, a county, or a city. Any person desiring to form a new political party for a congressional

district, a county, or a city shall follow the procedures set out in section 32-716, except that:

(1) The requirement for signatures to be obtained from registered voters in each of the three congressional districts shall not apply to this section;

(2) Petitions for new county or city political parties shall be filed with the election commissioner or county clerk, and the election commissioner or county clerk shall perform the duties imposed upon the Secretary of State by section 32-717; and

(3) Petitions for formation of a new city political party shall be filed no later than February 1 before the city primary.

Source: Laws 1994, LB 76, § 218.

32-719 County, congressional district, and state conventions; individual vote; unit voting prohibited.

At all county, congressional district, and state political party conventions held under sections 32-707 to 32-711, each delegate shall be entitled to register his or her individual vote, and it shall be unlawful to attempt to bind any delegate by any political party or convention rules requiring the delegates from any political subdivision to such convention to vote as one unit.

Source: Laws 1994, LB 76, § 219.

32-720 Division of political party ballot; preference; how determined.

In case of a division of any political party, the Secretary of State shall give the preference of party name to the convention held at the time and place designated in the call of the regularly constituted political party authorities, and if the other faction presents no other party name, the Secretary of State shall select a name or title and place the same on the ballot before the list of candidates of such faction. The action of the preceding national convention of such party, regularly called, shall determine the action of the Secretary of State or the court in its decision. The Secretary of State may be compelled by peremptory order of mandamus to perform such duty.

Source: Laws 1994, LB 76, § 220.

32-721 Candidate at special election; nomination by convention or committee; certificates of nomination; time of filing.

Any candidate of any political party for an office to be filled at a special election shall be nominated by a convention or central committee of his or her political party. The nomination shall be in writing, shall contain the name of the office for which each person was nominated and the name and residence of each person so nominated, including, if in a city, the street and number of residence, and place of business, if any, and shall designate in not more than five words the political party which such convention or committee represents. The presiding officer and the secretary of such convention or committee shall sign the nomination and include their respective places of business and take an oath before an officer qualified to administer oaths that the affiants were such officers at such convention or committee and that the certificate and the statements therein contained are true to the best of their knowledge and belief. Such conventions or committee meetings shall be held not less than seventy days prior to the date fixed by law for the election of the persons so nominated.

The nomination shall be filed with the filing officer prescribed in section 32-607 not less than seventy days before the election.

Source: Laws 1994, LB 76, § 221.

Form of certificate, set out in opinion, was approved. State ex rel. Norton v. Van Camp, 36 Neb. 91, 54 N.W. 113 (1893).

ARTICLE 8

NOTICE, PUBLICATION, AND PRINTING OF BALLOTS

Section
32-801. Official ballot; certifications required.
32-802. Notice of election; contents.
32-803. Sample of official ballot; publication; requirements; rate; limitation.
32-804. Sample ballots; distribution.
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32-801 Official ballot; certifications required.

At least fifty days before any statewide primary or general election, the Secretary of State shall transmit in ballot form to each election commissioner or county clerk a certification of the candidates, offices, and issues that appear on the state ballot. The certification prior to the primary election shall name the office to be filled, the length of the term, the number of candidates to be voted for, the name of each candidate for whom candidate filing forms or petitions have been filed in the office of the Secretary of State and who is entitled to be voted for at such primary election, and the party affiliation or nonpartisan status of each candidate. A separate statement of the city or village of residence of each candidate shall be included with the certification, but the city or village of residence shall not appear on the official ballot. The certification prior to the general election shall name the office to be filled, the length of the term, the number of candidates to be voted for, the name of each candidate who was nominated at the primary election or who filed by petition as shown by the records in the office of the Secretary of State and who is entitled to be voted for at the general election, and the party affiliation or nonpartisan status of each candidate for partisan offices.

Source: Laws 1994, LB 76, § 222; Laws 1997, LB 764, § 72.

The Secretary of State is required to certify to the counties which issues will be on the ballot at least 50 days before the election. State ex rel. Bellino v. Moore, 254 Neb. 385, 576 N.W.2d 793 (1998).

Unless there is some designation of office on a ballot, the ballot is void, but technical accuracy in the designation is not essential. State ex rel. Valentine v. Griffey, 5 Neb. 161, 31 L.E.2d 890 (1876).

32-802 Notice of election; contents.

The notice of election for any election shall state the date on which the election is to be held and the hours the polls will be open and list all offices, candidates, and issues that will appear on the ballots. The notice of election shall be printed in English and in any other language required pursuant to the Voting Rights Act Language Assistance Amendments of 1992. In the case of a primary election, the notice of election shall list all offices and candidates that are being forwarded to the general election. The notice of election shall only state that amendments or referendums will be voted upon and that the Secretary of State will publish a true copy of the title and text of any amendments or referendums once each week for three consecutive weeks preceding the election. Such notice of election shall appear in at least one newspaper designated by the election commissioner, county clerk, city council, or village board no later than forty days prior to the election. The election commissioner or county clerk shall, not later than forty days prior to the election, (1) post in his or her office the same notice of election published in the newspaper and (2) provide a copy of the notice to the political subdivisions appearing on the ballot. The election commissioner or county clerk shall correct the ballot to reflect any corrections received within ten days after mailing the notice as provided in section 32-819. The notice of election shall be posted in lieu of sample ballots until such time as sample ballots are printed. If joint elections are held in conjunction with the statewide primary or general election by a county, city, or village, only one notice of election need be published and signed by the election commissioner or county clerk.

Source: Laws 1994, LB 76, § 223; Laws 2002, LB 935, § 6.

32-803 Sample of official ballot; publication; requirements; rate; limitation.

A sample of the official ballot shall be printed in one or more newspapers of general circulation in the county, city, or village as designated by the election commissioner, county clerk, city council, or village board. The sample shall be printed in English and in any other language required pursuant to the Voting Rights Language Assistance Act of 1992. Such publication shall be made not more than fifteen nor less than two days before the day of election, and the same shall appear in only one regular issue of each paper. The form of the ballot so published shall conform in all respects to the form prescribed for official ballots as set forth in sections 32-806, 32-809, and 32-812, but larger or smaller type may be used. When paper ballots are not being used, a reduced-size facsimile of the official ballot shall be published as it appears on the voting system. Such publication shall include suitable instructions to the voters for casting their ballots using the voting system being used at the election. The rate charged by the newspapers and paid by the county board for the publication of such sample ballot shall not exceed the rate regularly charged for display advertising in such newspaper in which the publication is made.

Source: Laws 1994, LB 76, § 224; Laws 1997, LB 764, § 73; Laws 2003, LB 358, § 10.

32-804 Sample ballots; distribution.

If in the judgment of the election commissioner, county clerk, or city or village clerk the sample ballot published in the newspaper will not be seen by the voters generally, sample ballots may be printed on light red, light green, or light pink paper. The sample ballots shall be distributed not less than three nor more than thirty-five days before the election in an amount not to exceed ten percent of the total number of votes cast in such county, city, or village at the immediately preceding general election. The separate sample ballots shall be of the exact size and form as the official ballot.

Source: Laws 1994, LB 76, § 225.

32-805 Ballots; preparation; contents; posting.

The election commissioner or county clerk shall prepare the necessary ballots for every election in which candidates for elective office are certified to or filed with the election commissioner or county clerk or whenever any question is to be submitted to a vote of the registered voters of any locality and not to the state generally. The ballots shall be printed in English and in any other language required pursuant to the Voting Rights Act Language Assistance Amendments of 1992. If a question is submitted to the registered voters of any city or village alone, the city or village clerk shall provide the necessary ballots. Sample ballots shall be prepared for each precinct and shall be the same as the official ballots for the precinct. The official ballot shall be headed with the words Official Ballot, and the sample ballot shall be headed with the words Sample Ballot. All official and sample ballots shall be in the possession of the election commissioner, county clerk, or city or village clerk at least ten days before the election and subject to inspection by the candidates or their agents. One set of sample ballots shall be posted in the office of the election commissioner or county clerk not later than ten days prior to the election. Two sample ballots shall be posted at each polling place in each precinct on the morning of election day by the judges and clerks of election at or near the polling place. Additional sample ballots may be printed. No person other than an election commissioner, county clerk, or city or village clerk shall print or cause to be printed or distributed any ballot marked Official Ballot.

Source: Laws 1994, LB 76, § 226.

The arrangement of party names on the ballot is a matter within the discretion of the county clerk provided that each candidate is given the designation to which he is entitled. Woods v. State ex rel. McNerney, 44 Neb. 430, 63 N.W. 23 (1895).

32-806 Official ballots; color; type style and size.

All official ballots prepared pursuant to the Election Act shall be white in color, except that the election commissioner, county clerk, or city or village clerk may designate a distinctive color of ballot or ink for city, village, or school elections or, when authorized by the Secretary of State, for elections of any other political subdivision. If a distinctive color is designated, the color of the ballot shall not be the same as the sample ballots as provided in section 32-804. The style and size of type on official ballots shall be as close as possible to the style used on the ballots furnished by the Secretary of State.

Source: Laws 1994, LB 76, § 227.

32-807 Ballots; number; printing and delivery.

The election commissioner, county clerk, or city or village clerk shall print and deliver to each precinct or district in the county, city, or village an approximate number of ballots based upon what would appear sufficient at the time the ballots are to be printed. Such totals shall take into consideration increases in registration, early voting, annexations, changes in boundaries, spoiled ballots, and any other factor that may influence the total number of ballots needed. Additional ballots shall be printed to meet any contingency in order to provide a sufficient number of ballots for each precinct or district in the county, city, or village.

Source: Laws 1994, LB 76, § 228; Laws 2005, LB 98, § 7.

Under this section, the number of ballots to be printed is not a fixed and certain quantity, but is the result of computation by the clerk and is subject in some degree to his discretion. Wahlquist v. Adams County, 94 Neb. 682, 144 N.W. 171 (1913).

32-808 Ballots for early voting and applications; delivery; special ballot; publication of application form.

(1) Ballots for early voting and applications shall be ready for delivery to registered voters at least thirty-five days prior to each statewide primary or general election and at least fifteen days prior to all other elections.

(2) Notwithstanding subsection (1) of this section, upon request for a ballot, a ballot for early voting shall be forwarded to each voter meeting the criteria of section 32-939 at least forty-five days prior to any election. The election commissioner or county clerk shall not forward any ballot for early voting if the election to which such ballot pertains has already been held. If the ballot has not been printed in sufficient time to meet the requirements of this subsection, the election commissioner or county clerk shall issue a special ballot at least sixty days prior to an election to each voter meeting the criteria of section 32-939 upon the written request by such voter requesting the special ballot. A complete list of the nominated candidates and issues to be voted upon by a voter meeting the criteria of such section shall be included with the special ballot by the election commissioner or county clerk. A notice shall be sent with the primary election ballot stating that the voter must request a general election ballot unless such voter has requested both the primary and general election ballots. If the voter has requested both ballots, a notice shall be sent with the primary election ballot stating that the general election ballot will be sent to the same address unless otherwise notified.

(3) For purposes of this section, a special ballot means a ballot prescribed by the Secretary of State which contains the titles of all offices being contested at such election and permits the voter to vote by writing in the names of the specific candidates or the decision on any issue.

(4) The election commissioner or county clerk shall publish in a newspaper of general circulation in the county an application form to be used by registered voters in making an application for a ballot for early voting after the ballots become available. The publication of the application shall not be required if the election is held by mail pursuant to sections 32-952 to 32-959.

Source: Laws 1994, LB 76, § 229; Laws 1996, LB 964, § 4; Laws 1997, LB 764, § 74; Laws 1999, LB 571, § 3; Laws 2005, LB 98, § 8; Laws 2007, LB646, § 5.

Cross References

Absentee ballots for school bond elections, see section 10-703.01.

32-809 Statewide primary election; official ballot; form; contents.

(1) The form of the official ballot at the statewide primary election shall be prescribed by the Secretary of State. At the top of the ballot and over all else shall be printed in boldface type the name of the political party, ... Official Ballot, Primary Election 20.. . Each division containing the names of the office and a list of candidates for such office shall be separated from other groups by a bold line. The ballot shall list at-large candidates and subdistrict candidates under appropriate headings.

(2) All proposals for constitutional amendments, candidates for delegates to the national political party conventions, and candidates on the nonpartisan ballot shall be submitted on a ballot where bold lines separate one office or issue from another. Proposals for constitutional amendments proposed by the Legislature shall be placed on the ballot as provided in sections 49-201 to 49-211. Each candidate for delegate to the national political party convention shall have his or her preference for the candidacy for the office of President of the United States or the fact that he or she is uncommitted shown on the ballot in parenthesis and indented on the line immediately below the name of the candidate. All constitutional amendments shall be placed on a separate ballot when a paper ballot is used which requires the ballot after being voted to be folded before being deposited in a ballot box. When an optical-scan ballot is used which requires a ballot envelope or sleeve in which the ballot after being voted is placed before being deposited in a ballot box, constitutional amendments may be printed on either side of the ballot and shall be separated from other offices or issues by a bold line. Constitutional amendments so arranged shall constitute a separate ballot.

(3) The statewide primary election ballot shall contain the name of every candidate filing under sections 32-606, 32-611, and 32-613 and no other names. No name of a candidate for member of the Legislature or an elective office described in Article IV, section 1, of the Constitution of Nebraska shall appear on any ballot or any series of ballots at any primary election more than once except for the names of candidates for the office of delegate to a county, state, or national political party convention. When two or more of the last names of candidates for the same office at the primary election are the same in spelling or sound, the official ballots may, on the request of any such candidate, have his or her address printed immediately below his or her name in capital and lowercase letters in lightface type of the same size as the type in which the name of the candidate is printed.

Source: Laws 1994, LB 76, § 230; Laws 2003, LB 358, § 11.

32-810 Primary election ballot; arrangement of names and proposals.

(1) The election commissioner or county clerk shall place the names of all partisan candidates certified to him or her by the Secretary of State and of those partisan candidates filing in his or her office on a primary election ballot headed with the political party designation. The names of each nonpartisan candidate certified by the Secretary of State and of each nonpartisan candidate filing in the office of the election commissioner or county clerk shall be placed on the primary election ballot headed by the words Nonpartisan Ticket.

(2) If any office is not subject to the upcoming election, the office shall be omitted from the ballot and the remaining offices shall move up so that the same relative order is preserved. The order of any offices may be altered to

allow for the best utilization of ballot space in order to avoid printing a second ballot when one ballot would be sufficient if an optical-scan ballot is used. All proposals on the ballot submitted by a political subdivision shall follow all offices on the ballot for such political subdivision.

(3) The election commissioner or county clerk shall follow the order of precincts or wards as set out in the official abstract book on file in his or her office in preparing the official ballots. At the primary election, on the first set of ballots for the first precinct or ward shall be the names of candidates filing by date and hour as certified by the Secretary of State and for local candidates the names of candidates shall be listed in the order of filing by date and hour with the election commissioner or county clerk. When there are more candidates than vacancies for the same office, the names of all partisan and nonpartisan candidates at a primary election shall be rotated precinct by precinct in each office division in the order in which the precincts are set out in the official abstract book. In making the changes of position, the printer shall take the line of type at the head of each office division and place it at the bottom of that division, shoving up the column so that the name that was second shall be first after the change.

Source: Laws 1994, LB 76, § 231; Laws 1997, LB 764, § 75; Laws 1999, LB 571, § 4; Laws 2003, LB 358, § 12.

32-811 Political subdivisions; political party convention delegates; names not on ballot; when.

(1) If the names of candidates properly filed for nomination at the primary election for directors of natural resources districts, directors of public power districts, directors of reclamation districts, members of the boards of governors of community college areas, members of the boards of Class III school districts which nominate candidates at a primary election, and officers of cities of the first or second class and cities having a city manager plan of government do not exceed two candidates for each position to be filled, any such candidates shall be declared nominated and their names shall not appear on any primary election ballots. The official abstract of votes kept by the county or state shall show the names of such candidates with the statement Nominated Without Opposition. The election commissioner or county clerk shall place the names of such automatically nominated candidates on the general election ballot as provided in section 32-814.

(2) Candidates shall not appear on the ballot in the primary election for the board of directors in public power districts receiving annual gross revenue of less than forty million dollars, for county weed district boards, and for the board of trustees in villages.

(3) If the number of candidates for delegates to a county or national political party convention are the same in number or less than the number of candidates to be elected, the names shall not appear on the primary election ballot and those so filed shall receive a certificate of election.

Source: Laws 1994, LB 76, § 232; Laws 1995, LB 194, § 8; Laws 1997, LB 764, § 76; Laws 2003, LB 15, § 1.

32-812 Statewide general election; official ballot; form.

The form of the official ballot at the statewide general election shall be prescribed by the Secretary of State. At the top of the ballot for general

elections and over all else shall be printed in boldface type the words Official Ballot, General Election, November ...., 20.... . Each division containing the names of the office and a list of candidates nominated for such office shall be separated from other groups by a bold line. The ballot shall list at-large candidates and subdistrict candidates under appropriate headings.

Source: Laws 1994, LB 76, § 233; Laws 2004, LB 813, § 15.

32-813 Statewide general election; ballot; contents.

(1) The names of all candidates and all proposals to be voted upon at the general election shall be arranged upon the ballot in parts separated from each other by bold lines in the order the offices and proposals are set forth in this section. If any office is not subject to the upcoming election, the office shall be omitted from the ballot and the remaining offices shall move up so that the same relative order is preserved. The order of any offices may be altered to allow for the best utilization of ballot space in order to avoid printing a second ballot when one ballot would be sufficient if an optical-scan ballot is used. All proposals on the ballot shall remain separate from the offices, and the proposals shall follow all offices on the ballot.

(2)(a) If the election is in a year in which a President of the United States is to be elected, the names and spaces for voting for candidates for President and Vice President shall be entitled Presidential Ticket in boldface type.

(b) The names of candidates for President and Vice President for each political party shall be grouped together, and each group shall be enclosed with brackets with the political party name next to the brackets and one square or oval opposite the names in which the voter indicates his or her choice.

(c) The names of candidates for President and Vice President who have successfully petitioned on the ballot for the general election shall be grouped together with the candidates appearing on the same petition being grouped together, and each group shall be enclosed with brackets with the words ''By Petition'' next to the brackets and one square or oval opposite the names in which the voter indicates his or her choice.

(d) Beneath the names of the candidates for President and Vice President certified by the officers of the national political party conventions pursuant to section 32-712 and beneath the names of all candidates for President and Vice President placed on the general election ballot by petition, two write-in lines shall be provided in which the voter may fill in the names of the candidates of his or her choice. The lines shall be enclosed with brackets with one square or oval opposite the names in which the voter indicates his or her choice. The name appearing on the top line shall be considered to be the candidate for President, and the name appearing on the second line shall be considered to be the candidate for Vice President.

(3) The names and spaces for voting for candidates for United States Senator if any are to be elected shall be entitled United States Senatorial Ticket in boldface type.

(4) The names and spaces for voting for candidates for Representatives in Congress shall be entitled Congressional Ticket in boldface type. Above the candidates' names, the office shall be designated For Representative in Congress ...... District.

(5) The names and spaces for voting for candidates for the various state officers shall be entitled State Ticket in boldface type. Each set of candidates shall be separated by lines across the column, and above each set of candidates shall be designated the office for which they are candidates, arranged in the order prescribed by the Secretary of State. The candidates for Governor of each political party receiving the highest number of votes in the primary election shall be grouped together with their respective candidates for Lieutenant Governor. Each group shall be enclosed with brackets with the political party name next to the brackets and one square or oval opposite the names in which the voter indicates his or her choice for Governor and Lieutenant Governor jointly. The candidates for Governor and Lieutenant Governor who have successfully petitioned on the general election ballot shall be grouped together with the candidates appearing on the same petition being grouped together. Each group shall be enclosed with brackets with the words ''By Petition'' next to the brackets and one square or oval opposite the names in which the voter indicates his or her choice for Governor and Lieutenant Governor jointly. Beneath the names of the candidates for Governor nominated at a primary election by political party and their respective candidates for Lieutenant Governor and beneath the names of all candidates for Governor and Lieutenant Governor placed on the general election ballot by petition, one write-in line shall be provided in which the registered voter may fill in the name of the candidate for Governor of his or her choice and one square or oval opposite the line in which the voter indicates his or her choice for Governor.

(6) The names and spaces for voting for nonpartisan candidates shall be entitled Nonpartisan Ticket in boldface type. The names of all nonpartisan candidates shall appear in the order listed in this subsection, except that when using an optical-scan ballot, the order of offices may be altered to allow for the best utilization of ballot space to avoid printing a second ballot when one ballot would be sufficient:

(a) Legislature;

(b) State Board of Education;

(c) Board of Regents of the University of Nebraska;

(d) Chief Justice of the Supreme Court;

(e) Judge of the Supreme Court;

(f) Judge of the Court of Appeals;

(g) Judge of the Nebraska Workers' Compensation Court;

(h) Judge of the District Court;

(i) Judge of the Separate Juvenile Court;

(j) Judge of the County Court; and

(k) County officers in the order prescribed by the election commissioner or county clerk.

(7) The names and spaces for voting for the various county offices and for measures submitted to the county vote only or in only a part of the county shall be entitled County Ticket in boldface type. If the election commissioner or county clerk deems it advisable, the measures may be submitted on a separate ballot if using a paper ballot or on either side of an optical-scan ballot if the ballot is placed in a ballot envelope or sleeve before being deposited in a ballot box.

(8) The candidates for office in the precinct only or in the city or village only shall be printed on the ballot, except that if the election commissioner or county clerk deems it advisable, candidates for these offices may be submitted on a separate ballot if using a paper ballot or on either side of an optical-scan ballot if the ballot is placed in a ballot envelope or sleeve before being deposited in a ballot box.

(9) All proposals submitted by initiative or referendum and proposals for constitutional amendments shall be placed on a separate ballot when a paper ballot is used which requires that the ballot after being voted be folded before being deposited in a ballot box. When an optical-scan ballot is used which requires a ballot envelope or sleeve in which the ballot after being voted is placed before being deposited in a ballot box, initiative or referendum proposals and proposals for constitutional amendments may be placed on either side of the ballot, shall be separated by a bold line, and shall follow all other offices placed on the same side of the ballot. Initiative or referendum proposals and constitutional amendments so arranged shall constitute a separate ballot. Proposals for constitutional amendments proposed by the Legislature shall be placed on the ballot as provided in sections 49-201 to 49-211.

Source: Laws 1994, LB 76, § 234; Laws 1999, LB 571, § 5; Laws 2001, LB 252, § 1; Laws 2001, LB 768, § 5; Laws 2003, LB 358, § 13.

32-814 General election ballot; arrangement of names.

(1) The election commissioner or county clerk shall place the names of all nonpartisan candidates upon the same official general election ballot as the partisan candidates. The names placed on the official and sample general election ballots shall be the names of candidates nominated in the primary election, the names of petition candidates if any, the names of automatically nominated candidates as provided in section 32-811, and the names of candidates filing as provided in subsection (2) of section 32-606. The names of the candidates shall be placed under the proper titles.

(2) The election commissioner or county clerk shall place on the official general election ballot in each office division no more than twice as many names as there are places to be filled at the general election unless more than one candidate has successfully petitioned on the ballot to fill a vacancy after the primary election. The names of the nonpartisan candidates who received the highest number of votes for the office for which they were candidates in the primary election shall be placed on the official ballot. If more than one person was a candidate for the same position in the primary election, the election commissioner or county clerk shall place on the official ballot the names of the two persons who received the highest number of votes in the primary election for the position for which they were candidates.

(3) When the name of a person is written in and voted for as a candidate for an office for which he or she did not file in the primary election, such person shall not be entitled to a certificate of nomination at the primary election and shall not have his or her name placed on the general election ballot unless he or she (a) receives at least five percent of the total vote cast for Governor or for President of the United States at the immediately preceding general election in the political subdivision from which nominees for such position are to be chosen, (b) is one of the candidates receiving the number of votes qualifying him or her for nomination, and (c) meets the requirements for the office.

(4) If there are more candidates than vacancies for the same office, the election commissioner or county clerk shall rotate the names of the nonpartisan candidates on the official general election ballot. The election commissioner or county clerk shall follow the order of precincts or wards as set out in the official abstract book on file in his or her office in preparing the official ballots. The first set of ballots for the first precinct or ward shall be the names of candidates filing by date and hour or of those candidates filing petitions, and for local candidates the names of candidates shall be listed in the order of filing by date and hour with the election commissioner or county clerk or of those candidates filing petitions. Thereafter the names shall be rotated precinct by precinct in each office division in the order in which the precincts are set out in the official abstract book. In making the change of position, the printer shall take the line of type at the head of each division and place it at the bottom of that division, shoving up the column so that the name that was second shall be first after the change.

Source: Laws 1994, LB 76, § 235; Laws 1997, LB 764, § 77.

Provision for eliminating all but one candidate does not apply to petition candidates on nonpolitical county ticket. State ex rel. King v. Hanson, 138 Neb. 644, 294 N.W. 453 (1940).

A write-in candidate, who receives the requisite number of votes cast by a political party at a primary election, is the nominee of that party. State ex rel. Driscoll v. Swanson, 127 Neb. 715, 256 N.W. 872 (1934).

Before a person can be the nominee of any political party, such person must receive the requisite number of votes cast by that party at the primary election. State ex rel. Dickinson v. Sheldon, 80 Neb. 4, 113 N.W. 802 (1907).

32-815 General election ballot; partisan candidates; placement and rotation of names.

(1) The names of candidates for each partisan elective office shall be arranged on the ballot of the general election so that the political party polling the highest number of votes at the last general election for Governor will have the name of its nominee immediately beneath the name of the office for which the candidate was nominated, the political party polling the second highest number of votes will have the second place, the political party having the third highest number of votes will have the third place, and continuing with the political parties in descending order of number of votes, leaving those candidates whose names appear upon the ballot by petition to appear beneath all other candidates placed there by nomination. For each office for which there are more candidates than vacancies and there are two or more nominees of the same political party, the election commissioner or county clerk shall rotate the names of such candidates on the official ballot. In printing the ballots for the various election districts, the positions of the names shall be changed in each office division for each election district. In making the change of position, the printer shall take the line of type at the head of each division and place it at the bottom of that division, shoving up the column so that the name that was second shall be first after the change.

(2) The name of the person receiving the highest number of votes at a primary election as the candidate of a political party for an office shall be placed on the official ballot except as otherwise provided in the Election Act. No person shall be certified as a candidate of any political party for such office by the Secretary of State, election commissioner, or county clerk unless the person receives a number of votes at least equal to five percent of the total ballots cast at the primary election by registered voters affiliated with that

political party in the district which the office serves and meets the requirements for the office.

Source: Laws 1994, LB 76, § 236; Laws 1997, LB 764, § 78; Laws 1999, LB 571, § 6.

A write-in candidate, who receives the requisite number of votes cast by a political party at a primary election, is the nominee of that party. State ex rel. Driscoll v. Swanson, 127 Neb. 715, 256 N.W. 872 (1934).

Before a person can be the nominee of any political party, such person must receive the requisite number of votes cast by that party at the primary election. State ex rel. Dickinson v. Sheldon, 80 Neb. 4, 113 N.W. 802 (1907).

32-816 Official ballots; write-in space provided; exceptions; requirements.

(1) A blank space shall be provided at the end of each office division on the ballot for registered voters to fill in the name of any person for whom they wish to vote and whose name is not printed upon the ballot, except that (a) at the primary election there shall be no write-in space for delegates to the county political party convention, delegates to the national political party convention, directors of natural resources districts, or directors of public power districts and (b) at the general election there shall be no write-in space for directors of reclamation districts, members of the board of educational service units, directors of natural resources districts, directors of public power districts, or members of county weed district boards. A square or oval shall be printed opposite each write-in space similar to the square or oval placed opposite other candidates and issues on the ballot. The square or oval shall be marked to vote for a write-in candidate whose name appears in the write-in space provided.

(2) The Secretary of State shall approve write-in space for optical-scan ballots and electronic voting systems. Adequate provision shall be made for write-in votes sufficient to allow one write-in space for each office to be elected at any election except offices for which write-in votes are specifically prohibited. The write-in ballot shall clearly identify the office for which such write-in vote is cast. The write-in space shall be a part of the official ballot, may be on the envelope or a separate piece of paper from the printed portion of the ballot, and shall allow the voter adequate space to fill in the name of the candidate for whom he or she desires to cast his or her ballot.

Source: Laws 1994, LB 76, § 237; Laws 1997, LB 764, § 79; Laws 2001, LB 252, § 2; Laws 2003, LB 358, § 14.

Where a voter writes in a name on the ballot, he must make a cross or other clear intelligible mark in the square opposite the written name to have the ballot counted. Yeoman v. Houston, 168 Neb. 855, 97 N.W.2d 634 (1959).

Since the nonpartisan judiciary act is silent as to write-in candidates, this section applies and permits the placing of blank lines on the ballots for write-in purposes. State ex rel. Zeilinger v. Thompson, 134 Neb. 739, 279 N.W. 462 (1938).

The voters of the state have an unimpeded right to vote for any candidate for public office as a write-in candidate although such candidate may not be entitled to have his name placed on either the primary ballot or on the general election ballot as a candidate by petition. State ex rel. Nelson v. Marsh, 123 Neb. 423, 243 N.W. 277 (1932).

In the absence of fraud or an unlawful purpose, a ballot with the name of a candidate written in should be counted although the name of the same candidate is also printed on the ballot. Shaw v. Stewart, 115 Neb. 315, 212 N.W. 760 (1927).

This section is general in application and did not supersede the nonpartisan judiciary act. State ex rel. Oleson v. Minor, 105 Neb. 228, 180 N.W. 84 (1920).

A candidate for an office on the nonpolitical ballot may be nominated by having his name written in by a sufficient number of electors at the primary election. State ex rel. Hughes v. Hogeboom, 103 Neb. 603, 173 N.W. 589 (1919).

32-817 Official ballots; printing requirements.

The names of the candidates shall be set in boldface type using capital and lowercase letters. A square or oval shall be printed opposite the name of each candidate. At the general election, the name of the party represented by a candidate for partisan office shall be printed in capital and lowercase letters next to the name. Proposals submitted by initiative or referendum or for

constitutional amendments shall be printed in capital and lowercase letters, but the title heading and number thereof shall be in boldface type, and the square or oval for voting thereon shall be printed opposite the text so that it is clear for which issue the voter is casting a vote. Ballots shall be printed with substantially the same appearance, including type and form, as the sample ballot furnished by the Secretary of State.

Source: Laws 1994, LB 76, § 238; Laws 2003, LB 358, § 15.

32-818 Death of candidate; removal of name from ballot.

The Secretary of State, election commissioner, county clerk, or city or village clerk may remove a name from the ballot upon personal knowledge or proof of death at any time prior to the actual printing of the ballot even if the notice of election has been published containing the name of such deceased candidate or nominee.

Source: Laws 1994, LB 76, § 239.

32-819 Ballots; errors; how corrected.

(1) Whenever it appears by affidavit that an error or omission has occurred in the name or description of a candidate nominated for office or in the printing of the sample or official ballots, the county or district judge sitting at chambers may by order, upon the application of any registered voter, require the election commissioner, county clerk, or city or village clerk to correct such error or to show cause why such error or omission should not be corrected.

(2) The election commissioner, county clerk, or city or village clerk shall correct without delay any patent error in the ballots which he or she may discover or which is brought to his or her attention and which can be corrected without interfering with the timely distribution of the ballots.

(3) The election commissioner, county clerk, or city or village clerk shall not be required to correct any error on the ballot after the thirty-fifth day prior to the election except as otherwise ordered by the court.

Source: Laws 1994, LB 76, § 240; Laws 2002, LB 935, § 7.

This section requires the county clerk to correct any patent errors discovered in the ballots and provides a summary method of coercion if he fails to do so. Wahlquist v. Adams County, 94 Neb. 682, 144 N.W. 171 (1913).

An objection to the form of the ballot cannot be made after the election has been held. Tutt v. Hawkins, 53 Neb. 367, 73 N.W. 692 (1898).

This section provides the method for correcting the political or other description of the candidates on the ballots as printed. State ex rel. Crawford v. Norris, 37 Neb. 299, 55 N.W. 1086 (1893).

Objections to the form of the ballot cannot be made after the election. State ex rel. Christy v. Stein, 35 Neb. 848, 53 N.W. 999 (1892).

32-820 Ballots; political party circle or other predetermined selection; prohibited.

No official ballot for an elective office within this state shall contain any political party circle or any provision for voting for all candidates of one political party or for a predetermined selection of candidates of one political party by the making of a mark or other indication.

Source: Laws 1994, LB 76, § 241.

This section is independent legislation abolishing the party circle, a repeal as distinguished from an amendment, and is constitutional. State ex rel. Kaspar v. Lehmkuhl, 127 Neb. 812, 257 N.W. 229 (1934).

32-821 Ballots; delivery to election officials; unofficial ballots; when authorized.

Before the opening of the polls the election commissioner, county clerk, or city or village clerk shall cause to be delivered to the judges of election at each polling place the proper number of ballots as provided for in section 32-807. The ballots for each precinct shall be enclosed in a sealed packet marked with the proper designation of the precinct, and at the opening of the polls, the package of ballots shall be publicly broken by one of the judges of election. If for any cause the official ballots prepared by the election commissioner, county clerk, or city or village clerk are not ready for distribution at any polling place or if the supply of ballots is exhausted before the polls are closed, printed, copied, or written ballots which are as nearly as possible in the form of official ballots may be used.

Source: Laws 1994, LB 76, § 242.

32-822 Ballots; numbering of classes.

When voters are presented with more than one ballot on election day, the election commissioner, county clerk, or city or village clerk may number each class of ballots to identify the style, precinct, or number of split ballots for convenience in distributing and counting the ballots. No number shall be placed or printed upon a ballot to be recorded so as to be able to determine the identity of the person who voted such ballot.

Source: Laws 1994, LB 76, § 243.

ARTICLE 9

VOTING AND ELECTION PROCEDURES

Section

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32-901 Ballots; voting procedure.

(1) To vote for a candidate or on a ballot question using a paper ballot that is to be manually counted, the registered voter shall make a cross or other clear, discernable mark in the square opposite the name of every candidate, including

write-in candidates, for whom he or she desires to vote and, in the case of a ballot question, opposite the answer he or she wishes to give. Making a cross or other clear, discernable mark in the square constitutes a valid vote.

(2) To vote for a candidate or on a ballot question using a ballot that is to be counted by optical scanner, the registered voter shall fill in the oval or other space provided opposite the name of every candidate, including write-in candidates, for whom he or she desires to vote and, in the case of a ballot question, opposite the answer he or she wishes to give. A mark in the oval or provided space that is discernable by the scanner constitutes a valid vote.

(3) To vote for a candidate or on a ballot question using an electronic voting system, the registered voter shall follow the instructions for using the electronic voting system to cause a mark to be recorded opposite the candidate or ballot question response for which the voter wishes to vote. Causing such mark to be recorded constitutes a valid vote.

Source: Laws 1994, LB 76, § 244; Laws 2003, LB 358, § 16; Laws 2005, LB 566, § 31.

1. Legal ballots
2. Illegal ballots
3. Absence of cross
4. Miscellaneous

1. Legal ballots

The provisions of this section are directory and, in the absence of fraud or unlawful purpose, a ballot with the name of a candidate written in should be counted although the name of the same candidate is also printed on the ballot. Shaw v. Stewart, 115 Neb. 315, 212 N.W. 760 (1927).

In the absence of evidence showing that ballots were marked for identification, they are presumed valid. White v. Slama, 89 Neb. 65, 130 N.W. 978 (1911).

A ballot marked other than as provided by law is not valid unless marked for identification. Gauvreau v. Van Patten, 83 Neb. 64, 119 N.W. 11 (1908).

A ballot marked other than as provided by law is not void unless marked for identification. Bingham v. Broadwell, 73 Neb. 605, 103 N.W. 323 (1905).

2. Illegal ballots

Ballots signed by an elector are void and must be rejected. Swan v. Bowker, 135 Neb. 405, 281 N.W. 891 (1938).

Validity of irregularly marked ballots is discussed in detail. Griffith v. Bonawitz, 73 Neb. 622, 103 N.W. 327 (1905).

3. Absence of cross

The provisions of this section are merely directory, and under former law ballots with a candidate's name written in and no cross placed in any square should be counted for that candidate. State ex rel. Lanham v. Sheets, 119 Neb. 145, 227 N.W. 457 (1929).

All ballots marked in a peculiar manner, other than with a cross, should not be counted. Mauck v. Brown, 59 Neb. 382, 81 N.W. 313 (1899).

Ballots with a candidate's name written in but with no mark placed opposite any name must be rejected. Martin v. Miles, 46 Neb. 772, 65 N.W. 889 (1896). (Overruled by State ex rel. Lanham v. Sheets, 119 Neb. 145, 227 N.W. 457 (1929).)

4. Miscellaneous

Ballots are required to be folded so as to expose names of judges endorsed on back. Mommsen v. School Dist. No. 25, 181 Neb. 187, 147 N.W.2d 510 (1966).

32-902 Voting instructions; voting information; posting.

(1) The election commissioner or county clerk shall cause instructions for the guidance of registered voters in preparing their ballots to be printed in large, clear type on cards in English. He or she shall furnish at least five such cards to each polling place in each precinct at the same time and in the same manner as the printed ballots. The judges or clerks of election shall post such cards in each voting booth on the day of election. The card shall contain full instructions on preparing and casting ballots, including how to cast a write-in vote. The form and contents of the cards shall be approved by the Secretary of State.

(2) The election commissioner or county clerk shall cause voting information to be posted in each polling place on the day of election. The voting information shall include the following information as approved by the Secretary of State:

(a) Information regarding the date of the election and the hours during which polling places will be open;

(b) Instructions for voters who registered to vote by mail and first-time voters;

(c) General information on voting rights under applicable federal and state laws, including information on the right of an individual to cast a provisional ballot and instructions on how to contact the appropriate officials if these rights are alleged to have been violated; and

(d) General information on federal and state laws regarding prohibitions on acts of fraud and misrepresentation.

Source: Laws 1994, LB 76, § 245; Laws 2003, LB 358, § 17.

Statutory provisions regulating the conduct of an election are directory only when they are not essential to a fair election and they are not made mandatory by the statute itself. Boyer v. Aden, 241 Neb. 1, 486 N.W.2d 22 (1992).

32-903 Precincts; creation; requirements; election commissioner or county clerk; powers and duties.

(1) The election commissioner or county clerk shall create precincts composed of compact and contiguous territory within the boundary lines of legislative districts. The precincts shall contain not less than seventy-five nor more than one thousand registered voters based on the number of voters voting at the last statewide general election, except that a precinct may contain less than seventy-five registered voters if in the judgment of the election commissioner or county clerk it is necessary to avoid creating an undue hardship on the registered voters in the precinct. The election commissioner or county clerk shall create precincts based on the number of votes cast at the immediately preceding presidential election or the current list of registered voters for the precinct. The election commissioner or county clerk shall revise and rearrange the precincts and increase or decrease them at such times as may be necessary to make the precincts contain as nearly as practicable not less than seventy-five nor more than one thousand registered voters voting at the last statewide general election. The election commissioner or county clerk shall, when necessary and possible, readjust precinct boundaries to coincide with the boundaries of cities, villages, and school districts which are divided into districts or wards for election purposes. The election commissioner or county clerk shall not make any precinct changes in precinct boundaries or divide precincts into two or more parts between the statewide primary and general elections unless he or she has been authorized to do so by the Secretary of State. If changes are authorized, the election commissioner or county clerk shall notify each state and local candidate affected by the change.

(2) The election commissioner or county clerk may alter and divide the existing precincts, except that when any city of the first class by ordinance divides any ward of such city into two or more voting districts or polling places, the election commissioner or county clerk shall establish precincts or polling places in conformity with such ordinance. No such alteration or division shall take place between the statewide primary and general elections except as provided in subsection (1) of this section.

(3) All precincts and polling places may be consolidated for the use of electronic voting systems into fewer and larger precincts as deemed necessary and advisable by the election commissioner or county clerk. Such precincts, consolidated for electronic voting systems only, may have as many registered voters therein as deemed advisable in the interest of economy and efficiency. At least one electronic voting device shall be provided for every five hundred

registered voters voting in the consolidated precinct or polling place at the immediately preceding general election.

Source: Laws 1994, LB 76, § 246; Laws 1997, LB 764, § 80; Laws 2003, LB 358, § 18; Laws 2005, LB 401, § 3.

32-904 Polling places; designation; changes; notification required.

The election commissioner or county clerk shall designate the polling places for each precinct at which the registered voters of the precinct will cast their votes. Polling places representing different precincts may be combined at a single location when potential sites cannot be found, contracts for utilizing polling sites cannot be obtained, or a potential site is not accessible to handicapped persons. When combining polling places at a single site for an election other than a special election, the election commissioner or county clerk shall clearly separate the polling places from each other and maintain separate receiving boards. When combining polling places at a single site for a special election, the election commissioner or county clerk may combine the polling places and receiving boards. Polling places shall not be changed between the statewide primary and general elections unless the election commissioner or county clerk has been authorized to make such change by the Secretary of State. If changes are authorized, the election commissioner or county clerk shall notify each state and local candidate affected by the change. Notwithstanding any other provision of the Election Act, the Secretary of State may adopt and promulgate rules and regulations, with the consent of the appropriate election commissioner or county clerk, for the establishment of polling places which may be used for voting pursuant to section 32-1041 for the twenty days preceding the day of election. Such polling places shall be in addition to the office of the election commissioner or county clerk and the polling places otherwise established pursuant to this section.

Source: Laws 1994, LB 76, § 247; Laws 1997, LB 764, § 81; Laws 2005, LB 401, § 4; Laws 2007, LB646, § 6.

32-905 Political subdivision; building; use as polling place; when.

A political subdivision which receives federal or state funds and owns or leases a building which is suitable for a polling place shall make the building available to the election commissioner or county clerk for use as a polling place in any election which involves the precinct in which the building is located. The political subdivision shall not charge for the use of the building as a polling place.

Source: Laws 1994, LB 76, § 248.

32-906 Polling place; supplies and equipment; designation outside precinct; standards.

(1) The election commissioner or county clerk shall provide each polling place with ballot boxes, ballot box locks and keys, and a sufficient number of voting booths furnished with supplies and conveniences to enable each registered voter to prepare his or her ballot for voting and to secretly mark his or her ballot. One voting booth shall be provided for approximately every one hundred registered voters in the precinct. The election commissioner or county clerk may increase or decrease the number of voting booths to accommodate the expected voter turnout of any election other than a statewide election.

(2) When there is no structure within the precinct suitable for use as a polling place, the election commissioner or county clerk may designate a polling place outside the precinct and convenient thereto which shall be provided with voting booths furnished with supplies and conveniences as are other polling places.

(3) Standards for polling places shall include any applicable standards developed under sections 81-5,147 and 81-5,148.

Source: Laws 1994, LB 76, § 249; Laws 2003, LB 358, § 19; Laws 2007, LB646, § 7.

32-907 Polling places; accessibility requirements.

All polling places shall be accessible to all registered voters and shall be in compliance with the federal Americans with Disabilities Act of 1990, as amended. All polling places shall be modified or relocated to architecturally barrier-free buildings to provide unobstructed access to such polling places by people with physical limitations. At least one voting booth shall be so constructed as to provide easy access for people with limitations and shall accommodate a wheelchair. The modifications required by this section may be of a temporary nature to provide such unobstructed access only on election day.

Source: Laws 1994, LB 76, § 250.

32-908 Polls; when opened and closed.

(1) At all elections in the area of this state lying within the Mountain Standard or Mountain Daylight time zone, the polls shall open at 7 a.m. and close at 7 p.m. of the same day, and in the area lying within the Central Standard or Central Daylight time zone, the polls shall open at 8 a.m. and close at 8 p.m. of the same day.

(2) If the judges and clerks of election are not present at the polls at the required hour, the polls may be opened by those placed in charge of the polling place at any time before the time required for closing the polls on election day.

(3) If at the hour of closing there are any persons desiring to vote who are in the polling place or in a line at the polling place and who have not been able to vote since appearing at the polling place, the polls shall be kept open reasonably long enough after the hour for closing to allow those present at that hour to vote. No person arriving after the hour when the polls have officially closed shall be entitled to vote.

Source: Laws 1994, LB 76, § 251; Laws 2005, LB 566, § 32.

32-909 Ballot box; inspection and use; election officials; duties.

Before any ballot is deposited in the ballot box, the ballot box shall be publicly opened and exhibited and the judges and clerks of election shall see that no ballot is in the box. The ballot box shall then be locked and the key delivered to one of the judges of election or, in counties having an election commissioner, to the precinct inspector. A ballot box which contains ballots that will be counted using a scanner may be opened prior to the hour established by law for the closing of the polls at the discretion of the election commissioner or county clerk.

Source: Laws 1994, LB 76, § 252; Laws 2003, LB 358, § 20; Laws 2005, LB 566, § 33; Laws 2007, LB646, § 8.

32-910 Polling places; obstructions prohibited; restrictions on access.

Any judge or clerk of election, precinct or district inspector, sheriff, or other peace officer shall clear the passageways and prevent obstruction of the doors or entries and provide free ingress to and egress from the polling place or building and shall arrest any person obstructing such passageways. Other than a registered voter engaged in receiving, preparing, or marking a ballot, an election commissioner, a county clerk, a precinct inspector, a district inspector, a judge of election, a clerk of election, or a member of a counting board, no person shall be permitted to be within eight feet of the ballot boxes or within eight feet of any ballots being counted by a counting board.

Source: Laws 1994, LB 76, § 253; Laws 1997, LB 764, § 82.

32-911 Judges of election; presence; required.

No two judges of election shall be absent at the same time from the room in which the election is held during the hours the polls are open or while the votes are being counted.

Source: Laws 1994, LB 76, § 254.

32-912 Voters; ballots to which entitled; political party rule; effect.

(1) Any registered voter desiring to vote in a primary election held under the Election Act shall be entitled to participate in such primary election upon presenting himself or herself at the polling place for his or her residence. A registered voter who is affiliated with a political party shall receive from the receiving board all nonpartisan ballots and the partisan ballot of the political party indicated on his or her voter registration. Except as provided in subsections (2) and (3) of this section, a registered voter who is not affiliated with any political party shall receive only nonpartisan ballots at a primary election.

(2) Any political party may allow registered voters who are not affiliated with a political party to vote in the primary election for any elective office for which the party has candidates except for the office of delegate to the party's county, state, or national convention. Any political party desiring to permit such registered voters to vote for candidates of that party in the primary election shall file a letter stating that the governing body of the political party has adopted a rule allowing registered voters who are not affiliated with a political party to vote in the primary election for candidates of that party. The letter and copy of the adopted rule shall be filed with the Secretary of State at least sixty days before the primary election. The Secretary of State shall notify the appropriate election commissioners and county clerks in writing that the political party filing the letter will allow registered voters who are not affiliated with a political party to vote in the primary election for candidates of that party. Once filed, the rule allowing such voters to vote in such primary election shall be irrevocable and shall apply only to the primary election immediately following the adoption of the rule.

(3) A registered voter who is not affiliated with a political party and who desires to vote in the primary election for the office of United States Senator or United States Representative may request a partisan ballot for either or both of such offices from any political party. The election commissioner or county clerk shall post a notice in a conspicuous location, easily visible and readable by voters prior to approaching the receiving board, that a registered voter who is

not affiliated with a political party may request such ballots. No such registered voter shall receive more than one such partisan ballot.

(4) The registered voters residing in a political subdivision may cast their ballots for candidates for the offices in that subdivision and for issues proposed for that subdivision, except that when officers are to be nominated or elected from a subdistrict of the political subdivision, the registered voters residing in the subdistrict may only vote for candidates from the subdistrict and for candidates for officers to be elected at large from the whole political subdivision.

Source: Laws 1994, LB 76, § 255.

32-913 Precinct list of registered voters; sign-in register; preparation and use.

(1) The clerks of election shall have a list of registered voters of the precinct and a sign-in register at the polling place on election day. The list of registered voters shall be used for guidance on election day and may be in the form of a computerized, typed, or handwritten list or precinct registration cards. Registered voters of the precinct shall place and record their signature in the sign-in register before receiving any ballot. The list of registered voters and the sign-in register may be combined into one document at the discretion of the election commissioner or county clerk. If a combined document is used, a clerk of election may list the names of the registered voters in a separate book in the order in which they voted.

(2) Within twenty-four hours after the polls close in the precinct, the precinct inspector or one of the judges of election shall deliver the precinct list of registered voters and the precinct sign-in register to the election commissioner or county clerk. The election commissioner or county clerk shall file and preserve the list and register. No member of a receiving board who has custody or charge of the precinct list of registered voters and the precinct sign-in register shall permit the list or register to leave his or her possession from the time of receipt until he or she delivers them to another member of the receiving board or to the precinct inspector or judge of election for delivery to the election commissioner or county clerk.

Source: Laws 1994, LB 76, § 256; Laws 1997, LB 764, § 83; Laws 2003, LB 358, § 21; Laws 2007, LB44, § 1.

32-914 Ballots; distribution procedure.

(1) Official ballots shall be used at all elections. No person shall receive a ballot or be entitled to vote unless and until he or she is registered as a voter except as provided in section 32-914.01, 32-914.02, 32-915, 32-915.01, or 32-936.

(2) Except as otherwise specifically provided, no ballot shall be handed to any voter at any election until:

(a) He or she announces his or her name and address to the clerk of election;

(b) The clerk has found that he or she is a registered voter at the address as shown by the precinct list of registered voters unless otherwise entitled to vote in the precinct under section 32-328, 32-914.01, 32-914.02, 32-915, or 32-915.01;

(c) The voter has presented a photographic identification which is current and valid at the time of the election, or a copy of a utility bill, bank statement, paycheck, government check, or other government document which is current at the time of the election and which shows the same name and residence address of the voter that is on the precinct list of registered voters, if the voter registered by mail after January 1, 2003, and has not previously voted in an election for a federal office within the county and a notation appears on the precinct list of registered voters that the voter has not previously presented identification to the election commissioner or county clerk;

(d) As instructed by the clerk of election, the registered voter has personally written his or her name (i) in the precinct sign-in register on the appropriate line which follows the last signature of any previous voter or (ii) in the combined document containing the precinct list of registered voters and the sign-in register; and

(e) The clerk has listed on the precinct list of registered voters the corresponding line number and name of the registered voter or has listed the name of the voter in a separate book as provided in section 32-913.

Source: Laws 1994, LB 76, § 257; Laws 1997, LB 764, § 84; Laws 2002, LB 1054, § 19; Laws 2003, LB 358, § 22; Laws 2003, LB 359, § 4; Laws 2005, LB 566, § 34; Laws 2007, LB44, § 2.

32-914.01 Registered voter; change of name; entitled to vote; when.

If a person who is registered to vote changes his or her name but the voter registration register has not been changed to reflect the change of name, the person shall be entitled to vote at the polling place upon completing a registration application to update his or her voter registration record at the polling place. The election commissioner or county clerk shall update the voter registration register to reflect the change of name.

Source: Laws 1997, LB 764, § 85; Laws 1999, LB 234, § 10; Laws 2005, LB 566, § 35.

32-914.02 Registered voter; change of residence; entitled to vote; when.

If a person who is registered to vote moves to a new residence within the same county and precinct and has continuously resided in such county and precinct since registering to vote but the voter registration register has not been changed to reflect the move, the person shall be entitled to vote at the polling place for the new residence upon completing a registration application to update his or her voter registration record at the polling place. The election commissioner or county clerk shall update the voter registration register to reflect the change of address.

Source: Laws 1997, LB 764, § 86; Laws 1999, LB 234, § 11; Laws 2003, LB 358, § 23; Laws 2005, LB 566, § 36.

32-914.03 Repealed. Laws 2003, LB 358, § 46.

32-915 Provisional ballot; conditions; certification.

(1) A person whose name does not appear on the precinct list of registered voters at the polling place for the precinct in which he or she resides or whose name appears with a notation that he or she received a ballot for early voting may vote a provisional ballot if he or she:

(a) Claims that he or she is a registered voter who has continuously resided in the county in which the precinct is located since registering to vote;

(b) Is not entitled to vote under section 32-914.01 or 32-914.02;

(c) Has not registered to vote or voted in any other county since registering to vote in the county in which the precinct is located;

(d) Has appeared to vote at the polling place for the precinct to which the person would be assigned based on his or her residence address; and

(e) Completes and signs a registration application before voting.

(2) A voter whose name appears on the precinct list of registered voters for the polling place with a notation that the voter is required to present identification pursuant to section 32-318.01 but fails to present identification may vote a provisional ballot if he or she completes and signs a registration application before voting.

(3) Each person voting by provisional ballot shall enclose his or her ballot in an envelope marked Provisional Ballot and shall, by signing the certification on the front of the envelope or a separate form attached to the envelope, certify to the following facts:

(a) I am a registered voter in .... County;

(b) My name did not appear on the precinct list of registered voters;

(c) I registered to vote on or about this date ....;

(d) I registered to vote

.... in person at the election office or a voter registration site,

.... by mail,

.... on a form through the Department of Motor Vehicles,

.... on a form through another state agency,

.... in some other way;

(e) I have not resided outside of this county or voted outside of this county since registering to vote in this county;

(f) My current address is shown on the registration application completed as a requirement for voting by provisional ballot; and

(g) I am eligible to vote in this election and I have not voted and will not vote in this election except by this ballot.

(4) The voter shall sign the certification under penalty of election falsification. The following statements shall be on the front of the envelope or on the attached form: By signing the front of this envelope or the attached form you are certifying to the information contained on this envelope or the attached form under penalty of election falsification. Election falsification is a Class IV felony and may be punished by up to five years imprisonment, a fine of up to ten thousand dollars, or both.

(5) If the person's name does not appear on the precinct list of registered voters for the polling place and the judge or clerk of election determines that the person's residence address is located in another precinct within the same

county, the judge or clerk of election shall direct the person to his or her correct polling place to vote.

Source: Laws 1994, LB 76, § 258; Laws 1997, LB 764, § 87; Laws 1999, LB 234, § 12; Laws 2003, LB 358, § 24; Laws 2005, LB 401, § 5; Laws 2005, LB 566, § 37.

32-915.01 Provisional ballot; required; when.

Any person who votes in an election for federal office as a result of a federal or state court order or any other order extending the time established for closing the polls pursuant to a state law in effect ten days before the date of that election may only vote in that election by casting a provisional ballot as described in section 32-915.

Source: Laws 2003, LB 358, § 25.

32-915.02 Repealed. Laws 2005, LB 566, § 59.

32-916 Ballots; initials required; approval; deposit in ballot box; procedure.

(1) Two judges of election or a precinct inspector and a judge of election shall affix their initials to the official ballots. The judge of election shall deliver a ballot to each registered voter after complying with section 32-914.

(2) After voting the ballot, the registered voter shall, as directed by the judge of election, fold his or her ballot or place the ballot in the ballot envelope or sleeve so as to conceal the voting marks and to expose the initials affixed on the ballot. The registered voter shall, without delay and without exposing the voting marks upon the ballot, deliver the ballot to the judge of election before leaving the enclosure in which the voting booths are placed.

(3) The judge of election shall, without exposing the voting marks on the ballot, approve the exposed initials upon the ballot and deposit the ballot in the ballot box in the presence of the registered voter. No judge of election shall deposit any ballot in a ballot box unless the ballot has been identified as having the appropriate initials. Any ballot not properly identified shall be rejected in the presence of the voter, the judge of election shall make a notation on the ballot Rejected, not properly identified, and another ballot shall be issued to the voter and the voter shall then be permitted to cast his or her ballot. If the ballot is in order, the judge shall deposit the ballot in the ballot box in the presence of the voter and the voter shall promptly leave the polling place. The judges of election shall maintain the secrecy of the rejected ballots and shall cause the rejected ballots to be made up in a sealed packet. The judges of election shall endorse the packet with the words Rejected Ballots and the designation of the precinct. The judges of election shall sign the endorsement label and shall return the packet to the election commissioner or county clerk with a statement by the judges of election showing the number of ballots rejected.

(4) Upon receiving a provisional ballot as provided in section 32-915, the judge of election shall give the voter written information that states that the voter may determine if his or her vote was counted and, if not, the reason that the vote was not counted by accessing the system created pursuant to section 32-202 and the judge of election shall ensure that the appropriate information is on the outside of the envelope in which the ballot is enclosed or attached to the envelope, attach the statement required by section 32-915 if not contained

on the envelope, and place the entire envelope into the ballot box. Upon receiving a provisional ballot as provided in section 32-915.01, the judge of election shall comply with the requirements for a provisional ballot under this subsection, except that a provisional ballot cast pursuant to section 32-915.01 shall be kept separate from the other ballots cast at the election.

Source: Laws 1994, LB 76, § 259; Laws 1997, LB 764, § 88; Laws 1999, LB 802, § 15; Laws 2002, LB 1054, § 21; Laws 2003, LB 358, § 26; Laws 2003, LB 359, § 6; Laws 2005, LB 566, § 38.

Voters who appear at regular polling place are given a ballot with names of two judges endorsed thereon in ink. Mommsen v. School Dist. No. 25, 181 Neb. 187, 147 N.W.2d 510 (1966).

The requirement that every ballot be endorsed by two judges of election is mandatory, and all ballots not so endorsed are void. Swan v. Bowker, 135 Neb. 405, 281 N.W. 891 (1938).

Ballot is not vitiated by fact that judges signed same with initials or last name only, or by fact that one signature was that of an inspector assuming to act as judge, where voter accepted ballot believing that names signed were those of judges. Rasp v. McHugh, 121 Neb. 380, 237 N.W. 394 (1931).

Where the voter has complied with the statute and the ballot has been endorsed by one de jure judge and one de jure clerk, the ballot is valid. Bingham v. Broadwell, 73 Neb. 605, 103 N.W. 323 (1905).

A ballot that has not been endorsed by two judges of election, as required by the statute, is void. Mauck v. Brown, 59 Neb. 382, 81 N.W. 313 (1899).

This section is constitutional and a ballot, not endorsed by two judges of election, is void. Orr v. Bailey, 59 Neb. 128, 80 N.W. 495 (1899).

32-917 Spoiled ballots; how treated.

Any registered voter who spoils his or her ballot may receive another ballot after returning the spoiled ballot. No registered voter shall receive more than four ballots in all. The registered voter shall write invalid or void on the spoiled ballot and return it to the judges of election. The judges of election shall maintain the secrecy of the spoiled ballots and shall cause the spoiled ballots to be made up in a sealed packet. The judges of election shall endorse the packet with the words Spoiled Ballots and the designation of the precinct. The judges of election shall sign such endorsement label and shall return the packet to the election commissioner or county clerk with a statement by the judges of election showing the number of ballots spoiled.

Source: Laws 1994, LB 76, § 260.

Ballot counted and returned by election board in envelope marked rejected ballots should be counted in election contest. White v. Slama, 89 Neb. 65, 130 N.W. 978 (1911).

Stringing spoiled ballots, tied into a bundle, upon the same thread that the ballots cast had been strung upon was at most an irregularity which did not invalidate the election. Hendee v. Hayden, 42 Neb. 760, 60 N.W. 1034 (1894).

32-918 Assistance to registered voters; when; procedure.

(1) If a registered voter declares to the judge of election that he or she cannot read or that he or she suffers blindness or other physical disability or handicap such that the registered voter requires assistance in the marking of his or her ballot, (a) the registered voter may be assisted in marking his or her ballot by a relative or friend of his or her selection or (b) one judge of election and one clerk of election of different political parties may take the ballot or ballots from the polling place to a convenient place within the building or to the registered voter's automobile if the automobile is within one block of the polling place and the disabled or handicapped person may cast his or her ballot in the general presence of the judge and clerk. If a registered voter declares to the judge of election that he or she needs assistance in the operation of a voting device, a judge or clerk of election may assist the voter in operating the device.

(2) The judge and clerk shall give no information regarding the casting of the ballot. Any registered voter receiving assistance in voting the ballot from a judge and clerk shall declare to the judge and clerk the name of the candidates

and the measures for which he or she desires to vote, and the judge and clerk shall cast his or her ballot only as he or she so requests. No person other than the registered voter who is receiving assistance shall divulge to anyone within the polling place the name of any candidate for whom he or she intends to vote or ask or receive assistance within the polling place in the preparation of his or her ballot.

(3) The judges of election shall enter Assistance Rendered upon the precinct sign-in register near the name of any registered voter who receives such assistance in casting his or her ballot and shall include the name of such person rendering assistance to the registered voter. The person rendering assistance shall sign an oath before a judge of election substantially as follows: ...., hereby swears that he or she is a friend or relative of ...., a disabled registered voter who requested assistance in casting the ballot, that he or she did enter the voting booth or aid such voter outside of the voting booth and marked the ballot according to the intentions and desires of the registered voter, that he or she has kept the ballot at all times in his or her possession, and that the ballot was duly delivered to the judge of election on this ...... day of .... 20.... .

Source: Laws 1994, LB 76, § 261; Laws 2003, LB 358, § 27.

32-919 Registered voter; ballots; prohibited acts; forfeit vote.

Every registered voter receiving a ballot shall, before leaving the polling room, vote or, if he or she does not wish to vote, return all ballots so received to be deposited into the ballot box by a member of the receiving board. No person receiving a ballot shall take the same from the polling room except as authorized in the Election Act. No person shall remove any ballot from the polling room before the closing of the polls except as otherwise authorized under the Election Act. Any person taking a ballot from the polling room in violation of this section shall forfeit and lose his or her right to vote at the election. If an inspector or a judge or clerk of election observes a person about to violate this section, the inspector, judge, or clerk shall inform the person of the penalties provided in this section and section 32-1535.

Source: Laws 1994, LB 76, § 262.

32-920 Registered voter; memorandum; use permitted.

A registered voter may take with him or her into the polling place any printed or written memorandum or paper to assist him or her in preparing or marking the ballot.

Source: Laws 1994, LB 76, § 263.

32-921 Registered voter; occupancy and time restrictions.

Except as provided in subsection (1) of section 32-918, no registered voter shall be allowed to occupy a voting booth occupied by another. A registered voter shall not remain within the enclosure in which the voting booths are situated more than twenty minutes unless he or she is in line waiting to vote or voting. A registered voter shall not occupy a voting booth for more than ten minutes.

Source: Laws 1994, LB 76, § 264; Laws 2003, LB 358, § 28; Laws 2005, LB 566, § 39.

32-922 Employees; time allowed for voting, when.

Any registered voter who does not have two consecutive hours in the period between the time of the opening and closing of the polls during which he or she is not required to be present at work for an employer shall be entitled on election day to be absent from employment for such a period of time as will in addition to his or her nonworking time total two consecutive hours between the time of the opening and closing of the polls. If the registered voter applies for such leave of absence prior to or on election day, the registered voter shall not be liable for any penalty and no deduction shall be made from his or her salary or wages on account of such absence. The employer may specify the hours during which the employee may be absent.

Source: Laws 1994, LB 76, § 265.

32-923 Registered voters; privileges on election day.

Registered voters shall in all cases, except treason, felony, or breach of the peace, be privileged from arrest during the attendance at elections and while going to and returning from the same. No registered voter shall be obliged to do military duty on election day except in time of war and public danger.

Source: Laws 1994, LB 76, § 266.

32-924 Police officers and sheriffs; appointment to serve; when.

The election commissioner, county clerk, or city or village clerk may appoint or summon such police officers and sheriffs as may be necessary to maintain order at the election and enforce the Election Act. Except in counties having an election commissioner, if no police officer or sheriff is available, the judges of election may appoint one or more persons in writing to act as and have the powers of a police officer.

Source: Laws 1994, LB 76, § 267.

32-925 Polls; disturbing elections prohibited; arrest.

If any person conducts himself or herself in a noisy, riotous, or tumultuous manner at or about the polls so as to disturb the election or insults or abuses the precinct or district inspectors or judges or clerks of election and persists in such conduct after being warned to desist, any election commissioner, county clerk, inspector, judge of election, police officer, or sheriff shall arrest him or her without warrant and bring him or her before the county court. Such person shall be permitted to vote if he or she is a registered voter.

Source: Laws 1994, LB 76, § 268.

32-926 Person offering to vote; challenge authorized; procedure.

Any person offering to vote, even though such person is registered, may be challenged as unqualified by any inspector, judge or clerk of election, or registered voter. The judge or clerk of election shall challenge any person offering to vote whom he or she knows or suspects not to be duly qualified. The challenge shall be administered pursuant to sections 32-927 to 32-932 as applicable. The election commissioner or county clerk shall provide written oaths and forms to the inspectors and judges of election for purposes of such sections.

Source: Laws 1994, LB 76, § 269.

32-927 Person offering to vote; challenge; oath required; compliance with sections required.

If any person offering to vote is challenged by an inspector, judge or clerk of election, or registered voter, the person shall, in the presence of an inspector or a judge of election, affix his or her signature and print his or her name and address on the following oath: I do solemnly swear that I will fully and truly answer all such questions put to me related to my place of residence and qualifications as a registered voter at this election. The inspector or judge of election shall require the registered voter to comply with sections 32-928 to 32-930 as applicable and shall ask any other questions to the person challenged as necessary to test his or her qualifications as a registered voter at that election.

Source: Laws 1994, LB 76, § 270.

32-928 Person; challenge as alien; information required.

If a person is challenged on the ground that he or she has not become a citizen of the United States and the person so challenged does not produce his or her naturalization papers, the person shall print on the form provided by the election commissioner or county clerk the following information: Place of birth—show the state, country, kingdom, empire, or dominion where the applicant was born. Naturalized—the word Yes or No or Native, and if applicant is not native-born or has lost citizenship, show whether naturalized by his or her own papers, parent's papers, or spouse's papers and the court, county, state, and date of naturalization as the same appears in the naturalization papers.

Source: Laws 1994, LB 76, § 271.

32-929 Person; challenge as to residence; examination; provisional ballot.

If a person is challenged on the ground that he or she is not a resident of this state, the county, or the precinct, the person shall answer the following questions on the form provided by the election commissioner or county clerk:

Do you have a residence in this state: Yes or No?

Do you have a residence in this county: Yes or No?

Do you have a residence in this precinct: Yes or No?

If a person has moved from one residence to another within the precinct in which he or she is registered to vote, such voter shall be entitled to vote as provided in section 32-914.02. If a person has moved from one residence to another within the county in which he or she is registered to vote, such voter shall be entitled to vote a provisional ballot as provided in section 32-915.

Source: Laws 1994, LB 76, § 272; Laws 1997, LB 764, § 89; Laws 2003, LB 358, § 29.

32-930 Person; challenge as to age; examination.

If a person is challenged on the ground that he or she is not eighteen years of age or, during the years in which a statewide general election is held, that he or she will not be eighteen years of age by the first Tuesday after the first Monday in November of such year, the person shall answer the following question on the form provided by the election commissioner or county clerk: Will you be

eighteen years of age to the best of your knowledge and belief by the statewide general election of this year?

Source: Laws 1994, LB 76, § 273.

32-931 Person challenged as to right to vote; oath; clerks of election; duties.

If a person's right to vote is challenged, the person shall, in the presence of an inspector or a judge of election, affix his or her signature to the following oath: I do solemnly swear that I am a citizen of the United States, that I have residence in the State of Nebraska, the county of ...., and this precinct, that I reside at .... (Address), and that I have attained the constitutionally prescribed age to be a voter. The clerks of election shall write Sworn on the precinct list of registered voters and the precinct sign-in register at the end of such person's name.

Source: Laws 1994, LB 76, § 274.

Legislature has provided residence requirements for voting purposes. League of Nebraska Municipalities v. Marsh, 253 F.Supp. 27 (D. Neb. 1966).

32-932 Person challenged as to right to vote; allowed to vote; when.

Any person challenged who complies with sections 32-927 to 32-931 shall be allowed to vote. Any person challenged who refuses to comply with sections 32-927 to 32-930 or to take the oath provided in section 32-931 for any election shall not be issued a ballot or permitted to vote.

Source: Laws 1994, LB 76, § 275.

If a party challenged refuses to take oath, his vote should be rejected. Plouzek v. Saline County Reorganization Committee, 181 Neb. 440, 148 N.W.2d 919 (1967).

32-933 New or former resident; vote for President and Vice President; when eligible; procedure.

(1) Any person listed in this subsection shall be eligible as a new resident to vote for President and Vice President of the United States at the statewide general election but for no other offices:

(a) Any citizen of the United States who is at least the constitutionally prescribed age of a voter and who comes into Nebraska after the voter registration period is closed pursuant to section 32-302 for the purpose of making Nebraska his or her place of residence; and

(b) Any registered voter who moves from one county to another county within Nebraska after the close of the voter registration period.

(2) Any registered voter who moves from Nebraska to another state or to the District of Columbia for the purpose of making such new location his or her place of residence after the close of the voter registration period for such location shall be eligible as a former resident to vote for President and Vice President of the United States at the statewide general election but for no other offices.

(3) Any person described in subsection (1) of this section shall cast his or her ballot in the office of the election commissioner or county clerk at any time between the close of the voter registration period and the close of the polls on election day. Such ballots shall be available after the close of the voter

registration period. Ballots for former residents under subsection (2) of this section shall be available thirty-five days prior to the election. The ballots may be voted in the office of the election commissioner or county clerk at any time between thirty-five days prior to the election and the close of the polls on election day, or the ballots may be mailed to the office and counted if they arrive before the close of the polls on election day.

Source: Laws 1994, LB 76, § 276; Laws 1997, LB 764, § 90; Laws 2002, LB 935, § 8.

32-934 New or former resident; affidavit required; contents.

Any person who desires to vote pursuant to section 32-933 shall execute an affidavit in duplicate substantially as follows:

I, ..., do solemnly swear that:

1. I am a citizen of the United States.

2. Before moving, I resided at the following address (describing it by street and number if in a city or village and by section, township, and range if outside of a city or village, and the precinct, city, county, and state in which such residence is located):

....

....

3. On the day of the next presidential election, I will be at least the constitutionally prescribed age of a voter and I reside at the following address:

....

....

4. I am unable to vote for all offices because the voter registration deadline has passed and, under the Election Act, I believe I am entitled to vote for the candidates for President and Vice President of the United States at the election to be held November ......, 20.... .

5. I hereby make application for a presidential and vice-presidential ballot. I have not voted and will not vote otherwise than by this ballot for President and Vice President.

Source: Laws 1994, LB 76, § 277; Laws 1997, LB 764, § 91; Laws 2004, LB 813, § 16.

32-935 New or former resident; application to vote; election commissioner or county clerk; duties.

The election commissioner or county clerk shall immediately mail the duplicate of the affidavit described in section 32-934 to the appropriate official of the state or county in Nebraska in which the applicant last resided. Upon receipt, the election commissioner or county clerk shall file each duplicate application or other official information from another state or county in Nebraska or the District of Columbia indicating that a former resident of this state or county in Nebraska has made application to vote at a presidential election in another state or county in Nebraska or the District of Columbia and shall maintain an alphabetical index of such information for a period of twenty-two months after the election.

Source: Laws 1994, LB 76, § 278; Laws 1997, LB 764, § 92.

32-936 New or former resident; application to vote; voting procedure.

If satisfied that the application is proper and that the applicant is qualified to vote under section 32-933, the election commissioner or county clerk shall deliver to the applicant a ballot for President and Vice President of the United States. After voting the ballot, the voter shall securely seal the ballot in an envelope furnished by the election commissioner or county clerk. On the back of the envelope shall be imprinted a statement substantially as follows:

Certification of New (or Former) Resident Voter

I have qualified as a new (or former) resident voter in this state or county. I have not applied nor do I intend to apply for a ballot for early voting from the state, county in Nebraska, or District of Columbia from which I have moved. I have not voted and I will not vote otherwise than by this ballot.

The voter shall sign and date the certification upon the envelope. The election commissioner or county clerk shall keep the envelope in his or her office until delivered by him or her to the counting board under section 32-1027.

Source: Laws 1994, LB 76, § 279; Laws 2005, LB 98, § 9.

32-937 New or former resident; list of voters; public record.

The election commissioner or county clerk shall keep open to public inspection a list of all persons voting in the county as new or former residents which shows their names, addresses, and application dates. The election commissioner or county clerk shall record the name of any person voting pursuant to section 32-933 in the list of voters book with a notation designating him or her as a new or former resident voting for President and Vice President of the United States only.

Source: Laws 1994, LB 76, § 280.

32-938 Registered voter; early voting; when allowed.

(1) A registered voter shall be permitted to vote early by requesting a ballot for early voting pursuant to section 32-941 or 32-943.

(2) Any person excluded from voting under section 32-313 or 32-314 shall not be allowed to receive a ballot for early voting.

(3) Any person who fails to register to vote by the voter registration deadline shall not be allowed to vote except as provided in section 32-940 or 32-941.

Source: Laws 1994, LB 76, § 281; Laws 1995, LB 514, § 4; Laws 1999, LB 571, § 7; Laws 2005, LB 98, § 10; Laws 2005, LB 566, § 40.

32-939 Nebraska resident residing outside the country; registration to vote; application for ballot; when; use of Federal Write-In Absentee Ballot.

(1) The persons listed in this subsection who are residents of Nebraska but who reside outside the United States shall be allowed to simultaneously register to vote and make application for ballots for all elections in a calendar year through the use of the Federal Post Card Application or a personal letter which includes the same information as appears on the Federal Post Card Application:

(a) Members of the armed forces of the United States or the United States Merchant Marine, and their spouses and dependents residing with them;

(b) Citizens temporarily residing outside of the United States and the District of Columbia; and

(c) Overseas citizens.

(2) An omission of required information, except the political party affiliation of the applicant, may prevent the processing of an application and mailing of ballots. The request for any ballots and a registration application shall be sent to the election commissioner or county clerk of the county of the applicant's residence. The request may be sent at any time in the same calendar year as the election, except that the request shall be received by the election commissioner or county clerk not later than the third Friday preceding an election to vote in that election. If so requested, ballots may be sent for all subsequent elections held in the county in that calendar year.

(3) Any person meeting the criteria in subsection (1) of this section may cast a ballot by the use of the Federal Write-In Absentee Ballot. The Federal Write-In Absentee Ballot may be used for all elections. If a person casting a ballot using the Federal Write-In Absentee Ballot is not a registered voter, the information submitted in the Federal Write-In Absentee Ballot transmission envelope shall be treated as a voter registration application.

(4) Any person meeting the criteria in subsection (1) of this section requesting a ballot under this section or the special ballot described in section 32-808 may receive and return the ballot and the oath prescribed in subsection (2) of section 32-947 using any method of transmission authorized by the Secretary of State.

Source: Laws 1994, LB 76, § 282; Laws 2004, LB 727, § 1; Laws 2005, LB 98, § 11; Laws 2005, LB 401, § 7; Laws 2005, LB 566, § 41.

32-939.01 Person residing outside the country; eligibility to register and vote in Nebraska; procedure.

(1) A person who is the age of an elector and a citizen of the United States residing outside the United States, who has never resided in the United States, who has not registered to vote in any other state of the United States, and who has a parent registered to vote within this state shall be eligible to register to vote and vote in one county in which either one of his or her parents is a registered voter.

(2) A person registering to vote or voting pursuant to this section shall sign and enclose with the registration application and with the ballot being voted a form provided by the election commissioner or county clerk substantially as follows: I am the age of an elector and a citizen of the United States residing outside the United States, I have never resided in the United States, I have not registered to vote in any other state of the United States, and I have a parent registered to vote in .... County, Nebraska. I hereby declare, under penalty of election falsification, a Class IV felony, that the statements above are true to the best of my knowledge.

THE PENALTY FOR ELECTION FALSIFICATION IS IMPRISONMENT FOR UP TO FIVE YEARS OR A FINE NOT TO EXCEED TEN THOUSAND DOLLARS, OR BOTH.

....
(Signature of Voter)

Source: Laws 2005, LB 401, § 6.

32-940 Former federal employee; late registration to vote; voting; when allowed.

Any person employed in federal service whose status has been terminated by discharge from the armed forces or by separation from employment outside the territorial limits of the United States who was unable to register to vote may register to vote after the voter registration deadline by completing the necessary voter registration application in the office of the election commissioner or county clerk of the county of his or her residence no later than noon of the day before the election. After completing the voter registration application, such person shall then be allowed to vote in the election office.

Source: Laws 1994, LB 76, § 283; Laws 2005, LB 98, § 12; Laws 2005, LB 566, § 42.

32-941 Early voting; written request for ballot; procedure.

Any registered voter permitted to vote early pursuant to section 32-938 may, not more than one hundred twenty days before any election and not later than 4 p.m. on the Wednesday preceding the election, request a ballot for the election to be mailed to a specific address. A registered voter shall request a ballot in writing to the election commissioner or county clerk in the county where the registered voter has established his or her home and shall indicate his or her residence address, the address to which the ballot is to be mailed if different, and his or her political party, telephone number if available, and precinct if known. The registered voter may use the form published by the election commissioner or county clerk pursuant to section 32-808. The registered voter shall sign the request. A registered voter may use a facsimile machine for the submission of a request for a ballot. The election commissioner or county clerk shall include a registration application with the ballots if the person is not registered. Registration applications shall not be issued or mailed after the second Friday preceding the election. If the person is not registered to vote, the registration application shall be returned not later than the closing of the polls on the day of the election. No ballot issued under this section shall be counted unless such registration application is properly completed and processed.

Source: Laws 1994, LB 76, § 284; Laws 1997, LB 764, § 93; Laws 2002, LB 935, § 9; Laws 2005, LB 98, § 13; Laws 2005, LB 566, § 43.

32-942 Registered voter anticipating absence on election day; right to vote; method.

Any registered voter of this state who anticipates being absent from the county of his or her residence on the day of any election but who is present in the county after ballots are available may appear in person before the election commissioner or county clerk and obtain his or her ballot. The registered voter shall vote in the office of the election commissioner or county clerk or shall return the ballot to the office not later than the closing of the polls on the day of the election.

Source: Laws 1994, LB 76, § 285; Laws 2002, LB 935, § 10; Laws 2005, LB 98, § 14; Laws 2005, LB 566, § 44.

32-943 Ballot to be picked up by agent; written request; procedure; restrictions on agent.

(1) Any registered voter who is permitted to vote early pursuant to section 32-938 may appoint an agent to submit a request for a ballot for early voting on

his or her behalf. The registered voter or his or her agent may request that the ballot be sent to the registered voter by mail or indicate on the request that the agent will personally pick up the ballot for such registered voter from the office of the election commissioner or county clerk. A registered voter or an agent acting on behalf of a registered voter shall request a ballot in writing to the election commissioner or county clerk in the county where the registered voter has established his or her residence and shall indicate the voter's residence address, the address to which the ballot is to be mailed if different, and the voter's telephone number if available and precinct if known. The registered voter or the voter's agent may use the form published by the election commissioner or county clerk pursuant to section 32-808. The registered voter or his or her agent shall sign the request.

(2) A candidate for office at such election and any person serving on a campaign committee for such a candidate shall not act as an agent for any registered voter requesting a ballot pursuant to this section unless such person is a member of the registered voter's family. No person shall act as agent for more than two registered voters in any election.

(3) The agent shall pick up the ballot before one hour prior to the closing of the polls on election day and deliver the ballot to the registered voter. The ballot shall be returned not later than the closing of the polls on the day of the election.

(4) The election commissioner or county clerk shall adopt procedures for the distribution of ballots under this section.

Source: Laws 1994, LB 76, § 286; Laws 1997, LB 764, § 94; Laws 2002, LB 935, § 11; Laws 2005, LB 98, § 15; Laws 2005, LB 566, § 45.

32-944 Administering ballots to residents of nursing homes or hospitals; requirements.

The election commissioner or county clerk may train registered voters to act on behalf of the election commissioner or county clerk in administering a ballot to residents of nursing homes or hospitals who have requested ballots. Ballots shall be administered by two registered voters who are not affiliated with the same political party. The election commissioner or county clerk shall adopt procedures to carry out this section.

Source: Laws 1994, LB 76, § 287; Laws 2005, LB 98, § 16.

32-945 Request for ballot; provide registration form; when; change registration; acknowledgment.

When a request for a ballot from a person who is not registered to vote in the county reaches the election commissioner or county clerk by mail, by facsimile transmission, or by means other than by application in person on or prior to the third Friday preceding the election, the election commissioner or county clerk shall mail to the applicant the registration application with the ballot. No ballot shall be sent by mail to any person after the third Friday preceding the election if such person is not a registered voter. When an application for a ballot from a person who is registered in the county reaches the county clerk or election commissioner by mail, facsimile transmission, or other means than by application in person and the application indicates that the applicant has changed his or her residence within the county, the county clerk or election

commissioner shall change the address on the applicant's voter registration and mail to such applicant an acknowledgment of change of registration and the ballot as provided by section 32-947.

Source: Laws 1994, LB 76, § 288; Laws 1997, LB 764, § 95; Laws 2005, LB 98, § 17; Laws 2005, LB 566, § 46.

32-946 Registered voter without residence address; mailing ballot and registration applications; oath; voting procedure.

When a registered voter applying for a ballot has no residence address within the county, the election commissioner or county clerk shall mail to the registered voter at the address designated by the voter the requested ballot materials, including a registration application, no later than the third Friday preceding the election pursuant to section 32-941 and shall enclose with the material the following oath which the voter must swear to before his or her ballot will be counted:

I, ..., do hereby swear that prior to my current absence from ...... County, Nebraska, I resided within the State of Nebraska, that during such residency it was my intention to make my permanent residence in such county, that during my current absence from such county I have not registered to vote or voted in an election in any other jurisdiction as a resident of such other jurisdiction, that I do not intend to make my present residence my permanent residence, that my current absence from such county is temporary and for a definite period of time, and that at the termination of that period I intend to return to .... County, Nebraska, and make it my permanent residence. I acknowledge that the residence address assigned to me for voting purposes until I return to the county shall be deemed to be that of the office of the election commissioner or county clerk of the county in which my prior residence was located.

Source: Laws 1994, LB 76, § 289; Laws 1997, LB 764, § 96; Laws 2002, LB 935, § 12; Laws 2005, LB 98, § 18; Laws 2005, LB 566, § 47.

32-947 Ballot to vote early; delivery; procedure; identification envelope; instructions.

(1) Upon receipt of an application or other request for a ballot to vote early, the election commissioner or county clerk shall determine whether the applicant is a registered voter and is entitled to vote as requested. If the election commissioner or county clerk determines that the applicant is a registered voter entitled to vote early and the application was received at or before 4 p.m. on the Wednesday preceding the election, the election commissioner or county clerk shall deliver a ballot to the applicant in person or by mail, postage paid. The election commissioner or county clerk or any employee of the election commissioner or county clerk shall write his or her customary signature or initials on the ballot.

(2) An unsealed identification envelope shall be delivered with the ballot, and upon the back of the envelope shall be printed a form substantially as follows:

VOTER'S OATH

I, the undersigned voter, declare that the enclosed ballot or ballots contained no voting marks of any kind when I received them, and I caused the ballot or

ballots to be marked, enclosed in the identification envelope, and sealed in such envelope.

To the best of my knowledge and belief, I declare under penalty of election falsification that:

(a) I am a registered voter in .... County;

(b) I reside in the State of Nebraska at the address printed below;

(c) I have voted the enclosed ballot and am returning it in compliance with Nebraska law; and

(d) I have not voted and will not vote in this election except by this ballot.

ANY PERSON WHO SIGNS THIS FORM KNOWING THAT ANY OF THE INFORMATION IN THE FORM IS FALSE SHALL BE GUILTY OF ELECTION FALSIFICATION, A CLASS IV FELONY UNDER SECTION 32-1502 OF THE STATUTES OF NEBRASKA. THE PENALTY FOR ELECTION FALSIFICATION IS IMPRISONMENT FOR UP TO FIVE YEARS OR A FINE NOT TO EXCEED TEN THOUSAND DOLLARS, OR BOTH.

I also understand that failure to complete the information below will invalidate my ballot.

Signature . . . .

Printed Name . . . .

Residence Address . . . .

The primary election ballot, if any, within this envelope is a primary election ballot of the ..... party.

Ballots contained in this envelope are for the ..... (primary, general, or special) election to be held on the ..... day of .... 20.. .

(3) If the ballot and identification envelope will be returned by mail or by someone other than the voter, the election commissioner or county clerk shall include with the ballot an identification envelope upon the face of which shall be printed the official title and post office address of the election commissioner or county clerk.

(4) The election commissioner or county clerk shall also enclose with the ballot materials:

(a) A registration application, if the election commissioner or county clerk has determined that the applicant is not a registered voter pursuant to section 32-945, with instructions that failure to return the completed and signed application indicating the residence address as it appears on the voter's request for a ballot to the election commissioner or county clerk by the close of the polls on election day will result in the ballot not being counted;

(b) A registration application and the oath pursuant to section 32-946, if the voter is without a residence address, with instructions that the residence address of the voter shall be deemed that of the office of the election commissioner or county clerk of the county of the voter's prior residence and that failure to return the completed and signed application and oath to the election commissioner or county clerk by the close of the polls on election day will result in the ballot not being counted; or

(c) Written instructions directing the voter to submit a copy of an identification document pursuant to section 32-318.01 if the voter is required to present identification under such section and advising the voter that failure to submit identification to the election commissioner or county clerk by the close of the polls on election day will result in the ballot not being counted.

(5) The election commissioner or county clerk may enclose with the ballot materials a separate return envelope for the voter's use in returning his or her identification envelope containing the voted ballot, registration application, and other materials that may be required.

Source: Laws 1994, LB 76, § 290; Laws 1995, LB 514, § 5; Laws 1999, LB 571, § 8; Laws 1999, LB 802, § 16; Laws 2002, LB 1054, § 22; Laws 2003, LB 359, § 7; Laws 2005, LB 98, § 19; Laws 2005, LB 566, § 48; Laws 2008, LB838, § 2.
Operative date January 1, 2009.

Cross References

Forgery or false placement of initials or signatures on ballot pursuant to section, penalty, see section 32-1516.

32-948 Ballots to vote early; election commissioner or county clerk; duties; public inspection; when.

(1) Upon receipt of an application or request for a ballot to vote early, the election commissioner or county clerk shall enter in the record of early voters the applicant's name, residence address, precinct, and subdivision of the precinct, if any, the mailing address to which the ballots are to be sent if different from the residence address, and the date on which the application was received. The election commissioner or county clerk shall also record other information in the record of early voters as may be necessary to aid in the processing or verification of ballots, including such information as the date ballots and related materials were sent to the voter or picked up in person, the date on which the ballots were voted in person or returned or received by mail, or information as to the reason why a ballot could not be issued or sent.

(2) Applications for such ballots shall be open to public inspection prior to the election. The record of early voters and all applications for such ballots shall be open to public inspection upon completion of the election. The election commissioner or county clerk shall make an entry in the voter's registration record indicating that the voter has voted early in the election.

Source: Laws 1994, LB 76, § 291; Laws 2005, LB 98, § 20; Laws 2005, LB 566, § 49.

32-949 Ballot for early voting; registered voter; duties.

(1) After a ballot for early voting is received by a voter and before placing any marks thereon, the voter shall note whether there are any voting marks on the ballot and whether there is a signature or initials on the ballot in the space provided for the election official's signature or initials. If there are any voting marks or no signature or initials, the ballot shall be returned immediately to the election commissioner or county clerk. If there are no such marks, the voter shall cause the ballot to be marked. If the ballot is voted in the office of the election commissioner or county clerk, the registered voter shall return the ballot and identification envelope to the election commissioner or county clerk or an employee of the election commissioner or county clerk who shall deposit

the ballot into a ballot box and place the identification envelope in a secure container.

(2) If the voter is mailing or otherwise delivering the ballot to the election commissioner or county clerk, the voter shall:

(a) Place the marked ballot in the identification envelope received for that purpose in such a manner that the signature of the issuing officer on the ballot is visible;

(b) Complete and sign the voter's oath on the outside of the identification envelope under the penalty of election falsification;

(c) Enclose, in the identification envelope or separately in the return envelope if one has been provided, his or her completed registration application if one was provided pursuant to section 32-945 or 32-946, a copy of his or her identification document if such identification has been requested, and the oath completed and signed by a voter without a residence address if required pursuant to section 32-946;

(d) Ensure that the identification envelope or return envelope is sealed; and

(e) Mail, deliver, or cause to be delivered the envelope containing the ballots and any required materials to the election commissioner or county clerk from whom it was received.

(3) All postage costs related to returning such ballots and required materials, if any, to the election commissioner or county clerk shall be paid by the applicant.

Source: Laws 1994, LB 76, § 292; Laws 2005, LB 98, § 21; Laws 2005, LB 566, § 50.

32-949.01 Ballot for early voting; destroyed, spoiled, lost, or not received; cast provisional ballot or obtain replacement ballot; procedure.

If a ballot for early voting is destroyed, spoiled, lost, or not received by the registered voter, the voter may cast a provisional ballot pursuant to section 32-915 at the voter's polling place on election day or may obtain a replacement ballot from the election commissioner or county clerk by signing a statement verified on oath or affirmation on a form prescribed by the Secretary of State that the original ballot for early voting was destroyed, spoiled, lost, or not received and delivering the statement to the election commissioner or county clerk. To receive a replacement ballot in person, the voter shall return the statement to the office of the election commissioner or county clerk by noon on the day of the election. To receive a replacement ballot by mail, the voter shall return the statement to such office prior to the close of business on the fourth business day before the election. If the election commissioner or county clerk receives a statement meeting the requirements of this section, he or she shall deliver a replacement ballot to the voter if the voter is present in the office or shall mail a replacement ballot to the voter at the address shown on the statement. The election commissioner or county clerk shall keep a record of all replacement ballots issued under this section.

Source: Laws 2005, LB 401, § 8.

32-950 Ballots to vote early; accepted, when; rejected ballots; how treated; storage.

Ballots issued under section 32-948 which are returned not later than the hour established for the closing of the polls shall be accepted for review by the counting board for early voting. Such ballots received by the election commissioner or county clerk after the close of the polls on election day shall remain sealed in the envelope on which the election commissioner or county clerk shall write Rejected, received on, and the date on which the ballot was received. If such a ballot was received on election day but after the close of the polls, the election commissioner or county clerk shall also write on the envelope the time at which the ballot was received. Such rejected ballots shall be segregated and stored in a sealed container designated for Rejected Early Ballots.

Source: Laws 1994, LB 76, § 293; Laws 1997, LB 764, § 97; Laws 2002, LB 935, § 13; Laws 2005, LB 98, § 22; Laws 2005, LB 566, § 51.

32-951 Ballots for early voting; prohibited acts.

No person shall:

(1) Impersonate or make a false representation in order to obtain a ballot for early voting for his or her own use or for use by another;

(2) Knowingly connive to help a person to vote such a ballot illegally;

(3) Destroy, steal, mark, or mutilate any such ballot after the same has been voted or aid or abet another to do so;

(4) Delay in delivering such a ballot to the election commissioner or county clerk to prevent the ballot from arriving in time to be counted;

(5) In any manner aid or attempt to aid any person to vote such a ballot unlawfully;

(6) Hinder or attempt to hinder a registered voter from voting any such ballot; or

(7) Hinder or attempt to hinder any official from delivering or counting any such ballot.

Source: Laws 1994, LB 76, § 294; Laws 2005, LB 98, § 23; Laws 2005, LB 566, § 52.

32-952 Special election by mail; when.

If a political subdivision decides to place an issue on the ballot at a special election, the election commissioner or county clerk may conduct the special election by mail as provided in section 32-953 or conduct the special election as otherwise authorized in the Election Act. In making a determination as to whether to conduct the election by mail, the election commissioner or county clerk shall consider whether all of the following conditions are met:

(1) All registered voters of the political subdivision are eligible to vote on the issue or issues submitted to the voters;

(2) Only registered voters of the political subdivision are eligible to vote on the issue or issues submitted to the voters;

(3) Only issues and not candidates are submitted to the registered voters;

(4) A review has been conducted of the costs and the expected voter turnout which may result from holding the election by mail;

(5) The election commissioner or county clerk has determined a date for the election which is not the same date as another election in which the registered voters of the political subdivision are eligible to vote;

(6) The clerk of the political subdivision will certify the issue or issues to the election commissioner or county clerk at least fifty days prior to the date of the election; and

(7) The Secretary of State has approved a written plan for the conduct of the election, including a written timetable for the conduct of the election, submitted by the election commissioner or county clerk. The written plan shall include provisions for the notice of election to be published and for the application for ballots for early voting notwithstanding other statutory provisions regarding the content and publication of a notice of election or the application for ballots for early voting.

Source: Laws 1996, LB 964, § 5; Laws 2005, LB 98, § 24.

32-953 Special election by mail; mailing of ballots; procedure.

The election commissioner or county clerk shall mail the official ballot to all registered voters of the political subdivision at the addresses appearing on the voter registration register on the same day. The ballots shall be mailed by nonforwardable first-class mail not sooner than the twentieth day before the date set for the election and not later than the tenth day before the date set for the election. The election commissioner or county clerk shall include with the ballot an unsealed identification envelope meeting the requirements of subsection (2) of section 32-947 and instructions sufficient to describe the voting process.

Source: Laws 1996, LB 964, § 6; Laws 2008, LB838, § 3.
Operative date January 1, 2009.

32-954 Special election by mail; voting and return of ballot; procedure.

Upon receipt of the official ballot, the registered voter shall mark it, seal the ballot in the identification envelope supplied with the ballot, sign the identification envelope, and comply with the instructions provided with the ballot. The voter may return the ballot to the election commissioner or county clerk by mailing it or by personally delivering it to the office of the election commissioner or county clerk. The deadline for receipt of the ballot is 5 p.m. on the date set for the election. The official ballot must be returned in the identification envelope. The registered voter shall, by signing the envelope, certify to the facts contained on the envelope. The election commissioner or county clerk shall keep the identification envelopes received from registered voters unopened in a fireproof safe or other suitable location which is locked until delivered to the counting board.

Source: Laws 1996, LB 964, § 7; Laws 2002, LB 935, § 14; Laws 2008, LB838, § 4.
Operative date January 1, 2009.

32-955 Repealed. Laws 2008, LB 838, § 8.

(Operative date January 1, 2009.)

32-956 Special election by mail; replacement ballot; how obtained.

If a ballot is destroyed, spoiled, lost, or not received by the registered voter, the voter may obtain a replacement ballot from the election commissioner or county clerk by signing a statement verified on oath or affirmation on a form prescribed by the Secretary of State that the ballot was destroyed, spoiled, lost, or not received and delivering the statement to the election commissioner or county clerk by noon on the date set for the election. If the voter mails the statement, the election commissioner or county clerk shall not deliver a replacement ballot to the voter unless the statement is received prior to the close of business on the fourth business day before the date set for the election. If the election commissioner or county clerk receives a statement meeting the requirements of this section, he or she shall deliver a replacement ballot to the voter if the voter is present in the office or shall mail a replacement ballot to the voter at the address shown on the statement. The election commissioner or county clerk shall keep a record of all replacement ballots issued under this section.

Source: Laws 1996, LB 964, § 9; Laws 2002, LB 935, § 15.

32-957 Special election by mail; verification of signatures.

An official ballot under section 32-953 shall be counted only if it is returned in the identification envelope, the envelope is signed by the voter to whom it was issued, and the signature is verified by the election commissioner or county clerk. The election commissioner or county clerk shall verify the signature on each identification envelope received in his or her office with the signature appearing on the voter registration records. If the election commissioner or county clerk is unable to verify a signature, the election commissioner or county clerk shall contact the voter within two days after determining that he or she is unable to verify the signature to ascertain whether the voter cast a ballot. The election commissioner or county clerk may request that the registered voter sign and submit a current signature card pursuant to section 32-318. The election commissioner or county clerk may begin verifying the signatures as the envelopes are received in his or her office. If the election commissioner or county clerk determines that a voter has voted more than once, no ballot cast by that voter in that election shall be counted. The election commissioner or county clerk shall not make public any record or list of registered voters who have returned their ballots until the election has been certified by the canvassing board.

Source: Laws 1996, LB 964, § 10; Laws 2008, LB838, § 5.
Operative date January 1, 2009.

32-958 Special election by mail; supervision; election report; counting board.

The election commissioner or county clerk shall supervise the procedures for handling and canvassing the ballots to ensure the safety and confidentiality of all ballots properly cast. The election commissioner or county clerk shall file with the Secretary of State and the county board an election report. The Secretary of State shall develop a uniform election report form which requires information, including, but not limited to, an evaluation of the verification process including the number of ballots rejected and the reasons for the rejection, the process for handling and canvassing ballots, and the cost of the election conducted by mail. The election commissioner or county clerk shall

appoint a counting board for the election in the same manner as the counting board for early voting and ballots shall be counted and canvassed in the same manner as much as possible.

Source: Laws 1996, LB 964, § 11; Laws 2005, LB 98, § 25.

32-959 Special election by mail; undeliverable ballots; removal of names.

The names of voters whose ballots are returned as undeliverable shall be subject to removal from the voter registration records as provided in sections 32-326 to 32-329.

Source: Laws 1996, LB 964, § 12.

32-960 County with less than seven thousand inhabitants; elections conducted by mail; application for approval; contents.

In any county with less than seven thousand inhabitants, the county clerk may apply to the Secretary of State to mail ballots for all elections held after approval of the application to registered voters of any or all of the precincts in the county in lieu of establishing polling places for such precincts. The application shall include a written plan for the conduct of the election, including a timetable for the conduct of the election and provisions for the notice of election to be published and for the application for ballots for early voting notwithstanding other statutory provisions regarding the content and publication of a notice of election or the application for ballots for early voting. If the Secretary of State approves such application for one or more precincts in the county, the county clerk shall follow the applicable procedures in sections 32-953 to 32-959 for conducting elections by mail, except that the deadline for receipt of the ballots shall be 8 p.m. on the day of the election.

Source: Laws 2005, LB 401, § 9.

ARTICLE 10

COUNTING AND CANVASSING BALLOTS

Section
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32-1021. Repealed. Laws 2007, LB 646, § 17.
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32-1048. Repealed. Laws 2003, LB 358, § 46.
32-1049. Vote counting device; requirements.

32-1001 Closing of polls; receiving board; duties.

After the polls have closed, the precinct list of registered voters and the precinct sign-in register shall be signed by all members of the receiving board, the names of the registered voters shall be counted, and the number shall be recorded where designated on the list and the register. If a line is missed or a name is voided, the receiving board shall subtract such omissions or voids from the total before recording the total on the list and the register. The receiving board shall certify to all matters pertaining to casting of ballots and shall turn over the ballots, ballot boxes, list of registered voters, and sign-in register to the election commissioner or county clerk.

Source: Laws 1994, LB 76, § 295; Laws 2007, LB646, § 9.

A failure by the election officers of a precinct to sign the returns, as required by this section, does not invalidate the election. Wheelock v. Haney, 138 Neb. 547, 293 N.W. 418 (1940).

32-1002 Provisional ballots; when counted.

(1) As the ballots are removed from the ballot box pursuant to sections 32-1012 to 32-1018, the receiving board shall separate the envelopes containing the provisional ballots from the rest of the ballots and deliver them to the election commissioner or county clerk.

(2) Upon receipt of a provisional ballot, the election commissioner or county clerk shall verify that the certificate on the front of the envelope or the form

attached to the envelope is in proper form and that the certification has been signed by the voter.

(3) The election commissioner or county clerk shall also (a) verify that such person has not voted anywhere else in the county or been issued a ballot for early voting, (b) investigate whether any credible evidence exists that the person was properly registered to vote in the county before the deadline for registration for the election, (c) investigate whether any information has been received pursuant to section 32-309, 32-310, or 32-324 that the person has resided, registered, or voted in any other county or state since registering to vote in the county, and (d) upon determining that credible evidence exists that the person was properly registered to vote in the county, make the appropriate changes to the voter registration register by entering the information contained in the registration application completed by the voter at the time of voting a provisional ballot.

(4) A provisional ballot cast by a voter pursuant to section 32-915 shall be counted if:

(a) Credible evidence exists that the voter was properly registered in the county before the deadline for registration for the election;

(b) The voter has resided in the county continuously since registering to vote in the county;

(c) The voter has not voted anywhere else in the county or has not otherwise voted early using a ballot for early voting;

(d) The voter has completed a registration application prior to voting and:

(i) The residence address provided on the registration application completed pursuant to subdivision (1)(e) of section 32-915 is located within the precinct in which the person voted; and

(ii) If the voter is voting in a primary election, the party affiliation provided on the registration application completed prior to voting the provisional ballot is the same party affiliation that appears on the voter's voter registration record based on his or her previous registration application; and

(e) The certification on the front of the envelope or form attached to the envelope is in the proper form and signed by the voter.

(5) A provisional ballot cast by a voter pursuant to section 32-915 shall not be counted if:

(a) The voter was not properly registered in the county before the deadline for registration for the election;

(b) Information has been received pursuant to section 32-309, 32-310, or 32-324 that the voter has resided, registered, or voted in any other county or state since registering to vote in the county in which he or she cast the provisional ballot;

(c) Credible evidence exists that the voter has voted elsewhere or has otherwise voted early;

(d) The voter failed to complete and sign a registration application pursuant to subdivision (1)(e) of section 32-915;

(e) The residence address provided on the registration application completed pursuant to subdivision (1)(e) of section 32-915 is in a different county or in a different precinct than the county or precinct in which the voter voted;

(f) If the voter is voting in a primary election, the party affiliation on the registration application completed prior to voting the provisional ballot is different than the party affiliation that appears on the voter's voter registration record based on his or her previous registration application; or

(g) The voter failed to complete and sign the certification on the envelope or form attached to the envelope pursuant to subsection (3) of section 32-915.

(6) Upon determining that the voter's provisional ballot is eligible to be counted, the election commissioner or county clerk shall remove the ballot from the envelope without exposing the marks on the ballot and shall place the ballot with the ballots to be counted by the county canvassing board.

(7) The election commissioner or county clerk shall notify the system administrator of the system created pursuant to section 32-202 as to whether the ballot was counted and, if not, the reason the ballot was not counted.

(8) The verification and investigation shall be completed within seven days after the election.

Source: Laws 1994, LB 76, § 296; Laws 1999, LB 234, § 13; Laws 2002, LB 1054, § 23; Laws 2003, LB 358, § 30; Laws 2005, LB 566, § 53; Laws 2007, LB646, § 10.

32-1003 Votes counted; when.

All valid votes shall be counted. No ballot shall be rejected because the voter did not vote for every possible office or position.

Source: Laws 1994, LB 76, § 297.

A ballot marked other than as provided by law is not void unless marked for identification. Gauvreau v. Van Patten, 83 Neb. 64, 119 N.W. 11 (1908).

A ballot is not necessarily invalid because the manner in which it is marked might serve to identify it. Mauck v. Brown, 59 Neb. 382, 81 N.W. 313 (1899).

A ballot upon which the word Eagleham had been endorsed was within the clause of this section prohibiting the marking of ballots for identification and should have been rejected. Spurgin v. Thompson, 37 Neb. 39, 55 N.W. 297 (1893).

All ballots intentionally marked for identification are void, but ballots otherwise valid are not invalid because they happen to have been marked in such a manner that they may be later distinguished from other ballots cast at the election. State ex rel. Waggoner v. Russell, 34 Neb. 116, 51 N.W. 465, 33 A.S.R. 625 (1892), 15 L.R.A. 740 (1892).

32-1004 Overvote; rejection; when.

If a ballot has been overvoted for any office, the ballot shall be rejected for that office only. No overvoted ballot shall be judged for voter intent by any member of the counting board or any official involved in the counting process.

Source: Laws 1994, LB 76, § 298; Laws 2007, LB646, § 11.

32-1005 Write-in vote; when valid.

If the last name or a reasonably close spelling of the last name of a person engaged in or pursuing a write-in campaign pursuant to section 32-615 is written or printed on a line provided for that purpose and the square or oval opposite such line has been marked with a cross or other clear, intelligible mark, the vote shall be valid and the ballot shall be counted. Except as provided in section 32-1007, a write-in vote for a person who is not engaged in or pursuing a write-in campaign pursuant to section 32-615 shall not be counted.

Source: Laws 1994, LB 76, § 299; Laws 1999, LB 571, § 9; Laws 2003, LB 358, § 31.

32-1006 Ballot; vote plus write-in vote; rejected; duplicate ballot to correct overvoted ballot; procedures.

If a vote is cast for a candidate whose name is printed on the ballot and a name is filled in on the line provided for that purpose for the same office, the ballot shall be rejected for the office involved. The counting board shall make the following notation on the ballot card and on the ballot envelope if any: Rejected for the office of ...., overvoted, and the counting board shall immediately duplicate the overvoted ballot omitting the overvoted portion of the ballot and number the original ballot, ballot envelope if any, and duplicate ballot with the same identifying number. The identifying number shall be assigned in numerical order, and the original ballot shall remain in the ballot envelope if any.

Source: Laws 1994, LB 76, § 300; Laws 2003, LB 358, § 32.

32-1007 Ballots; write-in votes; improper name; rejected.

(1) For members of a village board of trustees, township officers, or members of the school board of Class I or II school districts, if a first or generally recognized name and last name of a person is filled in on a line provided for that purpose and the square or oval opposite such line has been marked with a cross or other clear, intelligible mark, the vote shall be valid and the ballot shall be counted. If only the last name of a person is in the write-in space on the ballot and there is more than one person in the county having the same last name, the counting board shall reject the ballot for that office unless the last name is reasonably close to the proper spelling of the last name of a candidate engaged in or pursuing a write-in campaign pursuant to section 32-615. The counting board shall make the following notation on the rejected ballot: Rejected for the office of ...., no first or generally recognized name.

(2) For President and Vice President, if a first or generally recognized name and last name of a person is filled in on the lines provided for that purpose and the square or oval opposite such line has been marked with a cross or other clear, intelligible mark, the vote shall be valid and the ballot shall be counted. If only the last name of a person is in the write-in space on the ballot and there is no generally recognized candidate for President or Vice President with that name, the counting board shall reject the ballot. The counting board shall make the following notation on the rejected ballot: Rejected for the office of President and Vice President, no first or generally recognized name.

Source: Laws 1994, LB 76, § 301; Laws 1999, LB 571, § 10; Laws 2001, LB 252, § 3; Laws 2003, LB 358, § 33.

32-1008 Write-in votes; totals; how reported.

If the write-in vote in the county for any particular office referred to in section 32-1007 totals less than five percent of the vote for such office in the county and the election commissioner or county clerk believes that such vote will not impact the outcome of the election, the number of write-in votes for that office may be counted and listed together as one total.

Source: Laws 1994, LB 76, § 302; Laws 1999, LB 571, § 11.

32-1009 Returns; when available.

No returns or partial returns shall be released prior to the closing of the polls. Any or all available returns may be released after the polls close.

Source: Laws 1994, LB 76, § 303.

32-1010 Ballots; where counted.

Ballots shall be counted or compiled at a centralized location as provided in sections 32-1012 to 32-1018. The receiving board shall deliver the ballot box and other election materials to the centralized location as directed by the election commissioner or county clerk.

Source: Laws 1994, LB 76, § 304; Laws 2007, LB646, § 12.

32-1011 Repealed. Laws 2007, LB 646, § 17.

32-1012 Centralized location; partial returns; when; designation of location; counting procedure.

In counties using electronic voting systems or optical scanners to count the ballots, the election commissioner or county clerk may arrange to have partial returns delivered, properly locked or sealed, to the centralized location or locations at any time desired after the opening of the polls if at least twenty-five ballots have been cast since any prior delivery of ballots. The election commissioner or county clerk shall designate the location or locations for counting the ballots and may designate a location or locations in any county. Upon completion of the count, the ballots shall be conveyed under supervision of the election commissioner or county clerk to the office of such official. If for any reason it becomes impracticable to count all or a part of the ballots with optical scanners, the election commissioner or county clerk may direct that the ballots be counted manually following as closely as possible the provisions governing the manual counting of ballots.

Source: Laws 1994, LB 76, § 306; Laws 2003, LB 358, § 34.

32-1013 Centralized location; watchers; counting board members; oath; authorized observers.

(1) In each centralized location, watchers may be appointed to be present and observe the counting of ballots. Each political party shall be entitled to one watcher at each location appointed and supplied with credentials by the county central committee of such political party. The district court having jurisdiction over any such county may appoint additional watchers for any location.

(2) The watchers and the members of the counting board shall take the following oath administered by the election commissioner or county clerk or an election official designated by the election commissioner or county clerk: I do solemnly swear that I will not in any manner make known to anyone other than duly authorized election officials the results of the votes as they are being counted until the polls have officially closed and the summary of votes cast is delivered to the election commissioner or county clerk.

(3) All other persons shall be excluded from the place where the counting is being conducted except for observers authorized by the election commissioner or county clerk. No such observer shall be connected with any candidate, political party, or measure on the ballot.

Source: Laws 1994, LB 76, § 307.

32-1014 Repealed. Laws 1997, LB 764, § 113.

32-1015 Centralized location; resolution board; designation; duties.

The election commissioner or county clerk shall designate at least two members of the counting board to act as a resolution board to resolve questions as to the legality of votes to be counted. The members of the resolution board shall be of equal number from different political parties. Any issue as to the legality of a vote shall be resolved unanimously by the resolution board. If a unanimous decision cannot be obtained, the ballot shall be rejected as to the vote in question.

Source: Laws 1994, LB 76, § 309.

32-1016 Centralized location; damaged or defective ballots; how treated.

If any ballot is damaged or defective so that it cannot properly be counted by the vote counting device, the resolution board shall make a true duplicate copy and substitute the copy for the damaged or defective ballot. All duplicate ballots shall be clearly labeled duplicate, and all damaged or defective ballots shall be clearly labeled damaged or defective. Each pair of duplicate and damaged or defective ballots shall bear a similar serial number or some form of identification so that both the damaged or defective and duplicate ballots can be matched to facilitate recounts or any inspection of the ballots. The resolution board shall maintain the secrecy of the damaged or defective ballots as much as possible and shall cause the damaged or defective ballots to be made up in a sealed packet. The resolution board shall endorse the packet with the words Damaged or Defective Ballots and the designation of the precinct. The resolution board shall sign the endorsement label and place the sealed packet in the ballots-cast container with the voted ballots as provided in section 32-1017.

Source: Laws 1994, LB 76, § 310; Laws 1997, LB 764, § 98.

32-1017 Centralized location; ballots-cast container; Rejected Ballots envelope; summary of votes cast.

(1) Upon completion of the counting of votes, the counting board shall place all voted ballots in the ballots-cast container. Rejected ballots shall be placed in the envelope designated Rejected Ballots, and the envelope shall be sealed and placed in the ballots-cast container with the voted ballots. The ballots-cast container shall then be sealed.

(2) The counting board shall prepare a summary of the votes cast and deliver the summary to the election commissioner or county clerk. When write-in votes are totaled in accordance with section 32-1008, the write-in votes shall be totaled as an aggregate for any such office. The election commissioner or county clerk shall release unofficial returns from the summary.

Source: Laws 1994, LB 76, § 311.

32-1018 Centralized location; vote counting devices; sealing and storage; reuse.

All tapes, programming boards, and other materials used with vote counting devices for the election shall be sealed and stored with the ballots and election materials for that election for the amount of time required by law. Programming boards may be reused after six months have elapsed following an election in which they were used.

Source: Laws 1994, LB 76, § 312.

32-1019 Repealed. Laws 2007, LB 646, § 17.

32-1020 Repealed. Laws 2007, LB 646, § 17.

32-1021 Repealed. Laws 2007, LB 646, § 17.

32-1022 Repealed. Laws 2007, LB 646, § 17.

32-1023 Repealed. Laws 2007, LB 646, § 17.

32-1024 Repealed. Laws 2007, LB 646, § 17.

32-1025 Repealed. Laws 2007, LB 646, § 17.

32-1026 Repealed. Laws 2007, LB 646, § 17.

32-1027 Counting board for early voting; appointment; duties.

(1) The election commissioner or county clerk shall appoint two or more registered voters to the counting board for early voting. One registered voter shall be appointed from the political party casting the highest number of votes for Governor or for President of the United States in the county in the immediately preceding general election, and one registered voter shall be appointed from the political party casting the next highest vote for such office. The election commissioner or county clerk may appoint additional registered voters to serve on the counting board and may appoint registered voters to serve in case of a vacancy among any of the members of the counting board. Such appointees shall be balanced between the political parties and may include registered voters unaffiliated with any political party. The counting board may begin carrying out its duties not earlier than the second Monday before the election and shall meet as directed by the election commissioner or county clerk.

(2) The counting board shall place all identification envelopes in order and shall review each returned identification envelope pursuant to verification procedures prescribed in subsections (3) and (4) of this section.

(3) In its review, the counting board shall determine if:

(a) The voter has provided his or her name, residence address, and signature on the voter identification envelope;

(b) The ballot has been received from the voter who requested it and the residence address is the same address provided on the voter's request for a ballot for early voting, by comparing the information provided on the identification envelope with information recorded in the record of early voters or the voter's request;

(c) A completed and signed registration application has been received from the voter by the deadline in section 32-302, 32-321, or 32-325 or by the close of the polls pursuant to section 32-945;

(d) An identification document has been received from the voter not later than the close of the polls on election day if required pursuant to section 32-318.01; and

(e) A completed and signed registration application and oath has been received from the voter by the close of the polls on election day if required pursuant to section 32-946.

(4) On the basis of its review, the counting board shall determine whether the ballot shall be counted or rejected as follows:

(a) A ballot received from a voter who was properly registered on or prior to the deadline for registration pursuant to section 32-302 or 32-321 shall be accepted for counting without further review if:

(i) The name on the identification envelope appears to be that of a registered voter to whom a ballot for early voting has been issued or sent;

(ii) The residence address provided on the identification envelope is the same residence address at which the voter is registered or is in the same precinct and subdivision of a precinct, if any; and

(iii) The identification envelope has been signed by the voter;

(b) In the case of a ballot received from a voter who was not properly registered prior to the deadline for registration pursuant to section 32-302 or 32-321, the ballot shall be accepted for counting if:

(i) A valid registration application completed and signed by the voter has been received by the election commissioner or county clerk prior to the close of the polls on election day;

(ii) The name on the identification envelope appears to be that of the person who requested the ballot;

(iii) The residence address provided on the identification envelope and on the registration application is the same as the residence address as provided on the voter's request for a ballot for early voting; and

(iv) The identification envelope has been signed by the voter;

(c) In the case of a ballot received from a voter without a residence address who requested a ballot pursuant to section 32-946, the ballot shall be accepted for counting if:

(i) The name on the identification envelope appears to be that of a registered voter to whom a ballot has been sent;

(ii) A valid registration application completed and signed by the voter, for whom the residence address is deemed to be the address of the office of the election commissioner or county clerk pursuant to section 32-946, has been received by the election commissioner or county clerk prior to the close of the polls on election day;

(iii) The oath required pursuant to section 32-946 has been completed and signed by the voter and received by the election commissioner or county clerk by the close of the polls on election day; and

(iv) The identification envelope has been signed by the voter; and

(d) In the case of a ballot received from a registered voter required to present identification before voting pursuant to section 32-318.01, the ballot shall be accepted for counting if:

(i) The name on the identification envelope appears to be that of a registered voter to whom a ballot has been issued or sent;

(ii) The residence address provided on the identification envelope is the same address at which the voter is registered or is in the same precinct and subdivision of a precinct, if any;

(iii) A copy of an identification document authorized in section 32-318.01 has been received by the election commissioner or county clerk prior to the close of the polls on election day; and

(iv) The identification envelope has been signed by the voter.

(5) In opening the identification envelope or the return envelope to determine if registration applications, oaths, or identification documents have been enclosed by the voters from whom they are required, the counting board shall make a good faith effort to ensure that the ballot remains folded and that the secrecy of the vote is preserved.

(6) The counting board may, on the second Monday before the election, open all identification envelopes which are approved, and if the signature of the election commissioner or county clerk or his or her employee is on the ballot, the ballot shall be unfolded, flattened for purposes of using the optical scanner, and placed in a sealed container for counting as directed by the election commissioner or county clerk. At the discretion of the election commissioner or county clerk, the counting board may begin counting early ballots no earlier than twenty-four hours prior to the opening of the polls on the day of the election.

(7) If an identification envelope is rejected, the counting board shall not open the identification envelope. The counting board shall write Rejected on the identification envelope and the reason for the rejection. If the ballot is rejected after opening the identification envelope because of the absence of the official signature on the ballot, the ballot shall be reinserted in the identification envelope which shall be resealed and marked Rejected, no official signature. The counting board shall place the rejected identification envelopes and ballots in a container labeled Rejected Ballots and seal it.

(8) As soon as all ballots have been placed in the sealed container and rejected identification envelopes or ballots have been sealed in the Rejected Ballots container, the counting board shall count the ballots the same as all other ballots and an unofficial count shall be reported to the election commissioner or county clerk. No results shall be released prior to the closing of the polls on election day.

Source: Laws 1994, LB 76, § 321; Laws 1999, LB 802, § 18; Laws 2002, LB 935, § 16; Laws 2005, LB 98, § 26; Laws 2005, LB 566, § 54; Laws 2007, LB646, § 13.

32-1028 County canvassing board; appointment.

The election commissioner or county clerk shall appoint two or more registered voters to constitute a county canvassing board. The election commissioner or county clerk shall be a member of the county canvassing board. One registered voter shall be appointed from the political party casting the highest number of votes for Governor or for President of the United States in the county in the immediately preceding general election, and one registered voter shall be appointed from the political party casting the next highest number of votes for such office. The election commissioner or county clerk may appoint additional registered voters to serve on the county canvassing board and may appoint registered voters to serve in case of a vacancy among any of the members of the county canvassing board. Such appointees shall be balanced

between the political parties and may include registered voters unaffiliated with any political party.

Source: Laws 1994, LB 76, § 322.

32-1029 Repealed. Laws 2002, LB 935, § 19.

32-1030 Early voting materials; treatment.

All identification envelopes, voted ballots, and rejected ballots and the Rejected Ballots container shall be placed in the container for early voting materials, and the container shall be sealed.

Source: Laws 1994, LB 76, § 324; Laws 2005, LB 98, § 27.

32-1031 County canvassing board; canvass of votes; procedure.

(1) After counting the ballots under section 32-1027, the county canvassing board shall proceed with the official canvass of votes cast on election day. If in the process of canvassing the votes for any candidate or measure in any precinct the election commissioner or county clerk or the canvassing board determines that there is an obvious error in the certification of the votes, the error shall be corrected. The county canvassing board may open the ballots-cast container and recount the ballots for any candidate or any measure which appears to be in error. If the county canvassing board finds and corrects any such error, it shall make the correction entry in the precinct sign-in register, the precinct list of registered voters, and the official summary or summaries of votes cast and shall attach a letter of explanation to each book where the correction was made. The letter shall be signed by all members of the county canvassing board.

(2) When it has been determined that the returns in all precincts are correct, the county canvassing board shall enter the same in a permanent ledger. The permanent ledger shall be preserved by the election commissioner or county clerk for the period of time specified by the State Records Administrator pursuant to the Records Management Act, and then it may be transferred to the State Archives of the Nebraska State Historical Society for permanent preservation.

(3) Any recesses or adjournments of the county canvassing board shall be to a fixed time and publicly announced. When a recess is called, all ballots that have not been counted and all other supplies shall be placed in a fireproof safe or other suitable location which is locked until such board reconvenes.

Source: Laws 1994, LB 76, § 325; Laws 2005, LB 98, § 28.

Cross References

Records Management Act, see section 84-1220.

32-1032 County canvassing board; election materials; preservation; duration.

Upon the completion of the canvass by the county canvassing board, all books shall again be sealed, and the election commissioner or county clerk shall keep all election materials, including the ballots-cast containers from each precinct, the sealed envelopes containing the precinct list of registered voters, the precinct sign-in register, the official summary or summaries of votes cast, and the container for early voting materials, for not less than twenty-two

months when statewide primary, general, or special elections involve federal offices, candidates, and issues and not less than fifty days for local elections not held in conjunction with a statewide primary, general, or special election. The election commissioner or county clerk shall keep on file one copy of each ballot face used in each precinct of the official partisan, nonpartisan, constitutional amendment, and initiative and referendum ballots, as used for voting, and all election notices used at each primary and general election for twenty-two months. The precinct sign-in register, the record of early voters, and the official summary of votes cast shall be subject to the inspection of any person who may wish to examine the same after the primary, general, or special election. The election commissioner or county clerk shall not allow any other election materials to be inspected except when an election is contested or the materials become necessary to be used in evidence in the courts. The election commissioner or county clerk shall direct the destruction of such materials after such time, except that the election commissioner or county clerk may retain materials for the purposes of establishing voter histories.

Source: Laws 1994, LB 76, § 326; Laws 1997, LB 764, § 100; Laws 2005, LB 98, § 29.

A county clerk has no right to permit ballots that have been committed to his care and keeping to be taken therefrom, regardless of their value as evidence. Stewart v. Bole, 61 Neb. 193, 85 N.W. 33 (1901).

32-1033 Certificate of nomination; certificate of election; issuance by election commissioner or county clerk; when; form.

The election commissioner or county clerk shall, within forty days after the election, prepare, sign, and deliver a certificate of nomination or a certificate of election to each person whom the county canvassing board has declared to have received the highest vote for county, city, or village offices. No person shall be issued a certificate of nomination as a candidate of a political party unless such person has received a number of votes at least equal to five percent of the total ballots cast at the primary election by registered voters affiliated with that political party in the district which the office for which he or she is a candidate serves. The certificate shall be substantially as follows:

State of Nebraska. At an election held on the .... day of .... 20.., ... was elected to the office of .... for the term of ...... years from the .... day of ...... 20.. (or when filling a vacancy, for the residue of the term ending on the .... day of .... 20..). Given at .... this .... day of .... 20.. .

Source: Laws 1994, LB 76, § 327; Laws 1997, LB 764, § 101; Laws 1999, LB 571, § 12.

There is a presumption that a certificate of nomination issued pursuant to this section does not create a binding contract between a candidate and the State. Pick v. Nelson, 247 Neb. 487, 528 N.W.2d 309 (1995).

By accepting a nomination for the office of presidential elector, a candidate pledges himself to discharge his duty, if elected, by voting for the candidates to be nominated subsequently by the national convention of the party. State ex rel. Nebraska Rep. State C. Com. v. Wait, 92 Neb. 313, 138 N.W. 159 (1912), 43 L.R.A.N.S. 282 (1912).

32-1034 Abstract of votes; election officials; duties.

Immediately upon the completion of the canvass by the county canvassing board, the election commissioner or county clerk shall prepare an abstract of votes for all officers and issues certified to the election commissioner or county clerk by the Secretary of State. The election commissioner or county clerk shall sign and affix his or her official seal to the abstract as the Abstract of Votes

of .... County and deliver it to the Secretary of State. The Secretary of State shall prepare a tabular sheet of the votes cast for such officers and measures and preserve the same with the abstract of votes from the various counties for the use of the Legislature and the board of state canvassers in making the official canvass. The Secretary of State shall deliver to the state chairperson of each political party, upon request, a separate abstract of votes of the various contests for national and state offices indicating the total votes received by each candidate and measure.

Source: Laws 1994, LB 76, § 328.

County clerk is required to furnish abstract of votes for use of the Legislature in making official canvass. State ex rel. Caldwell v. Peterson, 153 Neb. 402, 45 N.W.2d 122 (1950).

Abstract of votes cast for President and Vice President are transmitted to Secretary of State by county canvassing board. State ex rel. Beeson v. Marsh, 150 Neb. 233, 34 N.W.2d 279 (1948).

32-1035 Abstract of votes; failure to receive; Secretary of State; send messenger.

If the Secretary of State has not received the abstract of votes from any county by the third Monday after the day of election, the Secretary of State may send a messenger to the election commissioner or county clerk of such county at the expense of such county. The election commissioner or county clerk shall furnish the messenger with the abstract of votes or, if the abstract has been sent, with a copy of the abstract, and the messenger shall return the abstract to the Secretary of State without delay. If the abstract of votes was delayed by reason of the fault or neglect of the election commissioner or county clerk, he or she shall be responsible to the county for the cost of the messenger.

Source: Laws 1994, LB 76, § 329.

32-1036 Election results; reporting requirements; fee authorized.

The election commissioner or county clerk shall report to the Secretary of State all election results of statewide primary and general elections by precinct within eight weeks after the county canvass of such elections for President, Vice President, United States Senate, United States House of Representatives, members of the Legislature, members of the Public Service Commission, and the offices of Governor, Lieutenant Governor, Secretary of State, Auditor of Public Accounts, State Treasurer, and Attorney General. The Secretary of State shall retain the election results for at least five years and shall collate, arrange, computerize, or publish reports arranging the election results. The Secretary of State may charge a fee as provided in section 33-101 for copies of such election results.

Source: Laws 1994, LB 76, § 330.

32-1037 Board of state canvassers; members; duties.

There shall be a board of state canvassers consisting of the Governor, Secretary of State, Auditor of Public Accounts, State Treasurer, and Attorney General. The board of state canvassers shall meet at the office of the Secretary of State on the fourth Monday after each statewide primary and general election for the sole purpose of canvassing the votes cast for all officers and issues certified to the election commissioner or county clerk by the Secretary of State. The board of state canvassers may adjourn from day to day until all returns are received and all votes are tabulated. The Governor on the advice of

the Secretary of State or the Attorney General may call an extraordinary session of the board of state canvassers. The duty of the board of state canvassers to canvass the votes is ministerial in nature.

Source: Laws 1994, LB 76, § 331; Laws 1999, LB 60, § 1.

Board of state canvassers meets on the third Monday after election. State ex rel. Caldwell v. Peterson, 153 Neb. 402, 45 N.W.2d 122 (1950).

This statute is unconstitutional as relates to requirements for independent candidates for President and Vice President of United States. MacBride v. Exon, 558 F.2d 443 (8th Cir. 1977).

Although Nebraska's statutes unconstitutionally deny an independent candidate access to appear on the ballot in presidential elections, the court directed the independent be included upon a determination he was a serious candidate, truly independent, with a satisfactory level of community support. McCarthy v. Exon, 424 F.Supp. 1143 (D. Neb. 1976).

32-1038 Board of state canvassers; canvass of votes; procedure.

(1) The board of state canvassers shall authorize the Secretary of State to open the abstracts of votes from the various counties and prepare an abstract stating the number of ballots cast for each office, the names of all the persons voted for, for what office they respectively received the votes, and the number of votes each received. The abstract shall be signed by the members of the board and shall have the seal of the state affixed by the Secretary of State. The canvass of the votes for candidates for President and Vice President of the United States and the return thereof shall be a canvass and return of the votes cast for the presidential electors of the same party or group of petitioners respectively, and the certificate of such election made by the Governor shall be in accord with such return. Receipt by the presidential electors of a party or a group of petitioners of the highest number of votes statewide shall constitute election of the two at-large presidential electors of that party or group of petitioners. Receipt by the presidential electors of a party or a group of petitioners of the highest number of votes in a congressional district shall constitute election of the congressional district presidential elector of that party or group of petitioners.

(2) The board of state canvassers shall determine from the completed abstract the names of those candidates who have been nominated or elected. If any two or more persons are returned with an equal and the highest number of votes, the board of state canvassers shall decide by lot which of such persons is elected except for officers elected to the executive branch. The board of state canvassers shall also declare those measures carried which have received the required percentage of votes as provided by law.

Source: Laws 1994, LB 76, § 332.

Board of state canvassers does not have jurisdiction to canvass returns of election for officers of executive department. State ex rel. Caldwell v. Peterson, 153 Neb. 402, 45 N.W.2d 122 (1950).

Board of state canvassers is granted power to canvass the votes of presidential electors. State ex rel. Caldwell v. Peterson, 153 Neb. 402, 45 N.W.2d 122 (1950).

Group of petitioners represents new political party. State ex rel. Beeson v. Marsh, 150 Neb. 233, 34 N.W.2d 279 (1948).

It is the duty of the state canvassing board to canvass the returns of the vote on proposed amendments to the Constitution. State ex rel. Oldham v. Dean, 84 Neb. 344, 121 N.W. 719 (1909).

Mandamus will lie to compel the members of the state canvassing board, including the Governor, to perform their duties. State ex rel. Bates v. Thayer, 31 Neb. 82, 47 N.W. 704 (1891).

Although Nebraska's statutes unconstitutionally deny an independent candidate access to appear on the ballot in presidential elections, the court directed the independent be included upon a determination he was a serious candidate, truly independent, with a satisfactory level of community support. McCarthy v. Exon, 424 F.Supp. 1143 (D. Neb. 1976).

32-1039 Canvass of votes by Legislature; when.

The votes cast for the officers of the executive departments of this state and members of the Public Service Commission shall be canvassed by the Legislature at its next regular session.

Source: Laws 1994, LB 76, § 333.

Legislature is required to canvass votes cast for officers of the executive department. State ex rel. Caldwell v. Peterson, 153 Neb. 402, 45 N.W.2d 122 (1950).

32-1040 Certificate of nomination; certificate of election; issuance by Secretary of State; when; form.

The Secretary of State shall within forty days after the election prepare and deliver a certificate of nomination or certificate of election to each person who meets the constitutional and statutory requirements of office and whom the board of state canvassers or Legislature has declared to have received the highest vote for such office or position in the statewide primary or general election. The certificate shall be substantially as follows:

State of Nebraska. At an election held on the ..... day of ...., ... was elected to (or nominated for) the office of .... for the term of .... years from the .... (or when filling a vacancy, for the residue of the term ending on the .... day of .... 20....). Given at .... this .... day of .... 20.... .

The certificate shall be signed by the Governor, under the seal of the state, and countersigned by the Secretary of State if the candidate filed with the Secretary of State and was elected to a state office, as a member of Congress, or from a district whose boundaries extend beyond the limits of a single county

Source: Laws 1994, LB 76, § 334; Laws 2004, LB 813, § 17.

32-1041 Voting and counting methods and locations authorized; approval required; when.

The election commissioner or county clerk may use optical-scan ballots or voting systems approved by the Secretary of State to allow registered voters to cast their votes at any election. The election commissioner or county clerk may use vote counting devices and voting systems approved by the Secretary of State for tabulating the votes cast at any election. Vote counting devices shall include electronic counting devices such as optical scanners. Any new voting or counting system shall be approved by the Secretary of State prior to use by an election commissioner or county clerk. Notwithstanding any other provision of the Election Act, the Secretary of State may adopt and promulgate rules and regulations to establish different procedures and locations for voting and counting votes pursuant to the use of any new voting or counting system. The procedures shall be designed to preserve the safety and confidentiality of each vote cast and the secrecy and security of the counting process, to establish security provisions for the prevention of fraud, and to ensure that the election is conducted in a fair manner.

Source: Laws 1994, LB 76, § 335; Laws 1997, LB 526, § 1; Laws 2003, LB 358, § 37; Laws 2005, LB 401, § 10; Laws 2007, LB646, § 14.

32-1042 Voting systems; acquisition authorized; debt; tax levy; payment.

The governing body of any county may purchase, lease, lease-purchase, rent, or contract for voting systems approved by the Secretary of State to be used in all elections. The governing body of any county may issue bonds, certificates of indebtedness, or other obligations or levy for the purpose of acquiring voting systems. Any excess amounts levied and collected shall revert to the county general fund. Any bonds, certificates, or other obligations may be issued with or without interest and may be payable at such time or times as the governing

body may determine but shall not be issued or sold at less than par. The governing body of the county may provide for installment payments which extend over a period of more than one year notwithstanding sections 23-132 and 23-916.

Source: Laws 1994, LB 76, § 336; Laws 1996, LB 1114, § 53; Laws 2003, LB 358, § 38.

32-1043 Voting systems; rental contracts; authorized.

The governing body of any county which has procured voting systems may enter into a contract for the rental of such systems with a city, village, or school district. Such rentals may be paid out of the general fund or by levying taxes to provide funds for payment of such rentals. Such rental contracts may be made to extend over any period of time.

Source: Laws 1994, LB 76, § 337; Laws 2003, LB 358, § 39.

32-1044 Voting systems; custodian; training; duties; oath.

(1) The election commissioner or county clerk shall designate an individual to be trained in the method of preparation of the voting systems for correct use in the elections, and such person shall be called the custodian of the systems. The custodian shall conduct an instructional meeting for the members of the counting board. The custodian shall prepare all systems for proper use in all elections.

(2) The custodian shall take the same oath prescribed for judges and clerks of election pursuant to section 32-222 or 32-238.

Source: Laws 1994, LB 76, § 338; Laws 1997, LB 764, § 102; Laws 2003, LB 358, § 40.

32-1045 Vote counting devices; instructional meeting or session; written instructions.

Preceding each election at which vote counting devices are used, the custodian of such devices shall hold at least one instructional meeting for the instruction of every judge and clerk of election in the correct conduct of the election. Each judge and clerk of election shall receive compensation for attendance at such instructional meeting. In lieu of all judges and clerks attending such instruction, a judge of election or a precinct or district inspector may receive such instruction for the purposes of conducting an instructional session with the judges and clerks of election on election day before the polls officially open. The election commissioner or county clerk shall provide written instructions on the use of vote counting devices, including the examination prior to the opening of the polls, the voting procedure, and the examination and tabulating after the polls close.

Source: Laws 1994, LB 76, § 339; Laws 2003, LB 358, § 41.

32-1046 Repealed. Laws 2003, LB 358, § 46.

32-1047 Repealed. Laws 2003, LB 358, § 46.

32-1048 Repealed. Laws 2003, LB 358, § 46.

32-1049 Vote counting device; requirements.

Any election commissioner or county clerk using a vote counting device to count ballots in a centralized location shall:

(1) Provide for the proper sealing of the containers and the security of the ballots when transported from each polling place to the centralized location and when removed from their containers and delivered to the personnel who operate the vote counting devices;

(2) Provide a process of counting which allows for the ballots of each precinct to be placed in a sealed container and placed in a secure location after the counting process has been completed;

(3) Provide for a method of overseeing the ballots that have been overvoted or damaged which does not involve judging voter intent to assure that these ballots have not been or will not be intentionally mismarked;

(4) Provide for a procedure for counting write-in votes when such votes and names of write-in candidates are to be counted and recorded;

(5) Provide for at least three independent tests to be conducted before counting begins to verify the accuracy of the counting process, which includes the computerized program installed for counting various ballots by vote counting devices, by (a) the election commissioner or county clerk, (b) the chief deputy election commissioner or a registered voter with a different party affiliation than that of the election commissioner or county clerk, and (c) the person who installed the program in the vote counting device or the person in charge of operating the device;

(6) Provide for storing and safeguarding the magnetic tapes or computer chips of the vote counting devices for the required period of time;

(7) Provide the appropriate security personnel or measures necessary to safeguard the secrecy and security of the counting process;

(8) Develop a procedure for picking up and counting ballots during election day at the discretion of the election commissioner or county clerk. No report or tabulation of vote totals for such ballots shall be produced or generated prior to one hour before the closing of the polls; and

(9) Submit a written plan to the Secretary of State specifically outlining the procedures that will be followed on election day to implement this section. The plan shall be submitted no later than twenty-five days before the election and shall be modified, as necessary, for each primary, general, or special election.

Source: Laws 1994, LB 76, § 343; Laws 2007, LB646, § 15.

ARTICLE 11

CONTEST OF ELECTIONS AND RECOUNTS

Section

32-1101. Contest of election; applicability of sections; grounds.
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32-1101 Contest of election; applicability of sections; grounds.

Sections 32-1101 to 32-1117 shall apply to contests of any election. The election of any person to an elective office, the location or relocation of a county seat, or any proposition submitted to a vote of the people may be contested:

(1) For misconduct, fraud, or corruption on the part of an election commissioner, a county clerk, an inspector, a judge or clerk of election, a member of a counting or canvassing board, or an employee of the election commissioner or county clerk sufficient to change the result;

(2) If the incumbent was not eligible to the office at the time of the election;

(3) If the incumbent has been convicted of a felony unless at the time of the election his or her civil rights have been restored;

(4) If the incumbent has given or offered to any voter or an election commissioner, a county clerk, an inspector, a judge or clerk of election, a member of a counting or canvassing board, or an employee of the election commissioner or county clerk any bribe or reward in money, property, or thing of value for the purpose of procuring his or her election;

(5) If illegal votes have been received or legal votes rejected at the polls sufficient to change the results;

(6) For any error of any board of canvassers in counting the votes or in declaring the result of the election if the error would change the result;

(7) If the incumbent is in default as a collector and custodian of public money or property; or

(8) For any other cause which shows that another person was legally elected.

When the misconduct is on the part of an election commissioner, a county clerk, an inspector, a judge or clerk of election, a member of a counting or canvassing board, or an employee of the election commissioner or county clerk, it shall be insufficient to set aside the election unless the vote of the county, precinct, or township would change the result as to that office.

Source: Laws 1994, LB 76, § 344.

1. Nature of proceeding
2. Who may contest
3. Procedure

4. Other remedies
5. County seat elections
6. Miscellaneous

1. Nature of proceeding

This section is the exclusive method by which a school reorganization election may be attacked after the election is held, and a declaratory action is improper. Eriksen v. Ray, 212 Neb. 8, 321 N.W.2d 59 (1982).

It is ground for an election contest that illegal votes have been received or legal votes rejected sufficient to change the result. Plouzek v. Saline County Reorganization Committee, 181 Neb. 440, 148 N.W.2d 919 (1967).

This section does not apply to a school district election held for the purpose of contracting for the instruction of pupils. Farrell v. School Dist. No. 54, 164 Neb. 853, 84 N.W.2d 126 (1957).

The statutory proceeding to contest an election is a summary proceeding of a political nature and is not, strictly speaking, an action at law or in equity. Swan v. Bowker, 135 Neb. 405, 281 N.W. 891 (1938).

The right, conferred by statute on a candidate for public office to contest the election of his apparently successful rival, is a special statutory proceeding, and all the conditions prescribed for its exercise must be strictly followed. Landgren v. Hamilton, 133 Neb. 668, 276 N.W. 659 (1937); Wilson v. Matson, 110 Neb. 630, 194 N.W. 735 (1923).

An election contest is a summary proceeding of a political character tried before judges who serve in the capacity of election inspectors. Griffith v. Bonawitz, 73 Neb. 622, 103 N.W. 327 (1905).

The statute providing a method for contesting an election is complete within itself, including the manner of review in an appellate court. Mauck v. Brown, 59 Neb. 382, 81 N.W. 313 (1897).

A contest of election is an adversary proceeding by which the matters in controversy may be settled upon issues joined, and parties having an adverse interest to the contestant must be joined. Burke v. Perry, 26 Neb. 414, 42 N.W. 401 (1889).

A proceeding to contest an election is essentially a legal remedy, the object of which is to vacate the declared result of an election. Scott v. McGuire, 15 Neb. 303, 18 N.W. 93 (1883).

2. Who may contest

Proceedings under this section are available to contest election held under Reorganization of School Districts Act. Longe v. County of Wayne, 175 Neb. 245, 121 N.W.2d 196 (1963).

In an election contest, the contestant has the burden of proving that illegal ballots affected the result of the election. State ex rel. Brogan v. Boehner, 174 Neb. 689, 119 N.W.2d 147 (1963).

Election held for reorganization of school districts is subject to contest under this section. Arends v. Whitten, 172 Neb. 297, 109 N.W.2d 363 (1961).

There is no authority for a taxpayer and elector residing in a municipality to bring a proceeding to contest an election on the proposition of empowering the mayor and city council to compel a railroad company to provide viaducts over its tracks. Barnes v. City of Lincoln, 85 Neb. 494, 124 N.W. 99 (1909).

Under former law, residents and citizens of a proposed location of a county seat are not authorized to contest county seat election. Sebering v. Bastedo, 48 Neb. 358, 67 N.W. 148 (1896).

The first clause of this section gives to the taxpayers of a city the right to contest a city election on the question of giving financial aid to a railroad company. Foxworthy v. L. & F. R. R. Co., 13 Neb. 398, 14 N.W. 394 (1882).

3. Procedure

Irregularities in canvass of vote will not invalidate election. Haggard v. Misko, 164 Neb. 778, 83 N.W.2d 483 (1957).

Election contest was properly brought under subdivisions (5) and (6) of this section. Swan v. Bowker, 135 Neb. 405, 281 N.W. 819 (1938).

A contestant who alleges that illegal votes, sufficient to change the result of the election, were cast must prove for whom the illegal votes were cast before any votes can be eliminated. Mehrens v. Election Canvassing Board, 134 Neb. 151, 278 N.W. 252 (1938).

Election is not invalidated unless illegal votes are received and counted sufficient to change result. Mosiman v. Weber, 107 Neb. 737, 187 N.W. 109 (1922).

In proceeding to contest election, contestant may introduce in evidence properly preserved ballots without first making proof of charges in complaint. Frum v. Leamer, 101 Neb. 675, 164 N.W. 715 (1917).

A contestant is required to prove the material allegations of his complaint irrespective of whether the incumbent has formally answered. McWhorter v. Schramm, 97 Neb. 103, 149 N.W. 306 (1914).

The Legislature may constitute the Supreme Court a tribunal to decide contests of election involving officers elected by the entire state or by districts composed of a number of counties. Bell v. Templin, 26 Neb. 249, 41 N.W. 1093 (1889).

4. Other remedies

A suit to obtain an injunction is not the proper remedy in which to try the title to a public office. Hotchkiss v. Keck, 84 Neb. 545, 121 N.W. 579 (1909), reversed on rehearing 86 Neb. 322, 125 N.W. 509 (1910). Followed in Moor v. Keck, 84 Neb. 550, 121 N.W. 581 (1909), reversed on rehearing 86 Neb. 694, 126 N.W. 388 (1910).

The statutory remedy by contest is not an exclusive remedy, and the right to hold the office of county treasurer may be determined in an action of quo warranto. State ex rel. Barton v. Frantz, 55 Neb. 167, 75 N.W. 546 (1898).

The proceeding to contest an election, provided for by this article, is a cumulative remedy and is not a ban to a proceeding in quo warranto. State ex rel. Fair v. Frazier, 28 Neb. 438, 44 N.W. 471 (1890).

The statute provides an adequate remedy, either by contest or quo warranto, for the settlement of the rights of parties in disputed elections, and equity has no jurisdiction to enjoin an officer holding an election certificate from taking office. State ex rel. Hunt v. Mayor and City Council of Kearney, 28 Neb. 103, 44 N.W. 90 (1889).

The grounds of contest enumerated in this section are sufficient grounds of removal in an action of quo warranto. State ex rel. Richards v. McMillen, 23 Neb. 385, 36 N.W. 587 (1888).

Mandamus will lie to compel a canvassing board to canvass all the votes returned, in the event of a refusal to canvass the votes from certain precincts, and the fact that a statutory right of action to contest the election exists is not a ban. State ex rel. Whittemore v. Peacock, 15 Neb. 442, 19 N.W. 685 (1884).

Mandamus will lie to compel a board of canvassers to reassemble and canvass the entire vote cast at an election where they have refused to canvass part of the votes, and the fact that a statutory right of action to contest the election is provided by this section is not a ban. State ex rel. Willard v. Stearns, 11 Neb. 104, 7 N.W. 743 (1881).

Question of statutory right of action to contest an election being a ban to a writ of mandamus to compel a canvassing board to canvass all votes cast raised but not decided. State ex rel. Townsend v. Hill, 10 Neb. 58, 4 N.W. 514 (1880).

5. County seat elections

An election for the location or relocation of a county seat may be contested in a proceeding brought under this article, but not

in a mandamus proceeding. State ex rel. Hocknell v. Roper, 46 Neb. 730, 65 N.W. 802 (1896).

The proceeding provided for by this article is not an exclusive remedy by which elections for relocating county seats must be contested, and a taxpayer may enjoin the calling of an unauthorized election. Solomon v. Fleming, 34 Neb. 40, 51 N.W. 304 (1892).

The question of the jurisdiction of the county commissioners to call an election for the purpose of locating the county seat may properly be presented in a proceeding to contest the election. Laws v. Vincent, 16 Neb. 208, 20 N.W. 213 (1884).

6. Miscellaneous

The right to contest an election otherwise than by legal proceedings in the proper court is a right created by the Constitution and statutes. In re Contest Proceedings, 31 Neb. 262, 47 N.W. 923 (1891), 10 L.R.A. 803 (1891).

32-1102 Contested primary and general elections; state officers; venue; petition; service; answer.

(1) All contested primary and general elections for Governor, Lieutenant Governor, Secretary of State, Auditor of Public Accounts, State Treasurer, Attorney General, member of the Public Service Commission, member of the State Board of Education, and Regent of the University of Nebraska shall be heard and determined by the district court for Lancaster County.

(2) Any person contesting the election of any officer named in subsection (1) of this section shall present a petition to the district court of Lancaster County within forty days after the election. The petition shall set forth the points on which he or she will contest the election and the facts which he or she will prove in support of such points and shall ask for leave to produce his or her proof. The person whose election is being contested shall be served with a copy of such petition and a notice of the time and place of the presentation of the petition at least ten days before the petition will be presented and may, upon the presentation of such petition, file his or her answer thereto specifying reasons why his or her election should not be contested.

Source: Laws 1994, LB 76, § 345.

32-1103 Election contest; appointment of court official; powers and duties; compensation.

Upon the presentation of a petition contesting an election and the answer to such petition, if any, the court shall appoint an official of the court to take the testimony of the petitioner and the person whose election is contested at such times and places as the court directs. The court order shall specify the points and facts in regard to which the testimony is to be taken and the time when the official shall make his or her report to the court. The court shall fix the compensation of the official to be taxed as part of the costs. The official shall have the power to administer oaths and take depositions, to compel the attendance of witnesses by summons and attachment, to require such witnesses to testify, and to certify such testimony.

Source: Laws 1994, LB 76, § 346.

Delegation of authority under this section could not operate to expand the original jurisdiction of the Supreme Court. Sorensen v. Swanson, 181 Neb. 205, 147 N.W.2d 620 (1967).

32-1104 Election contest; rights of parties; procedure; report and recommendations.

The petitioner and the person whose election is contested shall have the right to attend the examination of the witnesses appearing before the official of the court and to cross-examine the witnesses. Testimony shall be taken only on the points and facts specified in the court order. The official shall cause to be made a full and accurate bill of exceptions of all evidence and testimony adduced at

the hearing and shall preside at such hearing as a judge in a court of equity. The official shall rule upon the admissibility of testimony and shall preserve and maintain on the part of all participants at the hearing judicial decorum and demeanor and shall have the powers of a judge to cite or punish for contempt. The official at the conclusion of the hearing shall make a written report and recommendations to the court which shall be considered by the court as a finding of a trial judge in equity.

Source: Laws 1994, LB 76, § 347.

32-1105 Election contest; bond; when required; where filed.

If the contested seat is not in the Legislature, the petitioner shall file in the proper court within ten days after filing of the petition a bond with security to be approved by the clerk of the court conditioned to pay all costs in case the election is confirmed.

If the contested seat is in the Legislature, the petitioner shall file with the Clerk of the Legislature within ten days after filing the petition a bond with security approved by the Clerk of the Legislature conditioned to pay all costs in case the election is confirmed. The bond shall be in an amount of at least five thousand dollars as determined by the Clerk of the Legislature. If the Clerk of the Legislature determines that the bond is inadequate, he or she may order an increase in the amount of the bond at any stage of the contest proceedings.

Source: Laws 1994, LB 76, § 348.

Cost bond must be filed within ten days after filing of complaint contesting election. Sutton v. Anderson, 176 Neb. 543, 126 N.W.2d 836 (1964).

32-1106 Legislature; election contest; notices required.

(1) If a candidate for the Legislature contests the election of a person proclaimed duly elected to the legislative seat for which the candidate was seeking election, the candidate shall, within forty days after the election, give written notice of the contest to the person whose election is being contested in person or by registered or certified mail. A copy of the notice showing that the notice was served upon such person shall be filed with the Clerk of the Legislature within such forty-day period. The notice shall specify the names of the voters whose votes are contested, the grounds upon which such votes are illegal, a full statement of any other ground upon which the election is contested, and, if necessary, the time and place for the taking of depositions of the witnesses to be examined.

(2) If the person whose seat in the Legislature is contested intends to contest the legality of any votes given to the candidate who contests the election and if such person intends to take depositions, the person whose seat is contested shall, within fourteen days after he or she is notified that his or her election is being contested, give to the petitioner a notice similar to that specified in subsection (1) of this section. The notice shall include the time and place for the taking of the depositions of such witnesses as he or she desires to examine.

(3) The taking of depositions and all matters relating thereto shall be conducted in the manner provided by the Rules of the Nebraska Unicameral Legislature. Either party may without notice take rebutting testimony at the time and place specified for the taking of depositions.

Source: Laws 1994, LB 76, § 349.

32-1107 Legislature; election contest; depositions; procedure.

(1) The taking of depositions shall be commenced within fifteen days after the giving of the respective notices of contest provided for in section 32-1106 and shall be completed as soon as practicable under the circumstances. The persons selected by the parties to take depositions shall issue subpoenas to all persons required by either party commanding them to appear and give testimony at the time and place specified. All testimony shall be certified to the Clerk of the Legislature by the persons selected to take the depositions.

(2) No testimony shall be received in the taking of depositions or by the Legislature which does not relate to the points specified in the notice. A copy of the notice, attested by the person who delivered or served the same, shall be delivered to the person or persons selected to take depositions, and the person or persons selected to take depositions shall transmit a copy of the notice with the depositions to the Clerk of the Legislature. No testimony other than the testimony contained in the depositions taken at the times and places provided for in this section and section 32-1106 shall be received as evidence unless otherwise determined by the Legislature.

Source: Laws 1994, LB 76, § 350.

32-1108 Ballot question; contest of election result; petition; service; answer; representation.

The result of any election upon a proposed constitutional amendment or statute submitted or referred to the voters either by the Legislature or by initiative or referendum petition may be contested upon the petition of one or more registered voters directed against the Secretary of State. The petitioning voter or voters shall present a petition to the district court of Lancaster County within forty days after such election. The petition shall set forth the points on which the election will be contested and the facts which will be proved in support of such points and shall ask for leave to produce the proof. The Secretary of State shall be served with a copy of the petition and a notice of the time and place of the presentation of the petition ten days before the petition will be presented. The Secretary of State may, upon the presentation of such petition, file an answer thereto specifying reasons why the election should not be contested. The proponents and opponents of any proposed constitutional amendment or statute shall have the right to engage counsel to represent and act for such parties in all matters involved in and pertaining to the contest.

Source: Laws 1994, LB 76, § 351.

32-1109 Political subdivision officers; election contest; venue; notices required; procedure.

(1) The several district courts shall have jurisdiction in cases of contested elections for officers of all political subdivisions of the State of Nebraska. Notice of such contest shall be given to the person whose election is contested within twenty days after the votes have been officially canvassed. The notice shall specify the grounds upon which the petitioner intends to rely and the names of the voters whose votes are contested if any and the grounds upon which such votes are illegal. The notice shall be served as provided in section 25-505.01.

(2) If the person whose election is being contested desires to contest any votes given to the petitioner, the person shall give the petitioner written notice within

twenty days after the notice of contest has been served. The notice shall specify the names of such voters and the grounds upon which such votes are illegal.

(3) The parties to the contest shall be allowed process for witnesses, and either party may take depositions to be read as evidence at the trial as is authorized in civil cases. All such depositions shall be filed before the trial is commenced and may be read into evidence regardless of the availability of the witnesses.

Source: Laws 1994, LB 76, § 352.

Notice of contest of election must be given after the votes have been officially canvassed. Sutton v. Anderson, 176 Neb. 543, 126 N.W.2d 836 (1964).

32-1110 Election contest; court; powers and duties.

Every court authorized to determine contested elections shall hear and determine such contested elections in a summary manner without any formal pleading. The contest shall be heard within fifteen days after the matter is at issue unless the contest is continued by mutual consent of the parties or for good cause shown.

Source: Laws 1994, LB 76, § 353.

32-1111 Election contest; person holding certificate of election; powers and duties.

When a contested election is pending, the person holding the certificate of election may give bond, qualify and take the office at the time specified by law, and exercise the duties of the office until the contest is decided. If the contest is decided against him or her, the Legislature or court shall order him or her to give up the office to the successful party in the contest and deliver to the successful party all books, records, papers, property, and effects pertaining to the office, and the Legislature or court may enforce such order by attachment or other proper legal process.

Source: Laws 1994, LB 76, § 354.

Contestant was declared elected and cause was remanded for further order of trial court hereunder. Dilsaver v. Pollard, 191 Neb. 241, 214 N.W.2d 478 (1974).

32-1112 Election contest; recount of votes; issuance of writ; certification of results.

(1) Any court before which any contested election may be pending or the clerk of such court in vacation may issue a writ to the election commissioner or county clerk of the county in which the contested election was held commanding him or her to open, count, compare with the list of voters, and examine the ballots in his or her office which were cast at the election in contest and to certify the result of such count, comparison, and examination to the court from which the writ was issued.

(2) The Legislature or the committee of the Legislature designated by the Legislature before which a contested election is pending may issue a writ to the election commissioner or county clerk of the county in which the contested election was held commanding him or her to open, count, compare with the list of voters, and examine the ballots in his or her office which were cast at the

election in contest and to certify the result of such count, comparison, and examination to the Legislature.

Source: Laws 1994, LB 76, § 355.

32-1113 Election contest; service of writ; notice to parties required.

Any writ issued pursuant to section 32-1112 shall be served without delay on the election commissioner or county clerk by the sheriff of his or her county. The election commissioner or county clerk shall at once fix a day, not more than thirty days after the date of the receipt of such writ, on which he or she will proceed to open such ballots and shall cause notice in writing of the day so fixed to be served on the petitioner and the person whose election is being contested or their attorneys at least five days before such day. Such notice may be served in the manner provided in section 25-505.01.

Source: Laws 1994, LB 76, § 356.

32-1114 Election contest; recount of ballots; procedure.

(1) Except as provided in subsection (2) of this section, on the day fixed for opening the ballots pursuant to section 32-1113, the election commissioner or county clerk and the county canvassing board which officiated in making the official county canvass of the election returns shall proceed to open such ballots in the presence of the petitioner and the person whose election is contested or their attorneys. While the ballots are open and being examined, the election commissioner or county clerk shall exclude all other persons from the counting room. All persons witnessing the counting of ballots shall be placed under oath requiring them not to disclose any fact discovered from such ballots except as stated in the certificate of the election commissioner or county clerk.

(2) In an election contest for a seat in the Legislature, the Legislature may establish rules and procedures for the recount of ballots. Such rules and procedures may provide for delivery to the Legislature or a committee of the Legislature designated by the Legislature before which a contested election is pending, by the election commissioner or county clerk, of the ballots or notarized copies of the ballots which were cast at the election in contest.

Source: Laws 1994, LB 76, § 357.

32-1115 Election contest; rights of parties; recount of ballots; completion; certification; Legislature; procedure.

(1) The election commissioner or county clerk shall permit the petitioner, the person whose election is being contested, and their attorneys to fully examine the ballots. The election commissioner or county clerk shall make return to the writ, under his or her hand and official seal, of all the facts which either of the parties may desire and which appear from the ballots to affect or relate to the contested election. After the examination of the ballots is completed, the election commissioner or county clerk shall again securely seal the ballots as they were and preserve and destroy them as provided by law in the same manner as if they had not been opened. The certificate of the election commissioner or county clerk certifying the total number of votes received by a candidate shall be prima facie evidence of the facts stated in the certificate, but the persons present at the examination of the ballots may be heard as witnesses to contradict the certificate.

(2) If the ballots or notarized copies of the ballots were examined as part of an election contest for a seat in the Legislature, the Legislature shall return such ballots or notarized copies of such ballots to the election commissioner or county clerk at the conclusion of the election contest.

Source: Laws 1994, LB 76, § 358.

32-1116 Election contests and recounts; costs and attorney's fees.

The cost of election contests and recounts under section 32-1118 shall be adjudged against the petitioner if he or she loses the contest, and if the petitioner wins the contest, the cost shall be adjudged against the state, county, or other political subdivision of which such contested office was a part. The payment of such costs shall be enforced as in civil cases. Attorneys representing the person finally determined to be the winner in any contest or recount of an election to the Legislature may be allowed as part of such costs reimbursement for reasonable attorney's fees as determined by the committee of the Legislature designated by the Legislature before which a contested election is pending but not to exceed five thousand dollars for such services.

Source: Laws 1994, LB 76, § 359.

32-1117 Election contests; appeal; when allowed; bond.

Except for election contests involving a member of the Legislature, an appeal from a final determination in an election contest may be taken in the same time or manner and to the same courts as is provided by law with respect to appeals in civil cases. In case of appeal, a bond with sufficient sureties shall be given conditioned for the payment of the costs accrued and to accrue in the cause. A new bond shall be given when required by any court in which the cause may be pending.

Source: Laws 1994, LB 76, § 360.

32-1118 Legislature; recount; petition; bond; Secretary of State; powers and duties.

(1) The apparent loser at a general election for a seat in the Legislature may secure a recount of the ballots cast at such election by filing a petition for a recount in duplicate with the Secretary of State no later than the fourth Monday after the election. The petition shall be accompanied by a corporate surety bond in the penal sum of two thousand five hundred dollars conditioned for the payment of costs pursuant to section 32-1116 if the recount fails to change the results of the election. If at any stage of the recount the amount of the bond becomes inadequate, the Secretary of State may order an increase in the amount of such bond.

(2) The Secretary of State shall, by certified or registered mail, give notice of the filing of a petition under this section not later than the day following the filing of the petition and deliver a copy of the petition to the declared winner. The Secretary of State shall also, by the most practicable means of communication, direct the election commissioner or county clerk of each county involved to deliver the ballot boxes to the office of the election commissioner or county clerk designated by the Secretary of State no later than the following Monday.

(3) After the ballot boxes have been received at the designated office, they shall be opened and the ballots for member of the Legislature shall be

recounted under the supervision of the Secretary of State. The Secretary of State may employ such persons as may be necessary to conduct the recount and fix their compensation.

(4) The Secretary of State shall, on or before December 20, certify the results of the recount to each of the parties to the recount and to the Clerk of the Legislature.

Source: Laws 1994, LB 76, § 361.

32-1119 Automatic recount; when; waiver; procedure.

(1) If it appears as evidenced by the abstract of votes that any candidate failed to be nominated or elected by a margin of (a) one percent or less of the votes received by the candidate who received the highest number of votes for the office at an election in which more than five hundred total votes were cast or (b) two percent or less of the votes received by the candidate who received the highest number of votes for the office at an election in which five hundred or less total votes were cast, then such candidate shall be entitled to a recount. Any losing candidate may waive his or her right to a recount by filing a written statement with the Secretary of State, election commissioner, or county clerk with whom he or she made his or her filing. All expenses of a recount under this section shall be paid by those political subdivisions involved in the recount.

(2) Recounts shall be made by the county canvassing board which officiated in making the official county canvass of the election returns. If any member of the county canvassing board cannot participate in the recount, another person shall be appointed by the election commissioner or county clerk to take the member's place.

(3) Recounts for candidates who filed with the Secretary of State shall be made on the fifth Wednesday after the election and shall commence at 9 a.m. The Secretary of State shall inform each election commissioner or county clerk of the names of the candidates for which the board of state canvassers deems a recount to be necessary.

(4) The election commissioner or county clerk shall be responsible for recounting the ballots for those candidates for whom the county canvassing board deems a recount to be necessary. The recount shall be made as soon as possible after the adjournment of the county canvassing board, except that if a recount is required under subsection (3) of this section, the recounts may be conducted concurrently.

(5) The Secretary of State, election commissioner, or county clerk shall notify all candidates whose ballots will be recounted of the time, date, and place of the recount. Candidates whose ballots will be recounted may be present or be represented by an agent appointed by the candidate.

(6) The procedures for the recounting of ballots shall be the same as those used for the counting of ballots on election day. The recount shall be conducted at the county courthouse, except that if vote counting devices are used for the counting or recounting, such counting or recounting may be accomplished at the site of the devices. Counties counting ballots by using a vote counting device shall first recount the ballots by use of the device. If substantial changes are found, the ballots shall then be counted using such device in any precinct which might reflect a substantial change.

Source: Laws 1994, LB 76, § 362; Laws 2002, LB 1054, § 24.

32-1120 Automatic recount; certificate of nomination; certificate of election; issuance by election commissioner or county clerk; when.

After the recount under section 32-1119 has been certified, the election commissioner or county clerk shall make a certificate of election or a certificate of nomination in the case of a primary election for the person having the highest number of votes for the office covered by the recount and cause the certificate to be delivered to the person entitled to the certificate.

Source: Laws 1994, LB 76, § 363.

32-1121 Recount requested by losing candidate; procedure; costs.

If any candidate failed to be nominated or elected by more than the margin provided in section 32-1119, the losing candidate may submit a certified written request for a recount at his or her expense. The request shall be filed with the filing officer with whom the candidate filed for election not later than the tenth day after the county canvassing board or the board of state canvassers convenes. The recount shall be conducted as provided in section 32-1119. Prior to conducting the recount, the cost of the recount shall be determined by the election commissioner or county clerk and the requesting candidate shall be so notified. The candidate requesting the recount shall pay the estimated cost of the recount before the recount is scheduled to be conducted. If the recount involves more than one county, the election commissioner or county clerk shall certify the cost to the Secretary of State. The Secretary of State shall then notify the candidate of the determined cost, and the cost shall be paid before any recount is scheduled to be conducted. The candidate shall pay the cost on demand to the county treasurer of each county involved, and such sums shall be placed in the county general fund to help defray the cost of the recount. If the actual expense is less than the determined cost, the candidate may file a claim with the county board for overpayment of the recount. If the recount determines the candidate to be the winner, all costs which he or she paid shall be refunded. Refunds shall be made from the county general fund.

Source: Laws 1994, LB 76, § 364.

32-1122 Recount; tie vote; determination of winner.

(1) If a recount after a primary election results in any two or more persons having an equal and the highest number of votes for the same nomination for the same county, city, village, or school district office, the county canvassing board shall, in the presence of the candidates or their representatives, determine by lot which of the candidates shall be nominated. The election commissioner or county clerk shall notify such candidates by certified mail to appear at his or her office on a given day and hour to determine the same before the county canvassing board. The election commissioner or county clerk shall make a certificate of nomination for the person so nominated and shall cause such certificate to be delivered to the person entitled thereto.

(2) If a recount after a general or special election results in any two or more persons having an equal and the highest number of votes for the same county, city, village, or school district office, the county canvassing board shall, in the presence of the candidates or their representatives, determine by lot which of the candidates shall be elected. The election commissioner or county clerk shall notify such candidates by certified mail to appear at his or her office on a given day and hour to determine the same before the county canvassing board. The

election commissioner or county clerk shall make a certificate of election for the person so elected and shall cause such certificate to be delivered to the person entitled thereto.

(3) If a recount after a primary election results in any two or more persons having an equal and the highest number of votes for nomination to an office canvassed by the board of state canvassers, the board shall decide by lot which of such persons is nominated.

(4) If a recount after a general or special election results in any two or more persons having an equal and the highest number of votes for the office of the Governor, Secretary of State, Auditor of Public Accounts, State Treasurer, Attorney General, or other officer elected to an executive department, the Legislature shall choose one of such persons for the office. If the office involved in the recount is the office of the Governor, the Lieutenant Governor shall be the candidate for Lieutenant Governor chosen by the person selected by the Legislature as Governor.

(5) If a recount after a general or special election results in any two or more persons having an equal and the highest number of votes for an office canvassed by the board of state canvassers, the board shall decide by lot which of such persons is elected, except officers elected to the executive department.

Source: Laws 1994, LB 76, § 365; Laws 2001, LB 253, § 1; Laws 2001, LB 768, § 6.

Upon determination there existed tie votes between two candidates for same office, cause remanded with directions that county canvassing board resolve disputed election under provisions of this section. Dugan v. Vlach, 195 Neb. 81, 237 N.W.2d 104 (1975).

ARTICLE 12

ELECTION COSTS

Section
32-1201. Costs of election; payment; county expense.
32-1202. Expenses chargeable to political subdivisions.
32-1203. Political subdivisions; election expenses; duties; determination of charge.
32-1204. Separate election; joint election; costs; political subdivisions; duties.
32-1205. Recall election; costs.
32-1206. Other elections; costs.
32-1207. Costs of elections; certification; payment; when due.
32-1208. Election equipment and materials; availability; costs.

32-1201 Costs of election; payment; county expense.

The county board shall draw warrants in payment of all bills submitted by the election commissioner or county clerk related to the cost of any election conducted by the office of the election commissioner or county clerk. Except as otherwise provided in subsection (4) of section 32-1203, the initial payment for bills submitted to the election commissioner or county clerk for the cost of preparing for and conducting elections shall be a county expense. The compensation of the election commissioner or county clerk, the deputy election commissioner or deputy county clerk for elections, and all permanent employees of the election commissioner or county clerk, the expenditures for the rental, furnishing, and equipping of the office of the election commissioner or county clerk, the expenditures for necessary office supplies, books, documents, and appurtenances relating to or used in performing the duties of the election commissioner or county clerk in relation to elections, and the cost of elections

for county, state, and federal governments shall be an apportioned county expense and shall not be chargeable to other political subdivisions.

Source: Laws 1994, LB 76, § 366; Laws 1997, LB 764, § 103.

32-1202 Expenses chargeable to political subdivisions.

The cost of publication and posting of notices and ballots, the cost of precinct registration lists, the compensation of temporary employees, inspectors, judges and clerks of election, and members of counting boards, the cost of renting, heating, lighting, and equipping polling places including placing and removing ballot boxes and other fixtures and equipment, the cost of printing and delivering ballots and sample ballots, the cost of postage, cards of instructions for voters, maps, voter books for the polling place, other election supplies, and electronic media, the expense of programming and operation of voting systems, and all other expenses of conducting statewide primary and general elections not listed in section 32-1201 shall be chargeable to the political subdivisions in and for which such elections are held.

Source: Laws 1994, LB 76, § 367; Laws 2003, LB 358, § 42.

A county is liable for the expense of reprinting correct ballots where a mistake is discovered in ballots which have already been printed and paid for by the county. Wahlquist v. Adams County, 94 Neb. 682, 144 N.W. 171 (1913).

32-1203 Political subdivisions; election expenses; duties; determination of charge.

(1) Each city, village, school district, public power district, sanitary and improvement district, metropolitan utilities district, fire district, natural resources district, community college area, educational service unit, hospital district, reclamation district, and library board shall pay for the costs of nominating and electing its officers as provided in subsection (2), (3), or (4) of this section. If a special issue is placed on the ballot at the time of the statewide primary or general election by any political subdivision, the political subdivision shall pay for the costs of the election as provided in subsection (2), (3), or (4) of this section. The districts listed in this subsection shall furnish to the Secretary of State and election commissioner or county clerk any maps and additional information which the election commissioner or county clerk may require in the proper performance of their duties in the conduct of elections and certification of results.

(2) The charge for each primary and general election shall be determined by (a) ascertaining the total cost of all chargeable costs as described in section 32-1202, (b) dividing the total cost by the number of precincts participating in the election to fix the cost per precinct, (c) prorating the cost per precinct by the inked ballot inch in each precinct for each political subdivision, and (d) totaling the cost for each precinct for each political subdivision, except that the minimum charge for each primary and general election for each political subdivision shall be fifty dollars.

(3) In lieu of the charge determined pursuant to subsection (2) of this section, the election commissioner or county clerk may charge public power districts the fee for election costs set by section 70-610.

(4) In lieu of the charge determined pursuant to subsection (2) of this section, the election commissioner or county clerk may bill school districts directly for the costs of an election held under section 10-703.01.

Source: Laws 1994, LB 76, § 368; Laws 1997, LB 764, § 104; Laws 2008, LB1067, § 1.
Effective date July 18, 2008.

32-1204 Separate election; joint election; costs; political subdivisions; duties.

(1) Every political subdivision shall pay the cost of holding and conducting a separate election on its behalf by the election commissioner or county clerk. The election commissioner or county clerk shall fix and certify the total cost of the separate election to the political subdivision involved. Total cost shall include all chargeable costs as provided in section 32-1202.

(2) Except as provided in section 32-1203, if any two or more political subdivisions hold a joint election, the election commissioner or county clerk shall fix and certify to each political subdivision joining in such election the portion of the total cost which each shall bear.

(3) If a special issue is placed on the ballot of a joint or separate election by any political subdivision, the election commissioner or county clerk shall charge such political subdivision for any additional costs in printing ballots and in publication.

Source: Laws 1994, LB 76, § 369.

32-1205 Recall election; costs.

A political subdivision in which an official is recalled or a vacancy needs to be filled as the result of a recall petition shall pay the costs of the recall procedure and any special election held as a result of a recall election. If a recall election is canceled pursuant to section 32-1306, the political subdivision shall be responsible for costs incurred related to the canceled election. The costs shall include all chargeable costs as provided in section 32-1202 associated with preparing for and conducting a recall or special election.

Source: Laws 1994, LB 76, § 370; Laws 2008, LB312, § 3.
Effective date July 18, 2008.

32-1206 Other elections; costs.

Any election not otherwise provided for in sections 32-1203 to 32-1205 which is conducted by the election commissioner or county clerk shall be paid for by the entity holding the election.

Source: Laws 1994, LB 76, § 371.

32-1207 Costs of elections; certification; payment; when due.

The election commissioner or county clerk shall fix and certify the cost of elections pursuant to sections 32-1203 to 32-1206. The cost of elections shall be due and payable from each political subdivision within thirty days after the receipt of the statement certifying the cost of the election. All payments received by the election commissioner or county clerk from each political subdivision for

the cost of elections shall be placed in the county general fund and shall be used to help defray the cost of elections.

Source: Laws 1994, LB 76, § 372.

32-1208 Election equipment and materials; availability; costs.

The election commissioner or county clerk shall provide polling booths, ballot boxes, secrecy sleeves, and other ballot supply kits to political subdivisions upon request. The cost of such equipment and materials shall be amortized over a period of ten to twenty years and shall be chargeable to the political subdivision under section 32-1202.

Source: Laws 1994, LB 76, § 373; Laws 1997, LB 764, § 105.

ARTICLE 13

RECALL

Section
32-1301. Recall; filing clerk, defined.
32-1302. Officials subject to recall.
32-1303. Recall petition; signers and circulators; requirements; notification.
32-1304. Petition papers; requirements.
32-1305. Petition papers; filing; signature verification; procedure.
32-1306. Filing clerk; notification required; recall election; when held; failure to order; effect.
32-1307. Recall election; ballot.
32-1308. Recall election; results; effect; vacancies; how filled.
32-1309. Recall petition prohibited; when.

32-1301 Recall; filing clerk, defined.

For purposes of sections 32-1301 to 32-1309, filing clerk shall mean the election commissioner or county clerk for recall of elected officers of cities, villages, counties, irrigation districts, natural resources districts, public power districts, school districts, community college areas, educational service units, hospital districts, and metropolitan utilities districts.

Source: Laws 1994, LB 76, § 374; Laws 2003, LB 444, § 9.

32-1302 Officials subject to recall.

(1) Except for trustees of sanitary and improvement districts, any elected official of a political subdivision and any elected member of the governing bodies of cities, villages, counties, irrigation districts, natural resources districts, public power districts, school districts, community college areas, educational service units, hospital districts, and metropolitan utilities districts may be removed from office by recall pursuant to sections 32-1301 to 32-1309. A trustee of a sanitary and improvement district may be removed from office by recall pursuant to sections 31-786 to 31-793.

(2) If due to reapportionment the boundaries of the area served by the official or body change, the recall procedure and special election provisions of sections 32-1301 to 32-1309 shall apply to the registered voters within the boundaries of the new area.

(3) The recall procedure and special election provisions of such sections shall apply to members of the governing bodies listed in subsection (1) of this section, other than sanitary and improvement districts, who are elected by

precinct, district, or subdistrict of the political subdivision. Only registered voters of such member's precinct, district, or subdistrict may sign a recall petition or vote at the recall election. The recall election shall be held within the member's precinct, district, or subdistrict. When an elected member is nominated by precinct, district, or subdistrict in the primary election and elected at large in the general election, the recall provisions shall apply to the registered voters at the general election.

(4) The recall procedure and special election provisions shall apply to the mayor and members of the city council of municipalities with a home rule charter notwithstanding any contrary provisions of the home rule charter.

Source: Laws 1994, LB 76, § 375; Laws 1997, LB 874, § 12.

32-1303 Recall petition; signers and circulators; requirements; notification.

(1) A petition demanding that the question of removing an elected official or member of a governing body listed in section 32-1302 be submitted to the registered voters shall be signed by registered voters equal in number to at least thirty-five percent of the total vote cast for that office in the last general election, except that (a) for an office for which more than one candidate is chosen, the petition shall be signed by registered voters equal in number to at least thirty-five percent of the number of votes cast for the person receiving the most votes for such office in the last general election, (b) for a member of a board of a Class I school district, the petition shall be signed by registered voters of the school district equal in number to at least twenty-five percent of the total number of registered voters residing in the district on the date that the recall petitions are first checked out from the filing clerk by the principal circulator, and (c) for a member of a governing body of a village, the petition shall be signed by registered voters equal in number to at least forty-five percent of the total vote cast for the person receiving the most votes for that office in the last general election. The signatures shall be affixed to petition papers and shall be considered part of the petition.

(2) Petition circulators shall conform to the requirements of sections 32-629 and 32-630.

(3) The petition papers shall be procured from the filing clerk. Prior to the issuance of such petition papers, an affidavit shall be signed and filed with the filing clerk by at least one registered voter. Such voter or voters shall be deemed to be the principal circulator or circulators of the recall petition. The affidavit shall state the name and office of the official sought to be removed, shall include in typewritten form in concise language of sixty words or less the reason or reasons for which recall is sought, and shall request that the filing clerk issue initial petition papers to the principal circulator for circulation. The filing clerk shall notify the official sought to be removed by any method specified in section 25-505.01 or, if notification cannot be made with reasonable diligence by any of the methods specified in section 25-505.01, by leaving a copy of the affidavit at the official's usual place of residence and mailing a copy by first-class mail to the official's last-known address. If the official chooses, he or she may submit a defense statement in typewritten form in concise language of sixty words or less for inclusion on the petition. Any such defense statement shall be submitted to the filing clerk within twenty days after the official receives the copy of the affidavit. The filing clerk shall notify the principal

circulator or circulators that the necessary signatures must be gathered within thirty days from the date of issuing the petitions.

(4) The filing clerk, upon issuing the initial petition papers or any subsequent petition papers, shall enter in a record, to be kept in his or her office, the name of the principal circulator or circulators to whom the papers were issued, the date of issuance, and the number of papers issued. The filing clerk shall certify on the papers the name of the principal circulator or circulators to whom the papers were issued and the date they were issued. No petition paper shall be accepted as part of the petition unless it bears such certificate. The principal circulator or circulators who check out petitions from the filing clerk may distribute such petitions to persons who may act as circulators of such petitions.

(5) Petition signers shall conform to the requirements of sections 32-629 and 32-630. Each signer of a recall petition shall be a registered voter and qualified by his or her place of residence to vote for the office in question.

Source: Laws 1994, LB 76, § 376; Laws 1997, LB 764, § 106; Laws 2002, LB 1054, § 25; Laws 2003, LB 444, § 10; Laws 2004, LB 820, § 1; Laws 2008, LB39, § 4.
Effective date July 18, 2008.

32-1304 Petition papers; requirements.

(1) The Secretary of State shall design the uniform petition papers to be distributed by all filing clerks and shall keep a sufficient number of such blank petition papers on file for distribution to any filing clerk requesting recall petitions. The petition papers shall as nearly as possible conform to the requirements of section 32-628.

(2) In addition to the requirements specified in section 32-628, for the purpose of preventing fraud, deception, and misrepresentation, every sheet of each petition paper presented to a registered voter for his or her signature shall have upon it, above the lines for signatures, (a) a statement that the signatories must be registered voters qualified by residence to vote for the office in question and support the holding of a recall election and (b) in letters not smaller than sixteen-point type in red print (i) the name and office of the individual sought to be recalled, (ii) the reason or reasons for which recall is sought, (iii) the defense statement, if any, submitted by the official, and (iv) the name of the principal circulator or circulators of the recall petition. The decision of a county attorney to prosecute or not to prosecute any individual shall not be stated on a petition as a reason for recall.

(3) Every sheet of each petition paper presented to a registered voter for his or her signature shall have upon it, below the lines for signatures, an affidavit as required in subsection (3) of section 32-628 which also includes language substantially as follows: ''and that the affiant stated to each signer, before the signer affixed his or her signature to the petition, the following: (a) The name and office of the individual sought to be recalled, (b) the reason or reasons for which recall is sought as printed on the petition, (c) the defense statement, if any, submitted by the official as printed on the petition, and (d) the name of the principal circulator or circulators of the recall petition.''

(4) Each petition paper shall contain a statement entitled Instructions to Petition Circulators prepared by the Secretary of State to assist circulators in understanding the provisions governing the petition process established by

sections 32-1301 to 32-1309. The instructions shall include the following statements:

(a) No one circulating this petition paper in an attempt to gather signatures shall sign the circulator's affidavit unless each person who signed the petition paper did so in the presence of the circulator.

(b) No one circulating this petition paper in an attempt to gather signatures shall allow a person to sign the petition until the circulator has stated to the person (i) the object of the petition as printed on the petition, (ii) the name and office of the individual sought to be recalled, (iii) the reason or reasons for which recall is sought as printed on the petition, (iv) the defense statement, if any, submitted by the official as printed on the petition, and (v) the name of the principal circulator or circulators of the recall petition.

Source: Laws 1994, LB 76, § 377; Laws 2002, LB 1054, § 26; Laws 2003, LB 444, § 11.

32-1305 Petition papers; filing; signature verification; procedure.

(1) The principal circulator or circulators shall file, as one instrument, all petition papers comprising a recall petition for signature verification with the filing clerk within thirty days after the filing clerk issues the initial petition papers to the principal circulator or circulators as provided in section 32-1303.

(2) If the filing clerk is the subject of a recall petition, the signature verification process shall be conducted by two election commissioners or county clerks appointed by the Secretary of State. Mileage and expenses incurred by officials appointed pursuant to this subsection shall be reimbursed by the political subdivision involved in the recall.

(3) Within fifteen days after the filing of the petition, the filing clerk shall ascertain whether or not the petition is signed by the requisite number of registered voters. No new signatures may be added after the initial filing of the petition papers. No signatures may be removed unless the filing clerk receives an affidavit signed by the person requesting his or her signature be removed before the petitions are filed with the filing clerk for signature verification. If the petition is found to be sufficient, the filing clerk shall attach to the petition a certificate showing the result of such examination. If the requisite number of signatures has not been gathered, the filing clerk shall file the petition in his or her office without prejudice to the filing of a new petition for the same purpose.

Source: Laws 1994, LB 76, § 378.

32-1306 Filing clerk; notification required; recall election; when held; failure to order; effect.

(1) If the recall petition is found to be sufficient, the filing clerk shall notify the official whose removal is sought and the governing body of the affected political subdivision that sufficient signatures have been gathered. Notification of the official sought to be removed may be by any method specified in section 25-505.01 or, if notification cannot be made with reasonable diligence by any of the methods specified in section 25-505.01, by leaving such notice at the official's usual place of residence and mailing a copy by first-class mail to the official's last-known address.

(2) The governing body of the political subdivision shall order an election to be held not less than thirty nor more than forty-five days after the notification of the official whose removal is sought under subsection (1) of this section, except that if any other election is to be held in that political subdivision within ninety days after such notification, the governing body of the political subdivision shall provide for the holding of the recall election on the same day. All resignations shall be tendered as provided in section 32-562. If the official whose removal is sought resigns before the recall election is held, the governing body may cancel the recall election if the governing body notifies the election commissioner or county clerk of the cancellation at least sixteen days prior to the election, otherwise the recall election shall be held as scheduled.

(3) If the governing body of the political subdivision fails or refuses to order a recall election within the time required, the election may be ordered by the district court having jurisdiction over a county in which the elected official serves. If a filing clerk is subject to a recall election, the Secretary of State shall conduct the recall election.

Source: Laws 1994, LB 76, § 379; Laws 2004, LB 820, § 2; Laws 2008, LB312, § 4.
Effective date July 18, 2008.

32-1307 Recall election; ballot.

The form of the official ballot at a recall election held pursuant to section 32-1306 shall conform to the requirements of this section. With respect to each person whose removal is sought, the question shall be submitted: Shall (name of person) be removed from the office of (name of office)? Immediately following each such question there shall be printed on the ballot the two responses: Yes and No. Next to each response shall be placed a square or oval in which the registered voters may vote for one of the responses by making a cross or other clear, identifiable mark. The name of the official which shall appear on the ballot shall be the name of the official that appeared on the ballot of the previous general election that included his or her name.

Source: Laws 1994, LB 76, § 380; Laws 2003, LB 358, § 43.

32-1308 Recall election; results; effect; vacancies; how filled.

(1) If a majority of the votes cast at a recall election are against the removal of the official named on the ballot or the election results in a tie, the official shall continue in office for the remainder of his or her term but may be subject to further recall attempts as provided in section 32-1309.

(2) If a majority of the votes cast at a recall election are for the removal of the official named on the ballot, he or she shall, regardless of any technical defects in the recall petition, be deemed removed from office unless a recount is ordered. If the official is deemed removed, the removal shall result in a vacancy in the office which shall be filled as provided in this section and sections 32-567 to 32-570.

(3) If the election results show a margin of votes equal to one percent or less between the removal or retention of the official in question, the Secretary of State, election commissioner, or county clerk shall order a recount of the votes cast unless the official named on the ballot files a written statement with the filing clerk that he or she does not want a recount.

(4) If there are vacancies in the offices of a majority or more of the members of any governing body at one time due to the recall of such members, a special election to fill such vacancies shall be conducted as expeditiously as possible by the Secretary of State, election commissioner, or county clerk.

(5) No official who is removed at a recall election or who resigns after the initiation of the recall process shall be appointed to fill the vacancy resulting from his or her removal or the removal of any other member of the same governing body during the remainder of his or her term of office.

Source: Laws 1994, LB 76, § 381.

32-1309 Recall petition prohibited; when.

No recall petition shall be filed against an elected official within twelve months after a recall election has failed to remove him or her from office or within six months after the beginning of his or her term of office or within six months prior to the incumbent filing deadline for the office.

Source: Laws 1994, LB 76, § 382.

ARTICLE 14

INITIATIVES, REFERENDUMS, AND ADVISORY VOTES

Cross References

Initiative and referendum law for all municipalities, optional, see sections 18-2501 to 18-2538.
Metropolitan-class cities, initiative and referendum elections, see sections 14-210 to 14-212.
Municipalities having commission form of government, see sections 19-432 and 19-433.
Ordinances, effective date, see section 19-3701.

Section

32-1401. Initiative petition; form.
32-1402. Referendum petition; form.
32-1403. Initiative or referendum; petition; title and text required; filing.
32-1404. Initiative and referendum petitions; signers and circulators; requirements.
32-1405. Initiative and referendum petitions; sponsors; filing required; Revisor of Statutes; Secretary of State; duties.
32-1405.01. Initiative and referendum measures; informational pamphlet; contents; distribution.
32-1405.02. Initiative and referendum measures; public hearing; notice.
32-1406. Initiative and referendum petitions; principal circulator; name and address.
32-1407. Initiative petition; filing deadline; issue placed on ballot; when; referendum petition; filing deadline.
32-1408. Initiative and referendum petitions; Secretary of State; refuse filing; when.
32-1409. Initiative and referendum petitions; signature verification; procedure; certification; Secretary of State; duties.
32-1410. Initiative and referendum petitions; ballot title; statement of effect; Attorney General; duties; appeal.
32-1411. Initiative and referendum measures; numbering; placement on ballot.
32-1412. Initiative and referendum measures; refusal of Secretary of State to place on ballot; jurisdiction of district court; parties; appeal.
32-1413. Initiative and referendum measures; publication required; rate.
32-1414. Initiative and referendum measures; counting, canvassing, and return of votes; proclamation by Governor.
32-1415. Initiative or referendum; approved; preservation and printing.
32-1416. Conflicting laws; adoption; which law controls.
32-1417. Constitution of United States; proposed amendment; adoption or rejection; submission to voters for advisory vote.

32-1401 Initiative petition; form.

The form of a petition for initiating any law or any amendment to the Constitution of Nebraska shall comply with the requirements of sections 32-628 and 32-1403 and shall be substantially as follows:

Initiative Petition

The object of this petition is to .... (Print a concise statement in large type of the legal effect of the filing of the petition and the object sought to be secured by submitting the measure to the voters).

To the Honorable ...., Secretary of State for the State of Nebraska:

We, the undersigned residents of the State of Nebraska and the county of ...., respectfully demand that the following proposed law (or amendment to the Constitution of Nebraska as the case may be) shall be referred to the registered voters of the state for their approval or rejection at the general election to be held on the .... day of .... 20...., and each for himself or herself says:

I have personally signed this petition on the date opposite my name;

I am a registered voter of the State of Nebraska and county of .... and am qualified to sign this petition or I will be so registered and qualified on or before the date on which this petition is required to be filed with the Secretary of State; and

My printed name, date of birth, street and number or voting precinct, and city, village, or post office address are correctly written after my signature.

(Here follow numbered lines for signature, printed name, date of birth, date, street and number or voting precinct, and city, village, or post office address.)

Source: Laws 1994, LB 76, § 383; Laws 1997, LB 460, § 5; Laws 2004, LB 813, § 18.

Cross References

Constitutional amendments proposed by Legislature, procedure, see sections 49-201 to 49-211.

32-1402 Referendum petition; form.

The form of a petition for ordering a referendum upon any act or any part of any act passed by the Legislature of the State of Nebraska shall comply with the requirements of sections 32-628 and 32-1403 and shall be substantially as follows:

Referendum Petition

The object of this petition is to .... (Print a concise statement in large type of the legal effect of the filing of the petition and the object sought to be secured by submitting the measure to the voters).

To the Honorable ...., Secretary of State for the State of Nebraska:

We, the undersigned residents of the State of Nebraska and the county of ...., respectfully order that Legislative Bill No. .... entitled .... (title of act and, if the petition is against less than the whole act, then set forth here the part or parts on which the referendum is sought), passed by the .... Legislature of the State of Nebraska at its .... Session, shall be referred to the registered voters of the state for retention or repeal at the general election to be held on the .... day of .... 20...., and each for himself or herself says:

I have personally signed this petition on the date opposite my name;

I am a registered voter of the State of Nebraska and county of .... and am qualified to sign this petition or I will be so registered and qualified on or before the date on which this petition is required to be filed with the Secretary of State; and

My printed name, date of birth, street and number or voting precinct, and city, village, or post office address are correctly written after my signature.

(Here follow numbered lines for signature, printed name, date, date of birth, street and number or voting precinct, and city, village, or post office address.)

Source: Laws 1994, LB 76, § 384; Laws 1997, LB 460, § 6; Laws 2004, LB 813, § 19.

Statutory form for referendum petition is furnished by this section. Klosterman v. Marsh, 180 Neb. 506, 143 N.W.2d 744 (1966).

Referendum petition need not have a copy of the measure attached to it until offered for filing, at which time it shall be sufficient if the referendum petition, taken as a whole, which includes all of the various sheets, has a full and correct copy of the measure attached to it. State ex rel. Ayres v. Amsberry, 104 Neb. 273, 177 N.W. 179 (1920), judgment vacated in 104 Neb. 279, 178 N.W. 822 (1920).

This act is constitutional. Barkley v. Pool, 103 Neb. 629, 173 N.W. 600 (1919); Barkley v. Pool, 102 Neb. 799, 169 N.W. 730 (1918).

A referendum petition does not need to contain any part of the act unless the referendum is sought against only a part of the act, and a petition seeking a referendum against an entire act is valid even though the petition contains a copy of the act from which a word has been omitted. Bartling v. Wait, 96 Neb. 532, 148 N.W. 507 (1914).

32-1403 Initiative or referendum; petition; title and text required; filing.

A full and correct copy of the title and text of the law or amendment to the Constitution of Nebraska to be proposed by an initiative petition or the measure sought to be referred to the registered voters by a referendum petition shall be printed upon each sheet of the petition which contains signatures. The petition may be filed with the Secretary of State in numbered sections for convenience in handling.

Source: Laws 1994, LB 76, § 385.

32-1404 Initiative and referendum petitions; signers and circulators; requirements.

A signer of an initiative and referendum petition shall be a registered voter of the State of Nebraska on or before the date on which the petition is required to be filed with the Secretary of State and shall meet the requirements of section 32-630. A person who circulates initiative and referendum petitions shall comply with the requirements of section 32-629 and subsection (2) of section 32-630 and with the prohibitions contained in subdivisions (3)(a), (d), (f), and (g) of section 32-630.

Source: Laws 1994, LB 76, § 386; Laws 1995, LB 337, § 4; Laws 1997, LB 460, § 7; Laws 2003, LB 444, § 12; Laws 2008, LB39, § 5. Effective date July 18, 2008.

32-1405 Initiative and referendum petitions; sponsors; filing required; Revisor of Statutes; Secretary of State; duties.

(1) Prior to obtaining any signatures on an initiative or referendum petition, a statement of the object of the petition and the text of the measure shall be filed with the Secretary of State together with a sworn statement containing the names and street addresses of every person, corporation, or association sponsoring the petition.

(2) Upon receipt of the filing, the Secretary of State shall transmit the text of the proposed measure to the Revisor of Statutes. The Revisor of Statutes shall review the proposed measure and suggest changes as to form and draftsmanship. The revisor shall complete the review within ten days after receipt from the Secretary of State. The Secretary of State shall provide the results of the review and suggested changes to the sponsor but shall otherwise keep them confidential for five days after receipt by the sponsor. The Secretary of State shall then maintain the opinion as public information and as a part of the official record of the initiative. The suggested changes may be accepted or rejected by the sponsor.

(3) The Secretary of State shall prepare five camera-ready copies of the petition from the information filed by the sponsor and any changes accepted by the sponsor and shall provide the copies to the sponsor within five days after receipt of the review required in subsection (2) of this section. The sponsor shall print the petitions to be circulated from the forms provided.

(4) The changes made to this section by Laws 1995, LB 337 shall apply to initiative and referendum petitions filed on or after September 9, 1995.

Source: Laws 1994, LB 76, § 387; Laws 1995, LB 337, § 5.

Petition was legally insufficient when it omitted a sworn statement of the sponsors and their street addresses. Loontjer v. Robinson, 266 Neb. 902, 670 N.W.2d 301 (2003).

Substantial compliance in filing the itemized verified statement of contributions and expenditures is all that is required. State ex rel. Morris v. Marsh, 183 Neb. 521, 162 N.W.2d 262 (1968).

Referendum petition against legislative act may be circulated as soon as act is passed. Klosterman v. Marsh, 180 Neb. 506, 143 N.W.2d 744 (1966).

The 1939 amendment to this section, which requires that a copy of the form of the petition together with a list of the known sponsors and those contributing funds be filed before the petition is circulated, is valid and mandatory, and the Secretary of State may refuse to file a petition where there has not been compliance with these requirements of this section. State ex rel. Winter v. Swanson, 138 Neb. 597, 294 N.W. 200 (1940).

This section, prior to the 1919 amendment, did not apply to a referendum petition and such a petition is sufficient if, at the time it is offered for filing, taking all of the sheets together as a whole, it has a full and correct copy of the measure attached to it. State ex rel. Ayres v. Amsberry, 104 Neb. 273, 177 N.W. 179 (1920), judgment vacated in 104 Neb. 279, 178 N.W. 822 (1920).

This section and section 32-705 provide generally for the duties of circulators of initiative and referendum petitions. Barkley v. Pool, 103 Neb. 629, 173 N.W. 600 (1919).

Under former law this section did not apply to referendum petitions. Bartling v. Wait, 96 Neb. 532, 148 N.W. 507 (1914).

Initiative procedure did not constitute adequate remedy to correct existing inequalities in apportionment of legislative districts. League of Nebraska Municipalities v. Marsh, 209 F.Supp. 189 (D. Neb. 1962).

32-1405.01 Initiative and referendum measures; informational pamphlet; contents; distribution.

(1) The Secretary of State shall develop and print one informational pamphlet on all initiative and referendum measures to be placed on the ballot. The pamphlet shall include the measure number, the ballot title and text, and the full text of each initiated or referred measure and arguments both for and against each measure.

(2) The Secretary of State shall write the arguments for and against each measure, and each set of arguments shall consist of no more than two hundred fifty words. Information for the arguments may be provided by the sponsors of the measure, opponents to the measure, and other sources.

(3) The Secretary of State shall distribute the pamphlets to election commissioners and county clerks at least six weeks prior to the election. The election commissioners and county clerks shall immediately make the pamphlets available in their offices and in at least three other public locations that will facilitate distribution to the public.

Source: Laws 1995, LB 337, § 7.

32-1405.02 Initiative and referendum measures; public hearing; notice.

After the Secretary of State certifies the initiative and referendum measures for the ballot under subsection (3) of section 32-1411, the Secretary of State shall hold one public hearing in each congressional district for the purpose of allowing public comment on the measures. Notice of each hearing shall be published once in such newspapers as are necessary to provide for general circulation within the congressional district in which the meeting will be held not less than five days prior to the hearing. The hearings shall be held not more than eight weeks prior to the election.

Source: Laws 1995, LB 337, § 8.

32-1406 Initiative and referendum petitions; principal circulator; name and address.

The election commissioner or county clerk shall provide the name and address of the principal circulator of an initiative or referendum petition upon request. The principal circulator shall inform the election commissioner or county clerk of the name and address to be provided.

Source: Laws 1994, LB 76, § 388.

32-1407 Initiative petition; filing deadline; issue placed on ballot; when; referendum petition; filing deadline.

(1) Initiative petitions shall be filed in the office of the Secretary of State at least four months prior to the general election at which the proposal would be submitted to the voters.

(2) When a copy of the form of any initiative petition is filed with the Secretary of State prior to obtaining signatures, the issue presented by such petition shall be placed before the voters at the next general election occurring at least four months after the date that such copy is filed if the signed petitions are found to be valid and sufficient. All signed initiative petitions shall become invalid on the date of the first general election occurring at least four months after the date on which the copy of the form is filed with the Secretary of State.

(3) Petitions invoking a referendum shall be filed in the office of the Secretary of State within ninety days after the Legislature at which the act sought to be referred was passed has adjourned sine die or has adjourned for more than ninety days.

Source: Laws 1994, LB 76, § 389.

Pursuant to subsection (1) of this section, county officials must determine whether each signer was registered as a voter on or before the date on which the petition was required to be filed with the Secretary of State. State ex rel. Bellino v. Moore, 254 Neb. 385, 576 N.W.2d 793 (1998).

This section does not invalidate initiative petitions if the time required for a judicial determination of the validity of the initiative effort extends to a date beyond that of the next ensuing general election; in such event, the election is to be held as early after the judgment of the court as it can be. State ex rel. Labedz v. Beermann, 229 Neb. 657, 428 N.W.2d 608 (1988).

32-1408 Initiative and referendum petitions; Secretary of State; refuse filing; when.

The Secretary of State shall not accept for filing any initiative or referendum petition which interferes with the legislative prerogative contained in the Constitution of Nebraska that the necessary revenue of the state and its governmental subdivisions shall be raised by taxation in the manner as the Legislature may direct.

Source: Laws 1994, LB 76, § 390.

32-1409 Initiative and referendum petitions; signature verification; procedure; certification; Secretary of State; duties.

(1) Upon the receipt of the petitions, the Secretary of State, with the aid and assistance of the election commissioner or county clerk, shall determine the validity and sufficiency of signatures on the pages of the filed petition. The Secretary of State shall deliver the various pages of the filed 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 pages of the petition, the election commissioner or county clerk shall issue to the Secretary of State a written receipt that the pages of the petition are in the custody of the election commissioner or county clerk. The election commissioner or county clerk shall determine if each signer was a registered voter on or before the date on which the petition was required to be filed with the Secretary of State. The election commissioner or county clerk shall compare the signer's signature, printed name, date of birth, street name 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 determination of the election commissioner or county clerk may be rebutted by any credible evidence which the election commissioner or county clerk 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 such petition, the sufficiency of such petition, and the qualifications of the signer, shall be to prevent fraud, deception, and misrepresentation in the petition process.

(2) Upon completion of the determination of registration, 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 petition 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 any page or pages of 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 deliver all pages of the petition and the certifications to the Secretary of State within forty days after the receipt of such pages from the Secretary of State. The delivery shall be by hand carrier, by use of law enforcement officials, or by certified mail, return receipt requested. The Secretary of State may grant to the election commissioner or county clerk an additional ten days to return all pages of the petition in extraordinary circumstances.

(3) Upon receipt of the pages of the petition, the Secretary of State shall issue a written receipt indicating the number of pages of the petition that are in his or her custody. When all the petitions and certifications have been received by the Secretary of State, he or she shall strike from the pages of the petition all but the earliest dated signature of any duplicate signatures and such stricken signatures shall not be added to the total number of valid signatures. Not more than twenty signatures on one sheet shall be counted. All signatures secured in a manner contrary to sections 32-1401 to 32-1416 shall not be counted. Clerical

and technical errors in a petition shall be disregarded if the forms prescribed in sections 32-1401 to 32-1403 are substantially followed. The Secretary of State shall total the valid signatures and determine if constitutional and statutory requirements have been met. The Secretary of State shall immediately serve a copy of such determination by certified or registered mail upon the person filing the initiative or referendum petition. If the petition is found to be valid and sufficient, the Secretary of State shall proceed to place the measure on the general election ballot.

(4) The Secretary of State may adopt and promulgate rules and regulations for the issuance of all necessary forms and procedural instructions to carry out this section.

Source: Laws 1994, LB 76, § 391; Laws 1995, LB 337, § 6; Laws 1997, LB 460, § 8; Laws 2007, LB311, § 1.

Subsection (1) of this section is unconstitutional because it requires an ''exact match'' of information and does not on its face provide for the Secretary of State to allow county officials to make exceptions to the matching requirement. State ex rel. Stenberg v. Moore, 258 Neb. 199, 602 N.W.2d 465 (1999).

Pursuant to subsection (1) of this section, upon receipt of initiative petitions, the Secretary of State delivers them to the election commissioners and clerks of each county for verification of each signature. When performing the verification procedures, county officials are required to compare the signer's printed name; street address or voting precinct; city, village, or post office address; and signature with voter registration records to determine if the signer is a registered voter. The signature is presumed to be valid only if all of these items match. Pursuant to subsection (1) of this section, county officials must determine whether each signer was registered as a voter on or before the date on which the petition was required to be filed with the Secretary of State. Pursuant to subsection (1) of this section, the findings of county officials as to the validity or invalidity of petition signatures may be rebutted by any credible evidence that the Secretary of State finds sufficient. Pursuant to subsection (1) of this section, a party cannot challenge the constitutionality of this section in the same action in which it attempts to rely upon the same section. Pursuant to subsection (1) of this section, a finding by county officials of the invalidity of individual signatures cannot be rebutted by the use of random statistical sampling. Pursuant to subsection (2) of this section, county officials are required to certify their verification of petition signatures to the Secretary of State within 40 days after their receipt of the petitions. Pursuant to subsection (3) of this section, the Secretary of State is required to determine the total number of valid signatures and determine whether the constitutional and statutory requirements have been met. The Secretary of State is required to notify the person filing the initiative petition of the result of the verification process. State ex rel. Bellino v. Moore, 254 Neb. 385, 576 N.W.2d 793 (1998).

Pursuant to subsection (3) of this section (formerly subsection (5) of section 32-705), the Secretary of State will approve a proposed petition if the statutorily prescribed forms are substantially complied with. Duggan v. Beermann, 249 Neb. 411, 544 N.W.2d 68 (1996).

32-1410 Initiative and referendum petitions; ballot title; statement of effect; Attorney General; duties; appeal.

(1) When an initiative petition is filed with the Secretary of State to propose a measure to the registered voters of the state, the Secretary of State shall transmit a copy of the measure to the Attorney General. Within ten days after receiving the copy, the Attorney General shall provide and return to the Secretary of State a ballot title for such measure. The ballot title shall express the purpose of the measure in not exceeding one hundred words and shall not resemble, so far as to be likely to create confusion, any title previously filed for any measure to be submitted at that election. The Attorney General also shall prepare a statement to be printed in italics immediately preceding the ballot title on the official ballot. Such statement shall in clear and concise language explain the effect of a vote for and against the measure in such language that the statement will not be intentionally an argument or likely to create prejudice, either for or against the measure. The ballot title shall be so worded that those in favor of adopting the measure shall vote For and those opposing the adoption of the measure shall vote Against.

(2) When a referendum petition is filed with the Secretary of State to refer a measure to the registered voters of the state, the Secretary of State shall transmit a copy of the measure to the Attorney General. Within ten days after receiving the copy, the Attorney General shall provide and return to the Secretary of State a ballot title for such measure. The ballot title may be distinct

from the legislative title of the measure, shall express the purpose of the measure in not exceeding one hundred words, and shall not resemble, so far as to be likely to create confusion, any title previously filed for any measure to be submitted at that election. The Attorney General also shall prepare a statement to be printed in italics immediately preceding the ballot title on the official ballot. Such statement shall in clear and concise language explain the effect of a vote to retain and a vote to repeal the measure in such language that the statement will not be intentionally an argument or likely to create prejudice, either for retention or for repeal of the measure. The ballot title shall be so worded that those in favor of retaining the measure shall vote Retain and those opposing the measure shall vote Repeal.

(3) Any person who is dissatisfied with the ballot title provided by the Attorney General for any measure may appeal from his or her decision to the district court as provided in section 32-1412. The person shall file a petition asking for a different title and setting forth the reasons why the title prepared by the Attorney General is insufficient or unfair. No appeal shall be allowed from the decision of the Attorney General on a ballot title unless the appeal is taken within ten days after the decision is filed. A copy of every such decision shall be served by the Secretary of State or the clerk of the district court upon the person offering or filing such initiative or referendum petition or appeal. Service of such decision may be by mail or electronic transmission and shall be made forthwith. The district court shall thereupon examine the measure, hear arguments, and in its decision thereon certify to the Secretary of State a ballot title for the measure in accord with the intent of this section by September 1 prior to the statewide general election.

(4) The appeal procedures described in the Administrative Procedure Act shall not apply to this section.

Source: Laws 1994, LB 76, § 392.

Cross References

Administrative Procedure Act, see section 84-920.

32-1411 Initiative and referendum measures; numbering; placement on ballot.

(1) The Secretary of State shall number the measures proposed by initiative or referendum to be voted upon at the next general election. Beginning with the 1986 general election, the first measure shall be numbered 400 and the succeeding measures shall be numbered consecutively 401, 402, 403, 404, 405, and so on.

(2) When any initiative or referendum petition is regularly and legally filed with the Secretary of State, he or she shall, at the next general election, cause to be printed on an official ballot in a nonpartisan manner the ballot title and number of the measure. The ballot titles shall be printed on the official ballot in a random order as determined by the Secretary of State. The statement prepared by the Attorney General shall be printed in italics immediately preceding the ballot title on the official ballot. Measures proposed by initiative petition shall be designated and distinguished on the ballot by the heading Proposed by Initiative Petition. Measures referred by petition shall be designated Referendum ordered by Petition of the People. All initiative and referendum measures shall be submitted in a nonpartisan manner without any indication or

suggestion on the ballot that they have been approved or endorsed by any political party or organization.

(3) At the time the Secretary of State furnishes to the election commissioners or county clerks certified copies of the names of the candidates for state and other offices, the Secretary of State shall furnish to each election commissioner or county clerk a certified copy of the ballot titles and numbers of the measures proposed by initiative or referendum to be voted upon at the next general election. The election commissioner or county clerk shall print such ballot titles and numbers upon the official ballot in the order presented by the Secretary of State and the relative position required by this section.

Source: Laws 1994, LB 76, § 393; Laws 1997, LB 460, § 9.

32-1412 Initiative and referendum measures; refusal of Secretary of State to place on ballot; jurisdiction of district court; parties; appeal.

(1) If the Secretary of State refuses to place on the ballot any measure proposed by an initiative petition presented at least four months preceding the date of the election at which the proposed law or constitutional amendment is to be voted upon or a referendum petition presented within ninety days after the Legislature enacting the law to which the petition applies adjourns sine die or for a period longer than ninety days, any resident may apply, within ten days after such refusal, to the district court of Lancaster County for a writ of mandamus. If it is decided by the court that such petition is legally sufficient, the Secretary of State shall order the issue placed upon the ballot at the next general election.

(2) On a showing that an initiative or referendum petition is not legally sufficient, the court, on the application of any resident, may enjoin the Secretary of State and all other officers from certifying or printing on the official ballot for the next general election the ballot title and number of such measure. If a suit is filed against the Secretary of State seeking to enjoin him or her from placing the measure on the official ballot, the person who is the sponsor of record of the petition shall be a necessary party defendant in such suit.

(3) Such suits shall be advanced on the court docket and heard and decided by the court as quickly as possible. Either party may appeal to the Court of Appeals within ten days after a decision is rendered. The appeal procedures described in the Administrative Procedure Act shall not apply to this section.

(4) The district court of Lancaster County shall have jurisdiction over all litigation arising under sections 32-1401 to 32-1416.

Source: Laws 1994, LB 76, § 394.

Cross References

Administrative Procedure Act, see section 84-920.

Subsection (2) of this section allows a court to consider whether an initiative petition is legally sufficient and questions dealing with statutory provisions concerning the form of a petition and the technical requirements of the sponsors affect the legal sufficiency of an initiative. Loontjer v. Robinson, 266 Neb. 902, 670 N.W.2d 301 (2003).

A prayer for injunctive relief under this section can be properly joined with a prayer for declaratory relief. Duggan v. Beermann, 249 Neb. 411, 544 N.W.2d 68 (1996).

The ten-day time limit imposed by this section within which to seek a writ of mandamus against the Secretary of State's sufficiency determination of an initiative petition violates neither the first nor fourteenth amendments to the U.S. Constitution. State ex rel. Labedz v. Beermann, 229 Neb. 657, 428 N.W.2d 608 (1988).

Under the provisions of this section, Nebraska citizens have ten days from the day the Secretary of State formally files an order refusing to place an initiative on the ballot to bring an action for a writ of mandamus in the district court for Lancaster County. State ex rel. Labedz v. Beermann, 229 Neb. 657, 428 N.W.2d 608 (1988).

This section governs the time for taking an appeal in cases arising under the Initiative and Referendum Act, and, unless a transcript is filed in the Supreme Court within the time pre-

scribed by this section, the Supreme Court cannot obtain jurisdiction of such cases on appeal. State ex rel. Ayres v. Amsberry, 104 Neb. 279, 178 N.W. 822 (1920), vacating former judgment in 104 Neb. 273, 177 N.W. 179 (1920).

The provisions of this act authorizing injunction suits are valid, and the remedies provided for by this section are available to and may be invoked by any citizen. Barkley v. Pool, 103 Neb. 629, 173 N.W. 600 (1919); Barkley v. Pool, 102 Neb. 799, 169 N.W. 730 (1918).

32-1413 Initiative and referendum measures; publication required; rate.

Immediately preceding any general election at which any initiative or referendum measure is to be submitted to the registered voters, the Secretary of State shall cause to be published in all legal newspapers in the state once each week for three consecutive weeks a true copy of the ballot title and text and the number of each measure to be submitted in the form in which the measure will be printed on the official ballot. The publication shall be at a rate charged as provided in section 33-141.

Source: Laws 1994, LB 76, § 395.

This section is not applicable to amendments to the Constitution proposed by the Legislature. State ex rel. Hall v. Cline, 118 Neb. 150, 224 N.W. 6 (1929).

32-1414 Initiative and referendum measures; counting, canvassing, and return of votes; proclamation by Governor.

The votes on initiative and referendum measures shall be counted, canvassed, and returned in the same manner as votes for candidates are counted, canvassed, and returned, and the abstract of votes made by the election commissioners or county clerks shall be returned on abstract sheets in the manner provided by section 32-1034 for abstracts of votes for state and county officers. The board of state canvassers shall canvass the votes upon each initiative or referendum measure in the same manner as is prescribed in the case of presidential electors. The Governor shall, within ten days of the completion of the canvass, issue his or her proclamation giving the whole number of votes cast in the state approving and rejecting each measure and declaring such measures as are approved by the constitutional number or majority of those voting to be in full force and effect as the law of the State of Nebraska from the date of such proclamation. If two or more measures are approved at such election which are known to conflict with each other or to contain conflicting provisions, the Governor shall also proclaim which is paramount in accordance with section 32-1416.

Source: Laws 1994, LB 76, § 396.

32-1415 Initiative or referendum; approved; preservation and printing.

If an initiative or referendum is approved by the voters at the general election, the copies of the initiative or referendum petition filed with the Secretary of State and a certified copy of the Governor's proclamation declaring the measure approved by the people shall be identified and preserved. The Secretary of State shall cause every measure approved by the people to be printed with the general laws enacted by the next session of the Legislature with the date of the Governor's proclamation declaring the same to have been approved by the people.

Source: Laws 1994, LB 76, § 397.

32-1416 Conflicting laws; adoption; which law controls.

If two or more conflicting laws are approved by the registered voters at the same election, the law receiving the greatest number of affirmative votes shall be paramount in all particulars as to which there is a conflict even though such law may not have received the greater majority of affirmative votes. If two or more conflicting amendments to the Constitution of Nebraska are approved by the registered voters at the same election, the amendment which receives the greatest number of affirmative votes shall be paramount in all particulars as to which there is conflict even though such amendment may not have received the greater majority of affirmative votes.

Source: Laws 1994, LB 76, § 398.

32-1417 Constitution of United States; proposed amendment; adoption or rejection; submission to voters for advisory vote.

(1) If a proposed amendment to the Constitution of the United States is duly submitted to the Legislature of the State of Nebraska as provided in Article V of the Constitution of the United States, a petition may be filed with the Secretary of State requesting that such proposed amendment be submitted to a vote of the people for an advisory opinion as to whether the proposed amendment to the Constitution of the United States shall be adopted or rejected. The petition shall set forth at length the proposed amendment and shall be signed by a number of registered voters of the state equal to ten percent of the votes cast at the immediately preceding presidential election. The registered voters signing the petition shall be so distributed as to include two percent of the registered voters of each of three-fifths of the counties of the state. When the petition is filed with the Secretary of State, he or she shall submit the proposed amendment to the registered voters of the state at the first general election held at least four months after such petition has been filed.

(2) The procedure for placing the proposed amendment on the ballot shall be the same as for placing initiated measures on the ballot under the Constitution and laws of Nebraska so far as is applicable. The ballot title on each such question submitted shall be designated as follows: Advisory Vote on Amendment to Constitution of United States Ordered by Petition of the People. The question shall be submitted in substantially the following form:

Is it desirable that the Legislature ratify the following proposed amendment to the Constitution of the United States:

(Setting out proposed amendment)

For ratification

Against ratification

(3) The result of the vote cast on a question submitted under this section shall be regarded as advisory to the Legislature of the opinion of the people concerning such proposed amendment to the Constitution of the United States but shall not be binding upon the Legislature or any member thereof or be considered as controlling in any action taken either to ratify or not to ratify such amendment.

Source: Laws 1994, LB 76, § 399.

ARTICLE 15
VIOLATIONS AND PENALTIES

Cross References

Election officials:

Failure to serve, see sections 32-228 and 32-236.
Service, penalized by employer, see section 32-241.
Indictment or information, requirements of, see section 29-1510.
Petitions, violations, see section 32-628.

Section
32-1501. Interference or refusal to comply with Secretary of State; penalty.
32-1502. Election falsification; penalty.
32-1503. Registration of voters; prohibited acts; penalty.
32-1504. Deputy registrar; neglect of duties; penalty.
32-1505. Deputy registrar; liquor violations; penalty.
32-1506. Election records; prohibited acts; penalty.
32-1507. False swearing; political party affiliation; penalty.
32-1508. Willful or corrupt false swearing; registration of voters; penalty.
32-1509. Repealed. Laws 1997, LB 764, § 113.
32-1510. Interference with voter registration; penalty.
32-1511. Interference with deputy registrar; penalty.
32-1512. Voter registration; irregularities or defects; not a defense; when.
32-1513. Candidate filing form; nominating petitions; prohibited acts; penalty.
32-1514. Candidate filing form; forgery; penalty.
32-1515. Candidate filing form; wrongful failure to file; penalty.
32-1516. Candidate filing form; initials or signatures on ballot; prohibited acts; penalty.
32-1517. Election officials; employers; prohibited acts; penalties.
32-1518. Election officials; other violations of Election Act; penalty.
32-1519. Judge or clerk of election; prohibited acts; penalty.
32-1520. Ballot with unlawful printing; prohibited acts; penalty.
32-1521. Persons authorized to print and distribute ballots; violation; penalty.
32-1522. Ballots and other election documents; prohibited acts; penalties.
32-1523. Obstruction of polling place or building; penalty.
32-1524. Electioneering; prohibited acts; penalty.
32-1525. Polling and interviews; prohibited acts; penalty.
32-1526. Fraudulent placement of ballot in ballot box; penalty.
32-1527. Voting of ballots; prohibited acts; penalty.
32-1528. Nonresident of school district, village, or precinct; illegal voting; penalty.
32-1529. Nonresident of state; illegal voting; penalty.
32-1530. Ineligible voter; illegal voting; penalty.
32-1531. Nonresident of county; illegal voting; penalty.
32-1532. Aiding and abetting ineligible voter; penalty.
32-1533. Aiding and abetting nonresident of county; penalty.
32-1534. Voting more than once; penalty.
32-1535. Unauthorized removal of ballots; penalty.
32-1536. Bribery; prohibited acts; penalty.
32-1537. Employer; prohibited acts; penalty.
32-1538. Fraudulent assistance of illiterate voter; penalty.
32-1539. Ballot for early voting; prohibited acts; penalty.
32-1540. Fraudulent placement of ballot into ballot box; penalty.
32-1541. List of voters book; prohibited acts; penalty.
32-1542. Election records and returns; prohibited acts; penalty.
32-1543. Unlawful destruction or possession of ballot or ballot box; penalty.
32-1544. Unlawful destruction of election material; prohibited acts; penalty.
32-1545. Election results or returns; prohibited acts; penalty.
32-1546. Petition signers and circulators; prohibited acts; penalties.
32-1547. Member of the Legislature or constitutional officer; multiple filing prohibited; penalty.
32-1548. County attorney; prosecute violations; suspension of sentence or judgment; when.
32-1549. Citation in lieu of arrest; Supreme Court; powers; prosecution; procedure; failure to appear; penalty.
32-1550. Arrest; grounds.
32-1551. Special election by mail; prohibited acts; penalty.

32-1501 Interference or refusal to comply with Secretary of State; penalty.

Any person who willfully interferes with or refuses to comply with the requirements of and cooperate with the Secretary of State or his or her designated agent in carrying out the powers and duties prescribed in sections 32-202 and 32-203 shall be guilty of a Class III misdemeanor.

Source: Laws 1994, LB 76, § 400.

32-1502 Election falsification; penalty.

A person shall be guilty of election falsification if, orally or in writing, he or she purposely states a falsehood under oath lawfully administered or in a statement made under penalty of election falsification (1) as to a material matter relating to an election in a proceeding before a court, tribunal, or public official or (2) in a matter in relation to which an oath or statement under penalty of election falsification is authorized by law, including a statement required for verifying or filing a voter registration application or voting early or a statement required by a new or former resident to enable him or her to vote for President or Vice President of the United States. Any person committing election falsification shall be guilty of a Class IV felony.

Source: Laws 1994, LB 76, § 401; Laws 2005, LB 98, § 30; Laws 2005, LB 566, § 55.

32-1503 Registration of voters; prohibited acts; penalty.

Any person who (1) falsely impersonates an elector and registers or attempts or offers to register in the name of such elector, (2) knowingly or fraudulently registers or offers to, attempts to, or makes application to register in or under the name of any other person, in or under any false, assumed, or fictitious name, or in or under any name not his or her own, (3) knowingly or fraudulently registers in two election districts, (4) having registered in one district, fraudulently attempts or offers to register at any other election district in which he or she does not have a lawful right to register, (5) knowingly or willfully does any unlawful act to secure registration for himself or herself or any other person, (6) knowingly, willfully, or fraudulently, by false impersonation or by any unlawful means, causes, procures, or attempts to cause or procure the name of any registered voter in any election precinct to be erased or stricken from any register of the voters of such precinct, (7) by force, threat, menace, intimidation, bribery, reward, offer or promise of reward, or other unlawful means, prevents, hinders, or delays any person having a lawful right to register or to be registered from duly exercising such right, (8) knowingly, willfully, or fraudulently compels, induces, or attempts or offers to compel or induce, by any unlawful means, any deputy registrar to register any person not lawfully entitled to registration in such precinct or to register any false, assumed, or fictitious name or any name of any other person, (9) knowingly, willfully, or fraudulently interferes with, hinders, or delays any deputy registrar in the discharge of his or her duties, (10) counsels, advises, induces, or attempts to induce any deputy registrar to refuse to perform or neglect to comply with his or her duties or to violate any of the provisions of the Election Act, or (11) aids, counsels, procures, or advises any person to do any act forbidden by this

section or to omit to do any act by law directed to be done shall be guilty of a Class IV felony.

Source: Laws 1994, LB 76, § 402.

32-1504 Deputy registrar; neglect of duties; penalty.

Any deputy registrar who is guilty of any willful neglect of his or her duty or of any corrupt or fraudulent conduct or practice in the execution of his or her duty or who willfully neglects or, when called upon, willfully declines to exercise the powers conferred on him or her by sections 32-301 to 32-330 shall be guilty of a Class IV felony.

Source: Laws 1994, LB 76, § 403.

32-1505 Deputy registrar; liquor violations; penalty.

No deputy registrar shall bring, attempt to bring, take, cause to be taken, order, or send into any place of registration or revision of registration any liquor or shall at any such time or place drink or partake of any liquor at such place of registration or revision of registration. A person violating this section shall be guilty of a Class III misdemeanor.

Source: Laws 1994, LB 76, § 404.

32-1506 Election records; prohibited acts; penalty.

Any deputy registrar, judge or clerk of election, or other officer having the custody of records, registers, copies of records or registers, oaths, certificates, or any other paper, document, or evidence of any description by law directed to be made, filed, or preserved who steals, willfully destroys, mutilates, defaces, falsifies, or fraudulently removes such paper, document, or evidence or any part thereof, who fraudulently makes an entry, erasure, or alteration in such paper, document, or evidence except as allowed and directed by the Election Act, who permits any other person to commit any violation listed in this section, or who advises, procures, or abets the commission of such a violation shall be guilty of a Class III misdemeanor and shall forfeit his or her office. Any other person who violates this section shall be guilty of a Class III misdemeanor.

Source: Laws 1994, LB 76, § 405.

32-1507 False swearing; political party affiliation; penalty.

Any registered voter, candidate, or proposed candidate who swears falsely as to political party affiliation or swears that he or she affiliates with two or more political parties shall be guilty of a Class IV misdemeanor.

Source: Laws 1994, LB 76, § 406.

32-1508 Willful or corrupt false swearing; registration of voters; penalty.

Any person who is guilty of willful or corrupt false swearing in taking an oath prescribed by or upon any examination provided for in sections 32-301 to 32-330 or upon being challenged as unqualified to register to vote shall be guilty of a Class IV felony.

Source: Laws 1994, LB 76, § 407.

32-1509 Repealed. Laws 1997, LB 764, § 113.

32-1510 Interference with voter registration; penalty.

Any person who causes any breach of the peace or uses any disorderly violence or threat of violence which impedes or hinders any registration of voters or revision of voter registration lists or interferes with the lawful proceedings of any deputy registrar shall be guilty of a Class III misdemeanor.

Source: Laws 1994, LB 76, § 409.

32-1511 Interference with deputy registrar; penalty.

Any person who (1) knowingly or willfully obstructs, hinders, assaults, or, by bribery, solicitation, or otherwise, interferes with any deputy registrar in carrying out his or her powers or duties, (2) hinders or prevents the attendance of any deputy registrar at any registration of voters or revision of voter registration lists, or (3) unlawfully molests, interferes with, removes, or ejects from any place of registration or revision of registration any deputy registrar or unlawfully threatens, attempts, or offers to do so shall be guilty of a Class III misdemeanor.

Source: Laws 1994, LB 76, § 410.

32-1512 Voter registration; irregularities or defects; not a defense; when.

Irregularities or defects in the mode of noticing, convening, holding, or conducting any registration or revision of registration authorized by sections 32-301 to 32-330 shall not constitute a defense to a prosecution for a violation of any of the provisions of sections 32-1503 to 32-1511.

Source: Laws 1994, LB 76, § 411.

32-1513 Candidate filing form; nominating petitions; prohibited acts; penalty.

Any person who (1) offers to accept and receive or accepts and receives any money or valuable thing in consideration for his or her filing or agreeing to file or not filing or agreeing not to file a candidate filing form for himself or herself as a candidate for nomination in any primary election, (2) offers to accept or receives any money or any valuable thing in consideration for withdrawing his or her name as a candidate for nomination at a primary election, (3) offers or, with knowledge of the same, permits any person to offer for his or her benefit any bribe to a voter to induce him or her to sign any candidate filing form or accept any such bribe or promise of gain of any kind in the nature of a bribe as a consideration for signing the same whether such bribe or promise of gain in the nature of a bribe is offered or accepted before or after such signing, or (4) signs more petitions for nomination than there are positions to fill in any kind of office shall be guilty of a Class III misdemeanor.

Source: Laws 1994, LB 76, § 412.

32-1514 Candidate filing form; forgery; penalty.

Any person who forges any candidate filing form shall be guilty of a Class III felony.

Source: Laws 1994, LB 76, § 413.

32-1515 Candidate filing form; wrongful failure to file; penalty.

Any person who is in possession of any candidate filing form entitled to be filed under the Election Act and who wrongfully suppresses or neglects or willfully fails to file such candidate filing form or fails to cause such candidate filing form to be filed at the proper time in the proper office shall be guilty of a Class III misdemeanor.

Source: Laws 1994, LB 76, § 414.

32-1516 Candidate filing form; initials or signatures on ballot; prohibited acts; penalty.

Any person who falsely makes or falsely swears to any candidate filing form or any part thereof, fraudulently defaces or destroys any candidate filing form or any part thereof, files or receives for filing any candidate filing form knowing that the form or any part thereof is falsely made, suppresses any duly filed candidate filing form or any part thereof, or forges or falsely places any initials or signatures on any ballot under section 32-916 or 32-947 shall be guilty of a Class III felony.

Source: Laws 1994, LB 76, § 415; Laws 1997, LB 764, § 107.

32-1517 Election officials; employers; prohibited acts; penalties.

(1) Any person appointed to be a precinct or district inspector or a judge or clerk of election who refuses, neglects, or fails to serve without excuse shall be guilty of a Class IV misdemeanor.

(2) Any employer of a person appointed to be a precinct or district inspector or a judge or clerk of election who threatens to discharge or coerces or attempts to coerce such person by reason of his or her service as an inspector or a judge or clerk of election shall be guilty of a Class III misdemeanor and such employer shall be subject to a mandatory five-hundred-dollar fine upon conviction.

(3) Any employer of a person appointed to be a precinct or district inspector or a judge or clerk of election who discharges such person from employment, docks such person's pay, overtime pay, sick leave, or vacation time, or in any other way penalizes such person because of his or her service as an inspector, a judge, or a clerk shall be guilty of a Class III felony.

Source: Laws 1994, LB 76, § 416.

32-1518 Election officials; other violations of Election Act; penalty.

Any judge or clerk of election, any precinct or district inspector, or any other person upon whom any duty is imposed by the Election Act relating to elections who willfully does or performs anything prohibited by the act for which no other penalty is provided or neglects or omits to perform any such duty shall be guilty of a Class I misdemeanor and shall forfeit his or her office.

Source: Laws 1994, LB 76, § 417.

Under this section, a county clerk who neglects to furnish ballots and correct them, as required by the election laws, is liable to forfeit his office and to be fined and imprisoned. Wahlquist v. Adams County, 94 Neb. 682, 144 N.W. 171 (1913).

32-1519 Judge or clerk of election; prohibited acts; penalty.

(1) Any judge of election who (a) knowingly receives or sanctions the reception of an improper or illegal vote from any person who is not a registered

voter, (b) receives or sanctions the reception of a ballot from any person who refuses to answer any question which is put to him or her in accordance with the Election Act, (c) refuses to take the oath prescribed by the act, (d) sanctions the refusal by any other judge of election to administer any oath required by the act when such oath is required, or (e) refuses to receive or sanctions the rejection of a ballot from any registered voter at the place where such registered voter properly and legally offers to vote shall be guilty of a Class III misdemeanor.

(2) Any judge or clerk of election on whom any duty is enjoined by the act who willfully neglects any such duty or who engages in any corrupt conduct in the discharge of his or her duty shall be guilty of a Class III misdemeanor.

Source: Laws 1994, LB 76, § 418.

32-1520 Ballot with unlawful printing; prohibited acts; penalty.

Any person causing ballots to be printed with a designated heading containing a name or names not found on the official ballot having such heading or any person knowingly peddling or distributing any such ballot with the intent to have such ballot voted at any election shall be guilty of a Class IV misdemeanor.

Source: Laws 1994, LB 76, § 419.

32-1521 Persons authorized to print and distribute ballots; violation; penalty.

Any person who prints or causes to be printed or distributed any ballot marked Official Ballot other than an election commissioner, county clerk, or city or village clerk shall be guilty of a Class III misdemeanor.

Source: Laws 1994, LB 76, § 420.

32-1522 Ballots and other election documents; prohibited acts; penalties.

(1) A judge or clerk of election, a printer, or any other person entrusted with the custody or delivery of ballots, blanks, list of voters book and official summary of votes cast, card of instructions, or other required papers who knowingly and willfully (a) unlawfully opens or permits to be opened any sealed packages containing ballots, (b) gives or delivers to any person not lawfully entitled thereto an official ballot, or (c) unlawfully misplaces or carries away, negligently loses, permits to be taken away from him or her, fails to deliver, or destroys any such package of ballots or any ballot, blank, list of voters book and official summary of votes cast, card of instructions, or other required paper shall be guilty of a Class III felony.

(2) Any printer employed to print the official ballots or any person engaged in printing the same who knowingly and willfully (a) prints or causes or permits to be printed any official ballots printed otherwise than the copy for the same furnished by the election commissioner or county clerk, (b) prints any false or fraudulent ballots, (c) appropriates any of such ballots to himself or herself or gives, delivers, or knowingly permits any of such ballots to be taken by any person other than the election commissioner or county clerk, or (d) seals up or causes or permits to be sealed up or delivers to the election commissioner or county clerk a less number of ballots than the number endorsed thereon shall be guilty of a Class I misdemeanor.

(3) Any person who knowingly has in his or her possession any official ballot illegally obtained or attempts to vote any ballot other than the official ballot lawfully obtained shall be guilty of a Class I misdemeanor.

Source: Laws 1994, LB 76, § 421.

32-1523 Obstruction of polling place or building; penalty.

Any person who obstructs the doors or entries or prevents free ingress to and egress from a polling place or building shall be guilty of a Class V misdemeanor.

Source: Laws 1994, LB 76, § 422.

32-1524 Electioneering; prohibited acts; penalty.

(1) No judge or clerk of election or precinct or district inspector shall do any electioneering while acting as an election official.

(2) No person shall do any electioneering, circulate petitions, or perform any action that involves solicitation within any polling place or any building designated for voters to cast ballots by the election commissioner or county clerk pursuant to the Election Act while the polling place or building is set up for voters to cast ballots or within two hundred feet of any such polling place or building. Any person violating this section shall be guilty of a Class V misdemeanor.

Source: Laws 1994, LB 76, § 423; Laws 2006, LB 940, § 2.

32-1525 Polling and interviews; prohibited acts; penalty.

No person shall conduct an exit poll, a public opinion poll, or any other interview with voters on election day seeking to determine voter preference within twenty feet of the entrance of any polling place or, if inside the polling place or building, within one hundred feet of any voting booth. Any person violating this section shall be guilty of a Class V misdemeanor.

Source: Laws 1994, LB 76, § 424.

32-1526 Fraudulent placement of ballot in ballot box; penalty.

Any judge or clerk of election who puts a ballot into the ballot box, except his or her own ballot or such as may be received in the regular discharge of his or her duties as a judge or clerk, or who knowingly permits any ballot which was fraudulently placed or deposited in such ballot box by any other person to remain in the ballot box or to be counted with the legal votes cast at such election shall be guilty of a Class IV felony.

Source: Laws 1994, LB 76, § 425.

32-1527 Voting of ballots; prohibited acts; penalty.

(1) No voter shall receive an official ballot from any person other than a judge of election, and no person other than a judge of election shall deliver an official ballot to a voter.

(2) No voter shall vote or offer to vote any ballot except an official ballot received from a judge of election.

(3) No voter shall place any mark upon an official ballot by which it may afterwards be identified as the one voted by him or her.

(4) No person shall show his or her ballot after it is marked to any person in such a way as to reveal the contents thereof or the name of the candidate or candidates for whom he or she has marked his or her vote, and no person shall solicit a voter to show the same.

(5) No person other than a judge of election shall receive from a voter an official ballot prepared for voting.

(6) Any person violating this section shall be guilty of a Class V misdemeanor.

Source: Laws 1994, LB 76, § 426.

32-1528 Nonresident of school district, village, or precinct; illegal voting; penalty.

Any person who votes a ballot in any school district, village, or precinct of a city in this state in which he or she does not actually reside or into which he or she has come for merely temporary purposes shall be guilty of a Class III misdemeanor.

Source: Laws 1994, LB 76, § 427.

A voter was found to reside in a voting district for the purposes of this section when he had a bodily presence in the district, made improvements upon his home in the district, spent 5 to 10 nights per month at his home in the district, repeatedly exercised his right to vote in the district, and was forced to spend time outside the district for medical reasons. State v. Jensen, 269 Neb. 213, 691 N.W.2d 139 (2005).

A voter was found to reside in a voting district for the purposes of this section when she had a physical presence at a home in the district, made improvements upon her home in the district, intended to remain at her home in the district, repeatedly voted in the district, and was forced to spend time outside the district to care for her son due to his medical condition. State v. Jensen, 269 Neb. 213, 691 N.W.2d 139 (2005).

Whether a voter is habitually present at a particular residence is not dispositive of the issue of domicile for purposes of this section. State v. Jensen, 269 Neb. 213, 691 N.W.2d 139 (2005).

32-1529 Nonresident of state; illegal voting; penalty.

Any resident of another state who votes in this state shall be guilty of a Class IV felony.

Source: Laws 1994, LB 76, § 428.

32-1530 Ineligible voter; illegal voting; penalty.

Any person who votes (1) who is not a resident of this state or registered in the county or who at the time of election is not of the constitutionally prescribed age of a registered voter, (2) who is not a citizen of the United States, or (3) after being disqualified by law by reason of his or her conviction of a felony and prior to the end of the two-year period after completing the sentence, including any parole term, shall be guilty of a Class IV felony.

Source: Laws 1994, LB 76, § 429; Laws 2005, LB 53, § 6.

32-1531 Nonresident of county; illegal voting; penalty.

Except as provided in sections 32-933 to 32-937, any person who is a resident of this state and who goes or comes into any county of which he or she is not an actual resident and votes in such county shall be guilty of a Class IV felony.

Source: Laws 1994, LB 76, § 430.

32-1532 Aiding and abetting ineligible voter; penalty.

Any person who procures, aids, assists, counsels, or advises another to give his or her vote, knowing that such other person is not a resident of this state or

a registered voter of the county as required by law at the time of election, is not of the constitutionally prescribed age of a registered voter, is not a citizen of the United States, or is not duly qualified as a result of any other disability to vote at the place where and the time when the vote is to be given shall be guilty of a Class IV felony.

Source: Laws 1994, LB 76, § 431.

32-1533 Aiding and abetting nonresident of county; penalty.

Any person who procures, aids, assists, counsels, or advises another to go or come into any county for the purpose of giving his or her vote in such county knowing that the other person is not duly qualified to vote in such county shall be guilty of a Class IV felony.

Source: Laws 1994, LB 76, § 432.

32-1534 Voting more than once; penalty.

Any person who votes more than once at the same election shall be guilty of a Class IV felony.

Source: Laws 1994, LB 76, § 433.

32-1535 Unauthorized removal of ballots; penalty.

Any person who removes any ballot from the polling room before the closing of the polls except as otherwise authorized under the Election Act shall be guilty of a Class V misdemeanor.

Source: Laws 1994, LB 76, § 434.

32-1536 Bribery; prohibited acts; penalty.

(1) Any person who accepts or receives any valuable thing as a consideration for his or her vote for any person to be voted for at any election shall be guilty of a Class II misdemeanor.

(2) Any person who, by bribery, attempts to influence any voter of this state in voting, uses any threat to procure any voter to vote contrary to the inclination of such voter, or deters any voter from voting shall be guilty of a Class II misdemeanor.

Source: Laws 1994, LB 76, § 435.

32-1537 Employer; prohibited acts; penalty.

Any person who (1) coerces or attempts to coerce any of his or her employees in their voting or in any other political action at any caucus, convention, or election held or to be held in this state or (2) attempts to influence the political action of his or her employees by threatening to discharge them because of their political action or by threats on the part of such person to close his or her place of business in the event of the passage or defeat of any issue on the ballot, in the event of the election or defeat of any candidate for public office, or in the event of the success or defeat of any political party at any election shall be guilty of a Class IV felony.

Source: Laws 1994, LB 76, § 436.

32-1538 Fraudulent assistance of illiterate voter; penalty.

Any person who, with intent to induce a voter who cannot read to vote contrary to his or her inclination, furnishes the voter with a ballot and informs him or her that the ballot contains a name or names different from the name or names which are written or printed on the ballot or who fraudulently or deceitfully changes a ballot of any voter so that such voter is prevented from voting for the candidate or candidates as he or she intended shall be guilty of a Class IV felony.

Source: Laws 1994, LB 76, § 437.

32-1539 Ballot for early voting; prohibited acts; penalty.

Any person who (1) impersonates or makes a false representation in order to obtain a ballot for early voting, (2) knowingly connives to help a person to vote such a ballot illegally, (3) destroys, steals, marks, or mutilates any such ballot after the same has been voted or aids or abets another to do so, (4) delays in delivering such a ballot to the election commissioner or county clerk to prevent the ballot from arriving in time to be counted, (5) in any manner aids or attempts to aid any person to vote such a ballot unlawfully, (6) hinders or attempts to hinder a registered voter from voting any such ballot, or (7) hinders or attempts to hinder any official from delivering or counting any such ballot shall be guilty of a Class IV felony.

Source: Laws 1994, LB 76, § 438; Laws 2005, LB 98, § 31.

32-1540 Fraudulent placement of ballot into ballot box; penalty.

Any person who fraudulently puts a ballot into the ballot box shall be guilty of a Class IV felony.

Source: Laws 1994, LB 76, § 439.

32-1541 List of voters book; prohibited acts; penalty.

Any person who willfully, knowingly, and with fraudulent intent inscribes, writes, or causes to be inscribed or written in or upon any list of voters book the name of any person not entitled to vote at such election shall be guilty of a Class IV felony.

Source: Laws 1994, LB 76, § 440.

32-1542 Election records and returns; prohibited acts; penalty.

Any person who has in his or her possession any falsely made, altered, forged, or counterfeited list of voters book, official summary of votes cast, or election returns of any election and who knows such book, summary, or election returns to be falsely made, altered, forged, or counterfeited, with the intent to hinder, defeat, or prevent a fair expression of the popular will at such election, shall be guilty of a Class IV felony.

Source: Laws 1994, LB 76, § 441.

32-1543 Unlawful destruction or possession of ballot or ballot box; penalty.

Any person who unlawfully attempts to destroy a ballot or who unlawfully, by force, violence, fraud, or other improper means, obtains or attempts to obtain possession of a ballot box or a ballot which was deposited in a ballot box while

the voting at the election is going on or before the ballots have been duly taken out of the ballot box by a judge of election shall be guilty of a Class IV felony.

Source: Laws 1994, LB 76, § 442.

32-1544 Unlawful destruction of election material; prohibited acts; penalty.

Any person who, from the time any ballots are cast or voted until the time has expired for using the same as evidence in any contest of an election, unlawfully destroys or attempts to destroy or incites or requests another to destroy any ballot box, list of registered voters, sign-in register, or record of early voters used at any election, unlawfully destroys, falsifies, marks, or writes on any ballot cast or voted, or changes, alters, erases, or tampers with any name contained on any ballot cast or voted shall be guilty of a Class IV felony.

Source: Laws 1994, LB 76, § 443; Laws 1997, LB 764, § 108; Laws 2005, LB 98, § 32.

32-1545 Election results or returns; prohibited acts; penalty.

(1) Any person disclosing any election results or election returns before the closing of the polls without the express authorization of the election commissioner or county clerk shall be guilty of a Class IV felony.

(2) Any person other than the election commissioner or county clerk who receives partial returns or election results and releases such partial returns or results without the express authorization of the election commissioner or county clerk shall be guilty of a Class IV felony.

(3) Any person who attempts to disseminate any election results or election returns before the closing of the polls shall be guilty of a Class IV felony.

(4) Any person who in any way causes the release of any election results or election returns without the express authorization of the election commissioner or county clerk shall be guilty of a Class IV felony.

Source: Laws 1994, LB 76, § 444.

32-1546 Petition signers and circulators; prohibited acts; penalties.

(1) Any person who is not, at the time of signing a petition, a registered voter and qualified to sign the petition except as provided for initiative and referendum petitions in section 32-1404 or who signs any name other than his or her own to any petition shall be guilty of a Class I misdemeanor.

(2) Any person who falsely swears to a circulator's affidavit on a petition, who accepts money or other things of value for signing a petition, or who offers money or other things of value in exchange for a signature upon any petition shall be guilty of a Class IV felony.

Source: Laws 1994, LB 76, § 445; Laws 2003, LB 444, § 13.

The 1977 revision of this section repealed by implication the penalty provision then contained in section 32-705. State v. Fellman, 236 Neb. 850, 464 N.W.2d 181 (1991).

''Falsely'', as used in this section, specifies the element of deliberate or intentional untruth or deceit regarding a circulator's swearing to a petitioner's signature on an initiative petition. This section, defining the crime of ''false swearing'', in reference to an initiative petition, is not unconstitutional for vagueness. State v. Monastero, 228 Neb. 818, 424 N.W.2d 837 (1988).

32-1547 Member of the Legislature or constitutional officer; multiple filing prohibited; penalty.

Any person serving as a member of the Legislature or in an elective office described in Article IV, section 1, of the Constitution of Nebraska who files for

more than one elective office to be filled in the same election except for the position of delegate to a county, state, or national political party convention shall be guilty of a Class IV misdemeanor.

Source: Laws 1994, LB 76, § 446.

32-1548 County attorney; prosecute violations; suspension of sentence or judgment; when.

Except as provided in subdivision (2) of section 84-205, the county attorney of any county in this state shall prosecute all complaints which may be made of violations of the Election Act to final judgment. The court before which any conviction for such violation shall be had shall not in any case suspend sentence or judgment for more than twenty days, except that no indictment or information for such violation shall be brought to trial unless the complainant, if he or she is found, has had at least two days' notice, in writing, from the county attorney of the day when he or she intends to try the same.

Source: Laws 1994, LB 76, § 447; Laws 1997, LB 758, § 2.

32-1549 Citation in lieu of arrest; Supreme Court; powers; prosecution; procedure; failure to appear; penalty.

(1) A peace officer may issue a citation in lieu of arrest for any offense which is a misdemeanor under the Election Act. The citation may be served in the same manner as an arrest warrant, in the same manner as a summons in a civil action, or by certified mail.

(2) To achieve uniformity, the Supreme Court may prescribe the form of citation. The citation shall include a description of the crime or offense charged, the time and place at which the person cited is to appear, a warning that failure to appear in accordance with the command of the citation is a punishable offense, and such other matter as the court deems appropriate, but shall not include a place for the cited person's social security number. The court may provide that a copy of the citation shall constitute the complaint filed in the trial court.

(3) When a citation is used by a peace officer, he or she shall enter on the citation all required information, including the name and address of the cited person, the offense charged, and the time and place the person cited is to appear in court. Unless the person cited requests an earlier date, the time of appearance shall be at least three days after the issuance of the citation. One copy of the citation shall be delivered to the person cited, and a duplicate thereof shall be signed by such person, giving his or her promise to appear at the time and place stated in the citation. Such person shall be released from custody upon signing the citation. As soon as practicable, the copy signed by the person cited shall be delivered to the prosecuting attorney.

(4) At least twenty-four hours before the time set for the appearance of the cited person, the prosecuting attorney shall issue and file a complaint charging such person with an offense or such person shall be released from the obligation to appear as specified. A person cited pursuant to this section may waive his or her right to trial. The Supreme Court may prescribe uniform rules for such waivers.

(5) Anyone may use a credit card authorized by the court in which the person is cited as a means of payment of his or her fine and costs.

(6) Any person failing to appear or otherwise comply with the command of a citation shall be guilty of a Class III misdemeanor.

Source: Laws 1994, LB 76, § 448; Laws 2002, LB 82, § 16.

32-1550 Arrest; grounds.

(1) Any peace officer having grounds for issuing a citation under the Election Act may take the accused into custody when the accused fails to identify himself or herself satisfactorily or refuses to sign the citation or when the officer has reasonable grounds to believe that (a) the accused will refuse to respond to the citation, (b) such custody is necessary to protect the accused or others when his or her continued liberty would constitute a risk of immediate harm, (c) such action is necessary in order to carry out legitimate investigative functions, (d) the accused has no ties to the jurisdiction reasonably sufficient to assure his or her appearance, or (e) the accused has previously failed to appear in response to a citation.

(2) Notwithstanding that a citation is issued, a peace officer is authorized to take a cited person to an appropriate medical facility if the person appears mentally or physically unable to care for himself or herself.

(3) Nothing in this section or section 32-1549 shall be construed to affect the rights, lawful procedures, or responsibilities of peace officers using the citation procedure in lieu of the arrest or warrant procedure.

Source: Laws 1994, LB 76, § 449.

32-1551 Special election by mail; prohibited acts; penalty.

Any person who (1) impersonates or makes a false representation in order to obtain a ballot for an election to be held by mail as provided in sections 32-952 to 32-959, (2) knowingly connives to help a person to vote such a ballot illegally, (3) destroys, steals, marks, or mutilates any such ballot after the same has been voted or aids or abets another to do so, (4) delays in delivering such a ballot to the election commissioner or county clerk to prevent the ballot from arriving in time to be counted, (5) in any manner aids or attempts to aid any person to vote such a ballot unlawfully, (6) hinders or attempts to hinder a registered voter from voting any such ballot, or (7) hinders or attempts to hinder any official from delivering or counting any such ballot shall be guilty of a Class IV felony.

Source: Laws 1996, LB 964, § 13.

ARTICLE 16

CAMPAIGN FINANCE LIMITATIONS

Section
32-1601. Act, how cited.
32-1602. Legislative findings.
32-1603. Terms, defined.
32-1604. Candidates for covered elective office; qualification for public funds; filings required; prohibited acts; criminal penalty; late filing fee; civil penalty.
32-1604.01. Candidates for covered elective office; affidavit; late filing fee; violation of act; when.
32-1605. Covered elective office; affidavit; additional filing required.
32-1606. Covered elective office; request for public funds; disbursement; limitations on use; report.

Section
32-1606.01. Preelection campaign statement; filing; contents; late filing fee; civil penalty.
32-1607. Prohibited acts; violations; penalties.
32-1608. Covered elective office; contributions; limitations.
32-1608.01. Rules and regulations; filings; methods authorized; authentication procedures.
32-1608.02. Candidate; record-keeping requirements.
32-1608.03. Candidate; limit receipt of public funds; loan authorized.
32-1609. Commission; audit.
32-1610. Campaign Finance Limitation Cash Fund; created; use; investment.
32-1611. Nebraska Accountability and Disclosure Commission; allocation of funds.
32-1612. Civil penalty.
32-1613. Statute of limitations.
32-1614. Repealed. Laws 2006, LB 188, § 21.

32-1601 Act, how cited.

Sections 32-1601 to 32-1613 shall be known and may be cited as the Campaign Finance Limitation Act.

Source: Laws 1992, LB 556, § 1; Laws 1993, LB 587, § 1; Laws 1997, LB 420, § 1; Laws 2006, LB 188, § 1.

32-1602 Legislative findings.

(1) The Legislature finds that the cost of running for statewide offices and legislative seats has risen greatly and that many qualified candidates are excluded from the democratic system as a result of such rising cost. The Legislature further finds that the United States Supreme Court has indicated that any limitation on campaign expenditures must be entered into voluntarily and that the utilization of public financing of campaigns is a constitutionally permissible way in which to encourage candidates to adopt voluntary campaign spending limitations. The Legislature further finds that using public funds to assist in the financing of campaigns for certain statewide offices and legislative seats, in conjunction with voluntary campaign spending limitations, will increase the number of qualified candidates able to run for office. The Legislature further finds that in order for the public financing system to function properly in service of the state's interests, every candidate, regardless of whether or not that candidate seeks or is entitled to public funds, must make timely filings as required by the Campaign Finance Limitation Act.

(2) The Legislature finds that there are compelling state interests in preserving the integrity of the electoral process in state elections by ensuring that these elections are free from corruption and the appearance of corruption; in providing the electorate with information that will assist them with electoral decisions; and in gathering the data necessary to permit administration and to detect violations of the act. The Legislature further finds that these ends can be achieved only if (a) reasonable limits are placed on the amount of campaign contributions from certain sources, (b) the sources of funding and the use of that funding in campaigns are fully disclosed within the time periods prescribed by the act, and (c) public funds are provided to candidates who voluntarily accept spending limitations and otherwise comply with conditions for such funding under the act.

Source: Laws 1992, LB 556, § 2; Laws 1997, LB 420, § 2; Laws 2006, LB 188, § 2.

32-1603 Terms, defined.

For purposes of the Campaign Finance Limitation Act, the definitions found in sections 49-1404 to 49-1444 shall be used, except that:

(1) Covered elective office means (a) the Legislature in any election period and (b) the Governor, State Treasurer, Secretary of State, Attorney General, Auditor of Public Accounts, the Public Service Commission, the Board of Regents of the University of Nebraska, and the State Board of Education if designated as covered for a given election period pursuant to section 32-1611;

(2) Election period means (a) the period beginning January 1 of the calendar year prior to the year of the election in which the candidate is seeking office through the end of the calendar year of such election for covered elective offices listed in subdivision (1)(a) of this section and (b) the period beginning July 1 of the calendar year prior to the year of the election in which the candidate is seeking office through the end of the calendar year of such election for covered elective offices listed in subdivision (1)(b) of this section;

(3) Expenditure, as it relates to the expenditure of public funds, means (a) the purchase for campaign activities of (i) services from a communications medium, including production costs, (ii) printing, photography, graphic arts, or advertising services, (iii) office supplies, (iv) postage and other commercial delivery services, (v) meals, lodging, and travel expenses, and (vi) staff salaries and (b) repayment of loans to the candidate committee made in accordance with subsection (2) of section 32-1608.03 for any of the purposes listed in subdivision (a) of this subdivision;

(4) General election period means the period beginning with the day following the end of the primary election period through the end of the election period;

(5) Primary election period means the period beginning with the first day of the election period through the thirty-fifth day following the primary election; and

(6) Unrestricted spending means expenditures or transfers of funds authorized under subdivision (6), (8), or (9) of section 49-1446.03.

Source: Laws 1992, LB 556, § 3; Laws 1993, LB 587, § 2; Laws 1997, LB 420, § 3; Laws 2001, LB 768, § 7; Laws 2002, LB 1086, § 2; Laws 2005, LB 242, § 1; Laws 2006, LB 188, § 3.

32-1604 Candidates for covered elective office; qualification for public funds; filings required; prohibited acts; criminal penalty; late filing fee; civil penalty.

(1) If the office is designated as covered for a given election period pursuant to section 32-1611, any candidate for Governor, State Treasurer, Secretary of State, Attorney General, Auditor of Public Accounts, the Public Service Commission, the Board of Regents of the University of Nebraska, or the State Board of Education may qualify for public funds to be used for the election period if he or she limits his or her campaign spending for the election period and meets the other requirements prescribed in this section.

(2) In any election period, any candidate for the Legislature may qualify for public funds to be used for the election period if he or she limits his or her campaign spending for the election period and meets the other requirements prescribed in this section.

(3)(a) Except as otherwise provided in subdivision (b) of this subsection, to qualify for public funds for the election period, a candidate for Governor shall limit his or her spending, other than unrestricted spending, for the election period to two million two hundred ninety-seven thousand dollars, a candidate for State Treasurer, Secretary of State, Attorney General, or Auditor of Public Accounts shall limit his or her spending, other than unrestricted spending, for the election period to two hundred nine thousand dollars, a candidate for the Board of Regents of the University of Nebraska shall limit his or her spending, other than unrestricted spending, for the election period to one hundred thousand dollars, a candidate for the Legislature shall limit his or her spending, other than unrestricted spending, for the election period to eighty-nine thousand dollars, and a candidate for the Public Service Commission or the State Board of Education shall limit his or her spending, other than unrestricted spending, for the election period to seventy thousand dollars, and such candidates shall limit their spending, other than unrestricted spending, for the primary election period to not exceed fifty percent of the limits provided in this subsection for the election period.

(b) Beginning in 2008 and every four years thereafter, the campaign spending limits in this subsection shall be adjusted for inflation based upon the Consumer Price Index for the calendar year prior to the year in which the adjustment is made, and the adjusted spending limits shall be in effect for the elections in 2010 and subsequent election periods until further adjusted as provided in this subdivision. The Nebraska Accountability and Disclosure Commission shall use the Consumer Price Index, All Urban Consumers, All Items, United States City Average, to calculate the adjustments for the spending limits. The spending limits shall be rounded to the next highest one-thousand-dollar amount. If publication of the Consumer Price Index is discontinued, the most recent spending limit adjustments in effect prior to the discontinuance shall remain in effect for subsequent election periods.

(4) Each candidate for a covered elective office desiring to receive public funds pursuant to this section shall (a) beginning the first day of the election period, raise an amount equal to at least twenty-five percent of the spending limitation for the office from persons who are residents of Nebraska and (b) file with the Nebraska Accountability and Disclosure Commission an affidavit pursuant to section 32-1604.01 indicating his or her intent to abide by the spending limitations and his or her agreement to personally act as a guarantor for the lawful use of such funds and to be held personally liable to the State of Nebraska for any such funds not repaid to the state as required by law. Money raised prior to filing the affidavit shall not count toward the qualifying amount established in this subsection. Money raised prior to the first day of the election period shall not count toward the qualifying amount established in this subsection. At least sixty-five percent of the qualifying amount established in this subsection shall be received from individuals. For purposes of this section, a business, corporation, partnership, limited liability company, or association shall be deemed a resident if it has an office in this state and transacts business in this state.

(5)(a) Any candidate for a covered elective office who does not file an affidavit pursuant to subsection (4) of this section shall file with the commission an affidavit indicating his or her intent not to abide by the spending limitations of this section and an affidavit stating a reasonable estimate of his or her maximum expenditures as defined in section 49-1419 for the primary election

period. The estimate of expenditures for the primary election period may be amended up to thirty days prior to the primary election by filing a subsequent affidavit. A candidate nominated for a covered elective office in the primary election shall file an estimate of expenditures for the general election period on or before the fortieth day following the primary election. The estimate of expenditures for the general election period may be amended up to sixty days prior to the general election by filing a subsequent affidavit.

(b) A candidate for a covered elective office who files an affidavit under subdivision (5)(a) of this section shall file an affidavit with the commission when his or her expenditures equal or exceed forty percent of the spending limitation for the primary election period. The candidate shall file a second affidavit with the commission when his or her expenditures equal or exceed forty percent of the spending limitation for the general election period. Each affidavit shall be filed no later than two days after the forty percent has been expended. A candidate who intentionally fails to file the required affidavit within either two-day period shall be guilty of a Class II misdemeanor. A candidate who fails to file an affidavit as required by this subdivision shall pay to the commission a late filing fee of twenty-five dollars for each day the affidavit remains not filed in violation of this section, not to exceed seven hundred fifty dollars. In addition, if a candidate fails to file an affidavit as required by this subdivision within the prescribed time resulting in any abiding candidate not receiving public funds as described in subsection (6) of this section or resulting in a delay in the receipt of such funds, the commission shall assess a civil penalty of not less than two thousand dollars and not more than three times (i) the amount of public funds the abiding candidate received after the delay or (ii) the amount of public funds the abiding candidate would have received if the affidavit had been filed within the prescribed time.

(6) If an affidavit required under subdivision (5)(b) of this section is not filed, no public funds shall be distributed to the candidates for such office who have qualified for public funds for the election period unless preelection campaign statements filed pursuant to section 32-1606.01, or subdivision (1)(a) or (b) of section 49-1459 or audits by the commission conducted pursuant to section 49-14,122 reveal that a candidate has made expenditures requiring the filing of an affidavit under subdivision (5)(b) of this section.

Source: Laws 1992, LB 556, § 4; Laws 1993, LB 121, § 197; Laws 1993, LB 587, § 3; Laws 1997, LB 420, § 4; Laws 1998, LB 632, § 1; Laws 2001, LB 768, § 8; Laws 2006, LB 188, § 4.

32-1604.01 Candidates for covered elective office; affidavit; late filing fee; violation of act; when.

(1) Each candidate for a covered elective office listed in subdivision (1)(a) of section 32-1603 shall file either an affidavit to abide under subsection (4) of section 32-1604 or an affidavit not to abide and an affidavit stating a reasonable estimate of his or her maximum expenditures under subdivision (5)(a) of section 32-1604 with the Nebraska Accountability and Disclosure Commission within ten days after a candidate committee is required to be formed pursuant to sections 49-1413, 49-1445, and 49-1449 and on or before the first day of each election period thereafter unless the candidate has not filed and will not file to seek election or reelection or has withdrawn his or her filing to seek election or reelection. Each candidate for a covered elective office listed in subdivision

(1)(b) of section 32-1603 shall file either an affidavit to abide under subsection (4) of section 32-1604 or an affidavit not to abide and an affidavit stating a reasonable estimate of his or her maximum expenditures under subdivision (5)(a) of section 32-1604 with the Nebraska Accountability and Disclosure Commission within ten days after a candidate committee is required to be formed pursuant to sections 49-1413, 49-1445, and 49-1449 or within ten days after the office is designated as a covered elective office under section 32-1611, whichever is later, unless the candidate has not filed and will not file to seek election or reelection or has withdrawn his or her filing to seek election or reelection. If a candidate is not required to form a candidate committee, the candidate is not required to file an affidavit under section 32-1604.

(2) An affidavit to abide under subsection (4) of section 32-1604 and an affidavit not to abide and an affidavit stating a reasonable estimate of his or her maximum expenditures under subdivision (5)(a) of section 32-1604 shall be filed on forms prescribed by the commission.

(3) A candidate who fails to file an affidavit as required by this section shall pay to the commission a late filing fee of twenty-five dollars for each day the affidavit remains not filed in violation of this section, not to exceed seven hundred fifty dollars.

(4) It shall be a violation of the Campaign Finance Limitation Act for a candidate for a covered elective office who has filed an affidavit to abide under subsection (4) of section 32-1604 to exceed the spending limitations prescribed in section 32-1604.

Source: Laws 1997, LB 420, § 5; Laws 1999, LB 416, § 1; Laws 2006, LB 188, § 5.

32-1605 Covered elective office; affidavit; additional filing required.

Any individual who files to appear on the ballot for a covered elective office shall file a copy of the affidavit that was required to be filed with the Nebraska Accountability and Disclosure Commission as provided in section 32-1604.01 at the same time and with the same official with whom the individual files for office. A candidate for a covered elective office who qualifies other than by filing shall file a copy of an affidavit under section 32-1604.01, if required under section 32-1604.01, with the commission within five days after qualifying for the ballot. A filing to appear on the ballot for a covered elective office shall not be accepted by a filing official unless a copy of the candidate's affidavit as filed with the commission, if required, is properly filed with the filing official.

Source: Laws 1992, LB 556, § 5; Laws 1997, LB 420, § 6.

32-1606 Covered elective office; request for public funds; disbursement; limitations on use; report.

(1) Any candidate for a covered elective office who has satisfied the requirements of subsection (4) of section 32-1604 may, upon making expenditures which equal or exceed twenty-five percent of the spending limitation for the election period prescribed in such section, file an affidavit with the commission setting forth these facts and requesting public funds. The candidate shall be entitled to receive the greater of (a) the difference between the spending limitation and the highest estimated maximum expenditures filed by any of the candidate's opponents or (b) the difference between the spending limitation and the highest amount of expenditures reported in preelection campaign state-

ments filed pursuant to section 32-1606.01, or subdivision (1)(a) or (b) of section 49-1459 by any of the candidate's opponents. For the election period, no candidate shall be entitled to receive more than three times the amount of the spending limitation for the election period. For the primary election period, no candidate shall be entitled to receive more than three times the amount of the spending limitation for the primary election period. The commission shall compute the amount of the payment to be made to a candidate. For purposes of this section, a candidate's opponent in a partisan primary election shall include only those other candidates of the same political party running for the same office and a candidate's opponent in a nonpartisan primary election shall include all candidates running for the same office.

(2) Public funds to which a candidate is entitled under this section shall be disbursed to that candidate no earlier than the last date to amend an affidavit stating a reasonable estimate of expenditures pursuant to subdivision (5)(a) of section 32-1604 and no later than fourteen days after the election.

(3) Public funds received pursuant to this section shall be kept in a separate account in a financial institution in this state, shall be used only to make expenditures, and shall not be counted against the spending limitations prescribed in section 32-1604. Any unexpended public funds shall be repaid to the state on or before December 31 of the final year of the election period.

(4) Expenditures from public funds received pursuant to this section shall be reported to the commission on forms prescribed by the commission and in accordance with rules and regulations adopted and promulgated by the commission.

Source: Laws 1992, LB 556, § 6; Laws 1993, LB 587, § 4; Laws 1997, LB 420, § 7; Laws 2006, LB 188, § 6.

Cross References

Commission, defined, see section 49-1412.

32-1606.01 Preelection campaign statement; filing; contents; late filing fee; civil penalty.

(1) In addition to campaign statements required according to the schedule in section 49-1459, a candidate who files an affidavit under subdivision (5)(a) of section 32-1604 shall file a third preelection campaign statement with the commission so that it is received by the commission not later than the sixth day before the election. The closing date for a campaign statement filed under this section shall be the eighth day before the election. Campaign statements filed under this section shall be subject to the Nebraska Political Accountability and Disclosure Act in all matters not in conflict with this section.

(2) The campaign statement shall contain the following information:

(a) The filing committee's name, address, and telephone number and the full name, residential and business addresses, and telephone numbers of its committee treasurer; and

(b) Under the heading RECEIPTS, the total amount of contributions received during the period covered by the campaign statement; under the heading EXPENDITURES, the total amount of expenditures made during the period covered by the campaign statement; and the cumulative amount of those totals for the election period. If a loan was repaid during the period covered by the campaign statement, the amount of the repayment shall be subtracted from the

total amount of contributions received. Forgiveness of a loan shall not be included in the totals. Payment of a loan by a third party shall be recorded and reported as a contribution by the third party but shall not be included in the totals. In-kind contributions or expenditures shall be listed at fair market value and shall be reported as both contributions and expenditures.

(3) All information in the campaign statement filed under this section shall also be included in the postelection campaign statement filed under subdivision (1)(c) of section 49-1459.

(4) Any person who fails to file a campaign statement with the commission under this section shall pay to the commission a late filing fee of twenty-five dollars for each day the campaign statement remains not filed in violation of this section, not to exceed seven hundred fifty dollars. In addition, if a candidate fails to file the statement required by this section within the prescribed time resulting in any abiding candidate not receiving public funds as described in subsection (6) of section 32-1604 or resulting in a delay in the receipt of such funds, the commission shall assess a civil penalty of not less than two thousand dollars and not more than three times (a) the amount of public funds the abiding candidate received after the delay or (b) the amount of public funds the abiding candidate would have received if the campaign statement had been filed within the prescribed time.

Source: Laws 2006, LB 188, § 7.

Cross References

Nebraska Political Accountability and Disclosure Act, see section 49-1401.

32-1607 Prohibited acts; violations; penalties.

(1) Any candidate who receives public funds pursuant to section 32-1606 and fails to comply with the spending limitations prescribed in section 32-1604 shall repay the amount expended in excess of the spending limitations to the state within six months after the receipt of the public funds by the candidate.

(2) Any candidate who receives public funds pursuant to section 32-1606 and exceeds the spending limitations prescribed in section 32-1604 by five percent or more shall, within six months, repay the entire amount of public funds received with interest at the rate specified in section 45-104.02, as such rate may from time to time be adjusted, from the date the limitation was exceeded by five percent or more.

(3) Any candidate described in subsection (1) of this section or the treasurer of any such candidate committee who exceeds the spending limitation by five percent or more shall be deemed to be in willful and knowing violation of section 32-1604. Any person willfully and knowingly violating such section shall be guilty of a Class II misdemeanor.

(4) If a person makes a false statement in an affidavit filed pursuant to subdivision (5)(a) of section 32-1604 and he or she does not believe the statement to be true, he or she shall be guilty of a Class IV felony.

(5) The expenditure of public funds received pursuant to section 32-1606 shall not be a violation of the spending limitation.

Source: Laws 1992, LB 556, § 7; Laws 1992, Fourth Spec. Sess., LB 1, § 3; Laws 1993, LB 587, § 5; Laws 1997, LB 420, § 8; Laws 2006, LB 188, § 8.

32-1608 Covered elective office; contributions; limitations.

During the election period, no candidate for a covered elective office shall accept contributions from independent committees, businesses, including corporations, unions, industry, trade, or professional associations, and political parties which, when aggregated, are in excess of fifty percent of the spending limitation for the office set pursuant to section 32-1604. The commission shall calculate the limitation on contributions under this section at the time it calculates the adjustments on the campaign spending limitations under section 32-1604. The commission shall publish the new contribution limits on its web site and shall notify any candidate who files for an office which is subject to the spending limitation of the contribution limits applicable at the time of filing.

Source: Laws 1992, LB 556, § 8; Laws 1993, LB 587, § 6; Laws 1997, LB 420, § 9; Laws 2001, LB 768, § 9; Laws 2006, LB 188, § 9.

32-1608.01 Rules and regulations; filings; methods authorized; authentication procedures.

(1) The commission shall adopt and promulgate rules and regulations to provide for the reporting of expenditures by candidates of any public funds received pursuant to the Campaign Finance Limitation Act and for the keeping of records with respect to the expenditure of such funds.

(2) The commission shall accept any affidavit required to be filed under the act by hand delivery, facsimile transmission, express delivery service, or any other written means of communication. If the filing is made by a means which does not include the original signature of the affiant, an affidavit which includes the original signature shall be filed with the commission within fourteen days after the initial filing.

(3) The commission may adopt procedures for the digital and electronic filing of any document required to be submitted under the Campaign Finance Limitation Act other than documents required to be notarized. Any procedures for digital filing shall comply with the provisions of section 86-611. The commission may adopt authentication procedures to be used as a verification process for documents filed digitally or electronically. Compliance with authentication procedures adopted by the commission shall have the same validity as a signature on any document.

Source: Laws 1993, LB 587, § 7; Laws 2006, LB 188, § 10.

Cross References

Commission, defined, see section 49-1412.

32-1608.02 Candidate; record-keeping requirements.

Any candidate desiring to receive public funds shall keep detailed accounts, records, bills, and receipts necessary to substantiate the information contained in any affidavit or statement requesting public funds and all expenditures of public funds distributed pursuant to the Campaign Finance Limitation Act.

Source: Laws 1993, LB 587, § 8.

32-1608.03 Candidate; limit receipt of public funds; loan authorized.

(1) Any candidate who has qualified to receive public funds pursuant to the Campaign Finance Limitation Act may, by written request, limit his or her

receipt of public funds to an amount which is less than the total amount he or she is entitled to receive.

(2) Any candidate who has satisfied the requirements of subsection (4) of section 32-1604 and has been advised by the commission that he or she will receive public funds by virtue of the expenditures of his or her opponent may finalize a loan for campaign purposes in an amount that does not exceed the amount of public funds for which the commission indicates he or she is qualified.

Source: Laws 1993, LB 587, § 9; Laws 2006, LB 188, § 11.

32-1609 Commission; audit.

The commission shall conduct an audit of the accounts and records of any candidate filing an affidavit under subsection (4) of section 32-1604.

Source: Laws 1992, LB 556, § 9; Laws 1997, LB 420, § 10.

Cross References

Commission, defined, see section 49-1412.

32-1610 Campaign Finance Limitation Cash Fund; created; use; investment.

The Campaign Finance Limitation Cash Fund is hereby created. The fund shall be used by the commission to provide public financing of campaigns pursuant to the Campaign Finance Limitation Act, except that transfers may be made to the General Fund at the direction of the Legislature. The fund shall consist of money appropriated to it by the Legislature, amounts repaid by candidates pursuant to sections 32-1606 and 32-1607, and taxpayer contributions to the fund pursuant to section 77-27,119.04. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1992, LB 556, § 10; Laws 1993, LB 587, § 10; Laws 1994, LB 1066, § 21.

Cross References

Commission, defined, see section 49-1412.
Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

32-1611 Nebraska Accountability and Disclosure Commission; allocation of funds.

(1) Prior to June 30 of each odd-numbered year, the Nebraska Accountability and Disclosure Commission shall (a) allocate available funds of one hundred fifty thousand dollars to fund requests for public funds for covered elective offices listed in subdivision (1)(a) of section 32-1603, (b) calculate its best estimate of the amount of funds available to fund requests for public funds during the ensuing election year in the Campaign Finance Limitation Cash Fund based upon the appropriations, if any, made to the fund by the Legislature in such year, and (c) if the estimated amount of available funds exceeds one hundred fifty thousand dollars, designate additional covered elective offices in the following order if the following amounts of additional funds are available:

(a) The Public Service Commission, one thousand dollars;

(b) The Board of Regents of the University of Nebraska, twenty-five thousand dollars;

(c) The State Board of Education, one thousand dollars;

(d) The Auditor of Public Accounts, fifty thousand dollars;

(e) The Attorney General, fifty thousand dollars;

(f) The Secretary of State, fifty thousand dollars;

(g) The State Treasurer, fifty thousand dollars; and

(h) The Governor, five hundred fifty thousand dollars.

(2) All elective offices not within the class of offices designated under subsection (1) of this section to be covered elective offices for the election period ending on December 31 of the following year shall be designated not to be covered elective offices for such election period.

Source: Laws 1993, LB 587, § 11; Laws 1997, LB 420, § 11; Laws 2001, LB 768, § 10.

32-1612 Civil penalty.

(1) The Nebraska Accountability and Disclosure Commission shall assess any person that the commission finds to have violated subsection (4) of section 32-1607 a civil penalty of two thousand dollars or an amount equal to ten percent of the amount by which the estimate was exceeded, whichever is greater, for each violation.

(2) If the commission finds that a person violated subsection (4) of section 32-1604.01 by making expenditures exceeding the spending limitations in an amount that does not exceed five percent of the spending limitations, the commission shall assess such person a civil penalty of not more than two thousand dollars. If the commission finds that a person violated subsection (4) of section 32-1604.01 by making expenditures exceeding the spending limitations in an amount that exceeds five percent of the spending limitations, the commission shall assess such person a civil penalty of twice the amount by which the expenditures exceeded the spending limitations or two thousand dollars, whichever is greater.

(3) Unless a specific penalty is otherwise provided, the commission shall assess any person that it finds to have violated any other provision of the Campaign Finance Limitation Act a civil penalty of not more than two thousand dollars for each violation.

Source: Laws 1997, LB 420, § 12; Laws 2006, LB 188, § 12.

32-1613 Statute of limitations.

The Nebraska Accountability and Disclosure Commission shall commence civil proceedings for a violation of the Campaign Finance Limitation Act within three years after the date on which the violation occurred.

Source: Laws 1997, LB 420, § 13.

32-1614 Repealed. Laws 2006, LB 188, § 21.

ARTICLE 17
VOTE NEBRASKA INITIATIVE

Section
32-1701. Vote Nebraska Initiative; created; members; meetings; report; expenses.

32-1701 Vote Nebraska Initiative; created; members; meetings; report; expenses.

(1) The Legislature finds that the number of people voting in recent years has steadily decreased and that voting is a core principle of democracy. Therefor it is the intent of the Legislature to establish the Vote Nebraska Initiative to examine why citizens are not voting and what the state can do to encourage voter turnout.

(2) The Vote Nebraska Initiative is created. The members of the initiative shall examine why voter turnout continues to decline, what voter education resources exist, what resources could be established to engage the voter and encourage voter turnout among minority and young voters, what roles the media and schools play in voter education, and what the media and schools can do to increase voter education.

(3) The Vote Nebraska Initiative shall consist of the following members:

(a) The Secretary of State;

(b) The Chairperson of the Government, Military and Veterans Affairs Committee of the Legislature;

(c) Two individuals employed by the media, one appointed by the Nebraska Broadcasters Association, and one appointed by the Nebraska Press Association;

(d) Two members of minority communities appointed by the Secretary of State;

(e) Up to three residents of Nebraska appointed by the Secretary of State;

(f) Three teachers employed by public schools who have a background in teaching social studies appointed by the Commissioner of Education, one employed by an elementary school, one employed by a middle school, and one employed by a high school;

(g) One representative of postsecondary education with a background in political science appointed by the Secretary of State;

(h) A member of the League of Women Voters appointed by the league;

(i) Three election commissioners or county clerks appointed by the Secretary of State;

(j) One member of the Democratic Party appointed by the state chairperson of the Democratic Party; and

(k) One member of the Republican Party appointed by the state chairperson of the Republican Party.

(4) The members of the Vote Nebraska Initiative shall meet within sixty days after August 31, 2003, and elect a chairperson from among the members. For administrative and budgetary purposes, the initiative shall be located in the

office of the Secretary of State. Members shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177.

(5) The Vote Nebraska Initiative report with recommendations to the Legislature shall be issued by December 31, 2004. This section terminates upon issuance of the report.

Source: Laws 2003, LB 358, § 44.

CHAPTER 33
FEES AND SALARIES

Section
33-101. Secretary of State; fees.
33-102. Notary public; fees; Administration Cash Fund; created; investment.
33-103. Court of Appeals or Supreme Court; docketing and clerk's fees.
33-103.01. Court of Appeals; review by Supreme Court; docket fee.
33-104. Board of Educational Lands and Funds; fees.
33-105. Department of Natural Resources; fees.
33-106. Clerk of the district court; fees; enumerated.
33-106.01. Clerk of the district court; costs; docket.
33-106.02. Clerk of the district court; fees; report; disposition.
33-106.03. Dissolution of marriage; additional docket fee.
33-106.04. Repealed. Laws 1997, LB 216, § 3.
33-107. Transferred to section 24-350.
33-107.01. Legal services fee; taxed as costs; when.
33-107.02. Modification of certain marriage, child support, or child custody or parenting time orders; additional docket fee.
33-107.03. Court automation fee.
33-108. Transferred to section 23-1223.
33-109. Register of deeds; county clerk; fees.
33-110. County clerks; fees for certificate and seal; when charged; marriage licenses and records; fees.
33-111. County clerks; compiling transfers; fees.
33-112. County clerks; register of deeds; entry on numerical index; fee.
33-113. County clerks; tax lists; budget allowance.
33-114. County treasurer; fees.
33-114.01. County treasurer; counties more than 100,000 inhabitants and less than 300,000 inhabitants; services of electronic data processing equipment; fees.
33-115. Repealed. Laws 1961, c. 284, § 1.
33-116. County surveyor; compensation; fees; mileage; equipment furnished.
33-117. Sheriffs; fees; disposition; mileage; report to county board.
33-117.01. Repealed. Laws 1980, LB 628, § 9.
33-118. Transferred to section 23-1704.04.
33-119. Sheriffs and constables; fees for serving process.
33-120. Fees; payment or security in advance; who may require.
33-121. Writs of attachment; fees; expenses; taxed as costs.
33-122. Attachment; appraisers; compensation.
33-123. County court; civil matters; fees.
33-124. County court; criminal cases; fee.
33-125. County court; probate fees; how determined.
33-126. Repealed. Laws 1989, LB 233, § 11.
33-126.01. Repealed. Laws 1988, LB 799, § 1.
33-126.02. County court; guardianships; conservatorships; fees; how determined.
33-126.03. County court; inheritance tax proceedings; fees; by whom paid.
33-126.04. County court; adoption; fees.
33-126.05. County court; miscellaneous fees.
33-126.06. County court; matters relating to trusts; fees.
33-127. Repealed. Laws 1972, LB 1032, § 287.
33-128. Repealed. Laws 1961, c. 96, § 11.
33-128.01. Repealed. Laws 1959, c. 266, § 1.
33-128.02. Repealed. Laws 1959, c. 266, § 1.
33-128.03. Repealed. Laws 1959, c. 266, § 1.
33-129. Transferred to section 77-401.02.

Section
33-130. County clerk or register of deeds; fees; payment to county treasurer; credited to general fund.
33-131. County officers; records of fees; duty to keep.
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33-101 Secretary of State; fees.

There shall be paid to the Secretary of State the following fees:

(1) For certificate or exemplification with seal, ten dollars;

(2) For copies of records, for each page, a fee of one dollar;

(3) For accessing records by electronic means:

(a) For batch requests of business entity information, fifteen dollars for up to one thousand business entities accessed and an additional fifteen dollars for each additional one thousand business entities accessed over one thousand;

(b) For information in the Secretary of State's Uniform Commercial Code Division data base, including records filed pursuant to the Uniform Commercial Code, Chapter 52, article 2, 5, 7, 9, 10, 11, 12, or 14, Chapter 54, article 2, or the Uniform State Tax Lien Registration and Enforcement Act, for batch requests searched by debtor location, fifteen dollars for up to one thousand records accessed and an additional fifteen dollars for each additional one thousand records accessed over one thousand;

(c) For an electronically transmitted letter indicating whether a business is properly registered with the Secretary of State and authorized to do business in the state, six dollars and fifty cents;

(d) For the entire contents of the data base regarding corporations and the Uniform Commercial Code, but excluding electronic images, three hundred dollars weekly subscription rate, one thousand dollars monthly subscription rate for a twice-monthly service, and eight hundred dollars monthly subscription rate;

(e) For images of records accessed over the Internet or by other electronic means other than facsimile machine, forty-five cents for each page or image of a page, not to exceed two thousand dollars per request for batch requests; and

(f) For the entire contents of the image data base regarding corporations and the Uniform Commercial Code, eight hundred dollars monthly subscription rate;

(4) For recording articles of association or incorporation, amendments, revised or restated articles, changes of registered office or registered agent, increase or decrease of capital stock, merger or consolidation, statement of intent to dissolve, and consent to dissolution, revocation of dissolution, articles of dissolution, domestic or foreign, profit or nonprofit, five dollars per page;

(5) For taking acknowledgment, ten dollars;

(6) For administering oath, ten dollars;

(7) For filings by for-profit corporations and associations required or permitted by law to file articles of incorporation or organization with the Secretary of State, the fees provided in section 21-2005 unless otherwise specifically provided by law; and

(8) For filings by nonprofit corporations and associations required or permitted by law to file articles of incorporation or organization with the Secretary of State, the fees provided in section 21-1905 unless otherwise specifically provided by law.

All fees collected pursuant to subdivision (3) of this section shall be deposited in the Records Management Cash Fund and shall be distributed as provided in any agreements between the State Records Board and the Secretary of State.

Source: Laws 1877, § 5, p. 196; Laws 1897, c. 72, § 1, p. 331; Laws 1907, c. 139, § 1, p. 445; Laws 1911, c. 128, § 1, p. 435; R.S.1913, § 2423; Laws 1921, c. 104, § 1, p. 374; C.S.1922, § 2364; C.S.1929, § 33-103; R.S.1943, § 33-101; Laws 1947, c. 118, § 1, p. 349; Laws 1955, c. 63, § 12, p. 207; Laws 1961, c. 156, § 1, p. 477; Laws 1965, c. 183, § 1, p. 569; Laws 1969, c. 268, § 1, p. 1030; Laws 1975, LB 95, § 6; Laws 1982, LB 928, § 27; Laws 1994, LB 1004, § 2; Laws 1995, LB 109, § 214; Laws 1996, LB 681, § 194; Laws 1998, LB 924, § 18; Laws 2000, LB 929, § 23; Laws 2003, LB 524, § 20.

Cross References

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

Building and loan associations are not exempted from paying the fee required by this section for filing certificates of increase of capital stock. State ex rel. Equitable Building Loan & Savings Assn. v. Amsberry, 104 Neb. 843, 178 N.W. 828 (1920).

Under the 1897 amendment to this section, a building and loan association was not required to file its articles of incorporation with the Secretary of State and pay him a fee as a condition precedent to obtaining a certificate of approval. State ex rel. Bullard v. Searle, 86 Neb. 259, 125 N.W. 590 (1910).

This section is cited in a footnote to the opinion to the effect that most state statutes measure domestic incorporation fees according to the amount or number of shares of capital stock authorized. Atlantic Refining Co. v. Virginia, 302 U.S. 22 (1837).

33-102 Notary public; fees; Administration Cash Fund; created; investment.

The Secretary of State shall be entitled to, for receiving, affixing the great seal to, and forwarding the commission of a notary public, the sum of fifteen dollars and the additional sum of fifteen dollars for filing and approving the bond of a notary public. The Secretary of State shall be entitled to the sum of fifteen dollars for receiving a renewal application pursuant to section 64-104.

The fees received by the Secretary of State pursuant to this section shall be remitted to the State Treasurer for credit seventy-five percent to the General Fund and twenty-five percent to the Administration Cash Fund which is hereby created. Any money in the Administration Cash Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1869, § 13, p. 25; R.S.1913, § 2424; Laws 1921, c. 99, § 1, p. 364; C.S.1922, § 2365; C.S.1929, § 33-104; R.S.1943, § 33-102; Laws 1945, c. 145, § 11, p. 494; Laws 1949, c. 93, § 4, p. 246; Laws 1963, c. 184, § 1, p. 625; Laws 1967, c. 396, § 1, p. 1241; Laws 1982, LB 928, § 28; Laws 1994, LB 1004, § 3; Laws 1995, LB 7, § 30.

Cross References

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

33-103 Court of Appeals or Supreme Court; docketing and clerk's fees.

At the time of filing an appeal, original action, or other proceeding in the Court of Appeals or Supreme Court there shall be paid to the clerk the sum of one hundred dollars as a docket fee. Fifty dollars of such fee shall be remitted to the State Treasurer for credit to the Nebraska Retirement Fund for Judges.

The clerk shall charge fees for copies of documents and certificates at the rate provided in section 25-1280.

Source: R.S.1866, c. 19, § 2, p. 157; R.S.1913, § 2425; C.S.1922, § 2366; Laws 1927, c. 120, § 1, p. 333; C.S.1929, § 33-105; Laws 1941, c. 32, § 3, p. 142; C.S.Supp.,1941, § 33-105; R.S. 1943, § 33-103; Laws 1982, LB 719, § 1; Laws 1991, LB 732, § 97; Laws 2005, LB 348, § 5.

Cross References

For docket fees in criminal cases when poverty affidavit filed, see section 29-2306.

The payment of the fee to docket a petition for further review is mandated by this section and is therefore deemed jurisdictional. A petition for further review, albeit tendered to the Clerk of the Supreme Court within 30 days after the Nebraska Court of Appeals has issued its decision, is not properly filed unless and until the required docket fee is timely paid. Robertson v. Rose, 270 Neb. 466, 704 N.W.2d 227 (2005).

Pursuant to section 25-1912, an appellant must file his or her notice of appeal and deposit with the clerk of the district court the docket fee required by this section within 30 days of the entry of the order from which the appeal is taken. Martin v. McGinn, 267 Neb. 931, 678 N.W.2d 737 (2004).

Appeals under the Workmen's Compensation Law are exempt from the fee required by this section for docketing appeal. Scott v. Dohrse, 130 Neb. 847, 266 N.W. 709 (1936).

33-103.01 Court of Appeals; review by Supreme Court; docket fee.

At the time of filing a petition for further review to the Supreme Court from the Court of Appeals, there shall be paid to the clerk the sum of fifty dollars as a

docket fee in lieu of any other filing fees. The fee shall be remitted to the State Treasurer for credit to the Nebraska Retirement Fund for Judges.

Source: Laws 2005, LB 348, § 6.

33-104 Board of Educational Lands and Funds; fees.

There shall be paid to the Board of Educational Lands and Funds, in advance, for services of the secretary of the board by a party demanding or necessitating the service, the following fees: For a copy of any instrument, paper, or record in his or her office, fifteen cents for each one hundred words with a minimum of one dollar and fifty cents; for certificate and seal, one dollar; for filing and recording an assignment, conditional assignment, or sublease agreement, ten dollars; for notice of delinquent account, three dollars; for reinstatement of account, if redemption is made prior to the date when notice of publication is made, five dollars; for copies of maps or plats, three dollars per hour for the time actually required and spent for the copying or preparation thereof.

Source: Laws 1903, c. 104, § 1, p. 574; R.S.1913, § 2426; C.S.1922, § 2367; C.S.1929, § 33-106; Laws 1935, c. 163, § 19, p. 610; C.S.Supp.,1941, § 33-106; R.S.1943, § 33-104; Laws 1957, c. 130, § 1, p. 444; Laws 1999, LB 779, § 3.

33-105 Department of Natural Resources; fees.

There shall be paid to the Department of Natural Resources in advance for the services of the Director of Natural Resources by the party demanding or necessitating the service the following fees:

(1) For filing, recording, and examining each application for a storage reservoir, for the first five thousand acre-feet or fraction thereof, twenty-five dollars, and for each additional five thousand acre-feet or fraction thereof, ten dollars;

(2) For filing, recording, and examining each application for, or application for modification of permits to include, intentional or incidental underground water storage and recovery, five hundred dollars;

(3) For filing, recording, and examining each application for water for irrigation from a natural stream, for the first one thousand acres proposed for irrigation or fraction thereof, two hundred dollars, and for each additional one thousand acres or fraction thereof, one hundred dollars;

(4) For filing, recording, and examining each application for water for irrigation from a storage reservoir, for the first one thousand acres proposed for irrigation or fraction thereof, fifty dollars, and for each additional one thousand acres or fraction thereof, twenty-five dollars;

(5) For filing, recording, and examining each application for water for power purposes, for each theoretical fifty horsepower or fraction thereof, five dollars;

(6) For filing, recording, and examining each application for withdrawal of ground water for industrial purposes, for the first four thousand acre-feet or fraction thereof, one thousand five hundred dollars, and for each additional one thousand acre-feet or fraction thereof, seven hundred fifty dollars;

(7) For filing an application to amend a permit for withdrawal of ground water for industrial purposes, five hundred dollars;

(8) For filing any petition, affidavit, other paper, or application for which no fee has been fixed, ten dollars;

(9) For recording any deed or document pertaining to land covered in whole or in part by a water appropriation or any instrument other than an application, ten dollars; and

(10) For certificate and seal, one dollar.

The Director of Natural Resources shall keep a record of all money thus received and shall remit such money to the State Treasurer for credit to and use of the General Fund.

Source: Laws 1905, c. 167, § 1, p. 652; Laws 1911, c. 153, § 34, p. 519; R.S.1913, § 2427-8; C.S.1922, § 2368; C.S.1929, § 33-107; R.S. 1943, § 33-105; Laws 1947, c. 119, § 1, p. 352; Laws 1957, c. 365, § 7, p. 1235; Laws 1957, c. 131, § 1, p. 445; Laws 1978, LB 773, § 1; Laws 1979, LB 547, § 1; Laws 1981, LB 56, § 17; Laws 1983, LB 198, § 3; Laws 1985, LB 103, § 1; Laws 1985, LB 488, § 1; Laws 1986, LB 309, § 1; Laws 1989, LB 45, § 1; Laws 1989, LB 132, § 1; Laws 2000, LB 900, § 85; Laws 2005, LB 335, § 73.

33-106 Clerk of the district court; fees; enumerated.

(1) In addition to the judges retirement fund fee provided in section 24-703 and the fee provided in section 33-106.03 and except as otherwise provided by law, the fees of the clerk of the district court shall be as follows: There shall be a docket fee of forty-two dollars for each civil and criminal case except (a) a case commenced by filing a transcript of judgment as hereinafter provided, (b) proceedings under the Nebraska Workers' Compensation Act and the Employment Security Law, when provision is made for the fees that may be charged, and (c) a criminal case appealed to the district court from any court inferior thereto as hereinafter provided. There shall be a docket fee of twenty-five dollars for each case commenced by filing a transcript of judgment from another court in this state for the purpose of obtaining a lien. There shall be a docket fee of twenty-seven dollars for each criminal case appealed to the district court from any court inferior thereto.

(2) In all cases, other than those appealed from an inferior court or original filings which are within jurisdictional limits of an inferior court and when a jury is demanded in district court, the docket fee shall cover all fees of the clerk, except that the clerk shall be paid for each copy or transcript ordered of any pleading, record, or other paper and that the clerk shall be entitled to a fee of fifteen dollars for making a complete record of a case.

(3) The fee for making a complete record of a case shall be taxed as a part of the costs of the case, except when expressly waived by the parties to the action. In a Title IV-D case, in a case filed pursuant to sections 25-2301 to 25-2310, or in a case filed by a county attorney, the fee for making a complete record of a case shall be waived. In all civil cases, except habeas corpus cases in which a poverty affidavit is filed and approved by the court, and for all other services, the docket fee or other fee shall be paid by the party filing the case or requesting the service at the time the case is filed or the service requested.

(4) For any other service which may be rendered or performed by the clerk but which is not required in the discharge of his or her official duties, the fee shall be the same as that of a notary public but in no case less than one dollar.

Source: R.S.1866, c. 19, § 3, p. 157; Laws 1877, § 5, p. 217; Laws 1899, c. 31, § 1, p. 164; Laws 1905, c. 68, § 1, p. 363; Laws 1909, c. 55, § 1, p. 280; R.S.1913, §§ 2421, 2429; Laws 1917, c. 40, § 1, p. 119; Laws 1919, c. 82, § 1, p. 204; C.S.1922, §§ 2362, 2369; Laws 1925, c. 81, § 1, p. 255; Laws 1927, c. 118, § 1, p. 328; C.S.1929, §§ 33-101, 33-108; R.S.1943, § 33-106; Laws 1947, c. 120, § 1, p. 353; Laws 1949, c. 94, § 1(1), p. 252; Laws 1951, c. 106, § 2, p. 512; Laws 1959, c. 140, § 4, p. 546; Laws 1961, c. 157, § 1, p. 480; Laws 1965, c. 125, § 3, p. 463; Laws 1977, LB 126, § 2; Laws 1981, LB 84, § 1; Laws 1983, LB 617, § 4; Laws 1986, LB 811, § 14; Laws 1986, LB 333, § 8; Laws 2003, LB 760, § 13; Laws 2005, LB 348, § 7.

Cross References

Employment Security Law, see section 48-601.
Nebraska Workers' Compensation Act, see section 48-1,110.

1. Fees
2. Interest
3. Court costs

1. Fees

This section does not require the clerk of the district court to account to the county for any naturalization fees collected by him. State ex rel. Douglas County v. Smith, 102 Neb. 82, 165 N.W. 896 (1917).

It is the duty of the clerk of the district court to collect in advance all fees provided by the statute for any service required of him. State v. Several Parcels of Land, 82 Neb. 51, 117 N.W. 450 (1908).

It is the duty of a clerk of the district court to require payment in advance or security for the payment of all fees for his services, and the sureties on his official bond are liable for all fees remaining uncollected at the expiration of his term. Boettcher v. Lancaster County, 74 Neb. 148, 103 N.W. 1075 (1905).

A clerk of the district court who makes certified transcripts of his records is entitled to fees for both the transcript and the certificate. The word certificate as used in this section refers to the act of certification as distinguished from the paper and its contents upon which the certificate is placed. Sheibley v. Hurley, 74 Neb. 31, 103 N.W. 1082 (1905).

A clerk of the district court is not entitled to fees for attaching a separate certificate and seal to each paper and journal entry of which he makes a copy where at the end of the transcript a general certificate is made which includes the same matters covered by the other certificates. Lydick v. Palmquist, 31 Neb. 300, 47 N.W. 918 (1891).

2. Interest

Interest on money paid in to clerk of district court by bidders at tax foreclosure sale is not a perquisite of the office. Bordy v. Smith, 150 Neb. 272, 34 N.W.2d 331 (1948).

Interest received by a county treasurer on deposit of public money is a perquisite within the meaning of this section. Scotts Bluff County v. McHenry, 130 Neb. 717, 266 N.W. 586 (1936).

3. Court costs

Court costs are the property of such persons for whose benefit they are primarily allowed and taxed, and attorney's fees allowed as costs actually belong to the attorney although awarded to the client. Solomon v. A. W. Farney, Inc., 136 Neb. 338, 286 N.W. 254 (1939).

A fee bill issued under this section is valid where a judgment for costs has been recovered and the costs have been taxed by the clerk of the district court and itemized upon the fee book prior to the issuance of a fee bill. Citizens National Bank v. Gregg, 53 Neb. 760, 74 N.W. 273 (1898).

33-106.01 Clerk of the district court; costs; docket.

Each clerk of the district court shall keep a docket in which he shall enter the costs chargeable and taxable against each party in any suit pending in said courts respectively. He is empowered at any time to make out a statement of such fees specifying each item of the fees so charged and taxed under seal of the court, which fee bill, so made under the seal of said court, shall have the same force and effect as an execution. The sheriff to whom said fee bill shall be issued shall execute the same as an execution, and have the same fees therefor. The clerk shall not enter in such docket any fees of any officer claiming the same, unless such officer shall duly return an itemized bill of the same.

Source: R.S.1866, c. 19, § 3, p. 157; Laws 1877, § 4, p. 217; Laws 1899, c. 31, § 1, p. 164; Laws 1905, c. 68, § 1, p. 363; Laws 1909, c.

55, § 1, p. 280; R.S.1913, §§ 2421, 2429; Laws 1917, c. 40, § 1, p. 119; Laws 1919, c. 82, § 1, p. 204; C.S.1922, §§ 2362, 2369; Laws 1925, c. 81, § 1, p. 255; Laws 1927, c. 118, § 1, p. 328; C.S.1929, §§ 33-101, 33-108; R.S.1943, § 33-106; Laws 1947, c. 120, § 1, p. 353; Laws 1949, c. 94, § 1(2), p. 253; Laws 1959, c. 140, § 5, p. 547.

33-106.02 Clerk of the district court; fees; report; disposition.

(1) The clerk of the district court of each county shall not retain for his or her own use any fees, revenue, perquisites, or receipts, fixed, enumerated, or provided in this or any other section of the statutes of the State of Nebraska or any fees authorized by federal law to be collected or retained by a county official. The clerk shall on or before the fifteenth day of each month make a report to the county board, under oath, showing the different items of such fees, revenue, perquisites, or receipts received, from whom, at what time, and for what service, and the total amount received by such officer since the last report, and also the amount received for the current year.

(2) The clerk shall account for and pay any fees, revenue, perquisites, or receipts not later than the fifteenth day of the month following the calendar month in which such fees, revenue, perquisites, or receipts were received in the following manner:

(a) Of the forty-two-dollar docket fee imposed pursuant to section 33-106, five dollars shall be remitted to the State Treasurer for credit to the General Fund and two dollars shall be remitted to the State Treasurer for credit to the Nebraska Retirement Fund for Judges;

(b) Of the twenty-seven-dollar docket fee imposed for appeal of a criminal case to the district court pursuant to section 33-106, two dollars shall be remitted to the State Treasurer for credit to the Nebraska Retirement Fund for Judges; and

(c) The remaining fees, revenue, perquisites, or receipts shall be credited to the general fund of the county.

Source: R.S.1866, c. 19, § 3, p. 157; Laws 1877, § 5, p. 217; Laws 1899, c. 31, § 1, p. 164; Laws 1905, c. 68, § 1, p. 363; Laws 1909, c. 55, § 1, p. 280; R.S.1913, §§ 2421, 2429; Laws 1917, c. 40, § 1, p. 119; Laws 1919, c. 82, § 1, p. 204; C.S.1922, §§ 2362, 2369; Laws 1925, c. 81, § 1, p. 255; Laws 1927, c. 118, § 1, p. 328; C.S.1929, §§ 33-101, 33-108; R.S.1943, § 33-106; Laws 1947, c. 120, § 1, p. 353; Laws 1949, c. 94, § 1(3), p. 254; Laws 1983, LB 617, § 5; Laws 1989, LB 4, § 3; Laws 2005, LB 348, § 8; Laws 2006, LB 823, § 1.

33-106.03 Dissolution of marriage; additional docket fee.

In addition to the fees provided for in sections 33-106 and 33-123, the clerk of the court shall collect an additional seventy-five dollars in docket fees for dissolution of marriages. The fee shall be remitted to the State Treasurer who shall credit twenty-five dollars to the Nebraska Child Abuse Prevention Fund and fifty dollars to the Parenting Act Fund.

Source: Laws 1986, LB 333, § 7; Laws 1996, LB 1296, § 6; Laws 2002, Second Spec. Sess., LB 48, § 1; Laws 2007, LB554, § 26.

33-106.04 Repealed. Laws 1997, LB 216, § 3.

33-107 Transferred to section 24-350.

33-107.01 Legal services fee; taxed as costs; when.

A legal services fee of five dollars and twenty-five cents shall be taxed as costs in each case filed in each separate juvenile court and district court, including appeals to such courts, and on each case filed in each county court except those filed in county court pursuant to its jurisdiction under section 25-2802. A legal services fee of five dollars and twenty-five cents shall be taxed as costs for each appeal and original action filed in the Court of Appeals and the Supreme Court. Such fees shall be remitted to the State Treasurer on forms prescribed by the State Treasurer within ten days after the close of each month for credit to the Legal Aid and Services Fund.

Source: Laws 1997, LB 729, § 1; Laws 1998, LB 1041, § 5; Laws 2002, LB 876, § 72; Laws 2005, LB 348, § 9.

33-107.02 Modification of certain marriage, child support, or child custody or parenting time orders; additional docket fee.

(1) A docket fee of sixty-five dollars shall be collected by the clerk of the county court or the clerk of the district court for each proceeding to modify a decree of dissolution or annulment of marriage, a modification of an award of child support, or a modification of child custody, parenting time, visitation, or other access as defined in section 43-2922. Such fees shall be remitted to the State Treasurer on forms prescribed by the State Treasurer within ten days after the close of each month. Fifteen dollars shall be credited to the Legal Aid and Services Fund, and fifty dollars shall be credited to the Parenting Act Fund.

(2) Any proceeding filed by a county attorney or an authorized attorney, as defined in section 43-1704, in a case in which services are being provided under Title IV-D of the federal Social Security Act, as amended, shall not be subject to the provisions of this section.

Source: Laws 1997, LB 729, § 2; Laws 1999, LB 19, § 1; Laws 2007, LB554, § 27.

33-107.03 Court automation fee.

In addition to all other court costs assessed according to law, a court automation fee of six dollars shall be taxed as costs for each case filed in each county court, separate juvenile court, and district court, including appeals to such courts, and for each appeal and original action filed in the Court of Appeals and the Supreme Court. The fees shall be remitted to the State Treasurer on forms prescribed by the State Treasurer within ten days after the end of each month. The State Treasurer shall credit the fees to the Supreme Court Automation Cash Fund.

Source: Laws 2002, Second Spec. Sess., LB 13, § 2.

33-108 Transferred to section 23-1223.

33-109 Register of deeds; county clerk; fees.

The register of deeds and the county clerk shall receive for recording a deed, mortgage, or release, recording and indexing of a will, recording and indexing

of a decree in a testate estate, recording proof of publication, or recording any other instrument, a fee of five dollars per page. The cost for a certified copy of any instrument filed or recorded in the office of county clerk or register of deeds shall be one dollar and fifty cents per page.

Source: Laws 1879, § 1, p. 107; Laws 1887, c. 42, § 1, p. 461; R.S.1913, § 2435; C.S.1922, § 2375; C.S.1929, § 33-114; Laws 1931, c. 66, § 1, p. 185; Laws 1935, c. 80, § 1, p. 269; Laws 1941, c. 67, § 1, p. 292; C.S.Supp.,1941, § 33-114; R.S.1943, § 33-109; Laws 1949, c. 93, § 5, p. 247; Laws 1961, c. 159, § 1, p. 484; Laws 1963, c. 185, § 1, p. 626; Laws 1965, c. 185, § 1, p. 574; Laws 1967, c. 204, § 1, p. 560; Laws 1969, c. 270, § 1, p. 1034; Laws 1971, LB 381, § 1; Laws 1972, LB 1264, § 1; Laws 1983, LB 463, § 1.

The county clerk of a county under township organization is not entitled to any compensation for making a duplicate tax list. Radford v. Dixon County, 29 Neb. 113, 45 N.W. 275 (1890).

33-110 County clerks; fees for certificate and seal; when charged; marriage licenses and records; fees.

County clerks shall receive no fee for the performance of the following services: For issuing certificates of election; for performing the duties of clerk of the county board; for taking acknowledgments of claims against the county; for attesting or certifying any document authorized by the county board or required by the departments of the state; or for recording Army or Navy discharges or furnishing certified copies thereof to be used in connection with any claim for compensation or disability. A charge of twenty-five cents shall be made for any other certificate and seal unless otherwise provided. The fees collected shall be credited to the county general fund.

County clerks shall receive a fee of fifteen dollars for the entire proceedings of issuing a marriage license, administering the related oaths or affirmations, and recording a marriage certificate. An additional fee of five dollars shall be made for each certified copy of a marriage record on file in the office of the county clerk. Both such fees shall be deposited in the county general fund.

Source: R.S.1866, c. 19, § 14, p. 167; R.S.1913, § 2434; C.S.1922, § 2374; C.S.1929, § 33-113; Laws 1931, c. 68, § 1, p. 187; C.S.Supp.,1941, § 33-113; R.S.1943, § 33-110; Laws 1949, c. 93, § 6, p. 247; Laws 1953, c. 116, § 1, p. 371; Laws 1986, LB 525, § 2; Laws 1988, LB 1126, § 1; Laws 1995, LB 202, § 1.

33-111 County clerks; compiling transfers; fees.

County clerks for compiling the transfer from the record of their office shall receive for each transfer the sum of fifteen cents, or such other sum, not exceeding fifteen cents, as the county board and county clerk may agree upon, to be paid by the county.

Source: Laws 1881, c. 41, § 1, p. 221; R.S.1913, § 2436; C.S.1922, § 2376; C.S.1929, § 33-115.

In the absence of a contract between the county and the county clerk, the clerk is entitled to receive the statutory compensation for compiling a numerical index in a new county. Bastedo v. Boyd County, 57 Neb. 100, 77 N.W. 387 (1898).

33-112 County clerks; register of deeds; entry on numerical index; fee.

For entering each instrument presented for record in the numerical index, the clerk or register of deeds shall receive the sum of fifty cents for each lot and

each single block without lots in platted areas and fifty cents for each section in unplatted areas to be paid in advance by the person offering the instrument for record.

Source: Laws 1881, c. 41, § 2, p. 221; R.S.1913, § 2437; Laws 1917, c. 43, § 1, p. 124; C.S.1922, § 2377; C.S.1929, § 33-116; Laws 1943, c. 84, § 1, p. 284; R.S.1943, § 33-112; Laws 1949, c. 93, § 7, p. 248; Laws 1983, LB 463, § 2; Laws 1990, LB 1153, § 54.

33-113 County clerks; tax lists; budget allowance.

In counties having over two hundred thousand population, where the county clerk makes the county and city tax lists, he shall be allowed a budget of twenty thousand dollars for clerks' salaries for making said tax lists.

Source: Laws 1877, § 1, p. 215; Laws 1885, c. 51, § 1, p. 253; Laws 1901, c. 35, § 1, p. 362; Laws 1903, c. 43, § 1, p. 309; Laws 1905, c. 72, § 1, p. 371; Laws 1907, c. 57, § 1, p. 232; Laws 1911, c. 54, § 1, p. 238; R.S.1913, § 2453; Laws 1919, c. 201, § 1, p. 895; Laws 1921, c. 100, § 1, p. 366; C.S.1922, § 2392; Laws 1929, c. 107, § 1, p. 398; C.S.1929, § 33-131; Laws 1943, c. 90, § 22, p. 307.

Section does not impose on assistants of county clerk statutory duty of safekeeping public funds. State v. Boatman, 142 Neb. 589, 7 N.W.2d 159 (1942).

33-114 County treasurer; fees.

Each county treasurer shall receive for and on behalf of the county for services rendered to other governmental subdivisions and agencies, when fees for services rendered by him or her are not otherwise specifically provided, the following fees: (1) On all sums of money collected by him or her for each fiscal year, two percent of the sums so collected; (2) for the collection of all sums of money, general or bonded, of drainage, irrigation, or natural resources districts, one percent of the sums so collected; (3) for the collection of all sums of money for municipal taxes, general or special, including money for bond sinking fund or bond interest fund and school money, one percent of the sums so collected; and (4) for the collection of all sums of money for special assessments for municipal improvements, one and one-half percent of the sums so collected.

On all sums collected, such percentage shall be allowed but once. In computing the amount collected for the purpose of charging percentage, all sums from whatever fund derived shall be included together, except the school fund. The treasurer shall be paid in the same proportion from the respective funds of the state collected by him or her whether the funds are in money or state warrants.

Source: R.S.1866, c. 19, § 20, p. 169; Laws 1891, c. 27, § 1, p. 263; Laws 1901, c. 32, § 1, p. 359; Laws 1903, c. 42, § 1, p. 307; R.S.1913, § 2439; C.S.1922, § 2379; Laws 1923, c. 84, § 1, p. 225; C.S.1929, § 33-118; Laws 1931, c. 67, § 1, p. 186; Laws 1941, c. 64, § 1, p. 288; C.S.Supp.,1941, § 33-118; R.S.1943, § 33-114; Laws 1947, c. 121, § 1, p. 356; Laws 1951, c. 102, § 1, p. 507; Laws 1969, c. 271, § 1, p. 1035; Laws 1973, LB 206, § 7; Laws 1983, LB 391, § 2; Laws 1993, LB 346, § 1.

A county treasurer is not entitled to a fee for making a return upon a distress warrant where no property subject to levy was found. Red Willow County v. Smith, 67 Neb. 213, 93 N.W. 151 (1903).

The fees of a county treasurer for collecting taxes are determined by adding together all money received on behalf of the state during one year, except educational funds, and applying the percentages set out in the statute, and charging the commissions pro rata to the various funds. State ex rel. Pearson v. Cornell, 54 Neb. 647, 75 N.W. 25 (1898).

A county treasurer is not entitled to a commission or collection fee from the proceeds received from the sale of bonds delivered to him as county treasurer. Stoner v. Keith County, 48 Neb. 279, 67 N.W. 311 (1896).

A county treasurer is not entitled to fees upon money paid to him by a township treasurer, and cannot include it in the total amount collected by him. Taylor v. Kearney County, 35 Neb. 381, 53 N.W. 211 (1892).

In computing the fees to which a county treasurer is entitled, all sums from whatever fund derived, except the school fund, shall be included together and the percentage allowed but once. State ex rel. Grable v. Roderick, 25 Neb. 629, 41 N.W. 404 (1889).

33-114.01 County treasurer; counties more than 100,000 inhabitants and less than 300,000 inhabitants; services of electronic data processing equipment; fees.

In any county having a population of more than one hundred thousand and less than three hundred thousand inhabitants, when such county has entered into an agreement with the county seat for it to provide the services of its electronic data processing equipment for the purposes of tax collection, the county treasurer shall receive from such city for services provided in the assessment and collection of taxes the amount provided by agreement between the county and such city.

Source: Laws 1973, LB 244, § 1.

33-115 Repealed. Laws 1961, c. 284, § 1.

33-116 County surveyor; compensation; fees; mileage; equipment furnished.

Each county surveyor shall be entitled to receive the following fees: (1) For all services rendered to the county or state, a daily rate as determined by the county board; and (2) for each mile actually and necessarily traveled in going to and from work, the rate allowed by the provisions of section 81-1176. All expense of necessary assistants in the performance of the above work, the fees of witnesses, and material used for perpetuation and reestablishing lost exterior section and quarter corners necessary for the survey shall be paid for by the county and the remainder of the cost of the survey shall be paid for by the parties for whom the work may be done. All necessary equipment, conveyance, and repairs to such equipment, required in the performance of the duties of the office, shall be furnished such surveyor at the expense of the county, except that in any county with a population of less than fifty thousand the county board may, in its discretion, allow the county surveyor a salary fixed pursuant to section 23-1114, payable monthly, by warrant drawn on the general fund of the county. All fees received by surveyors so receiving a salary may, with the authorization of the county board, be retained by the surveyor, but in the absence of such authorization all such fees shall be turned over to the county treasurer monthly for credit to the county general fund.

Source: R.S.1866, c. 19, § 16, p. 168; Laws 1869, § 1, p. 157; Laws 1899, c. 32, § 1, p. 167; Laws 1913, c. 43, § 12, p. 146; R.S.1913, § 2440; Laws 1919, c. 75, § 1, p. 194; C.S.1922, § 2380; Laws 1927, c. 114, § 1, p. 321; C.S.1929, § 33-119; Laws 1931, c. 65, § 7, p. 180; C.S.Supp.,1941, § 33-119; Laws 1943, c. 90, § 19, p. 305; R.S.1943, § 33-116; Laws 1947, c. 122, § 1, p. 357; Laws 1953, c. 117, § 1, p. 372; Laws 1957, c. 70, § 4, p. 296; Laws 1961, c. 158, § 2, p. 482; Laws 1961, c.

160, § 1, p. 485; Laws 1969, c. 272, § 1, p. 1036; Laws 1981, LB 204, § 50; Laws 1982, LB 127, § 8; Laws 1996, LB 1011, § 21.

An agreement by a county surveyor to perform services required of him for a less compensation than that fixed by law is contrary to public policy and void. Hansen v. Cheyenne County, 139 Neb. 484, 297 N.W. 902 (1941); Fitch v. Cass County, 139 Neb. 483, 297 N.W. 905 (1941).

33-117 Sheriffs; fees; disposition; mileage; report to county board.

(1) The several sheriffs shall charge and collect fees at the rates specified in this section. The rates shall be as follows: (a) Serving a capias with commitment or bail bond and return, two dollars; (b) serving a search warrant, two dollars; (c) arresting under a search warrant, two dollars for each person so arrested; (d) unless otherwise specifically listed in subdivisions (f) to (s) of this subsection, serving a summons, subpoena, order of attachment, order of replevin, other order of the court, notice of motion, other notice, other writ or document, or any combination thereof, including any accompanying or attached documents, ten dollars for each person served, except that when more than one person is served at the same time and location in the same case, the service fee shall be ten dollars for the first person served at that time and location and two dollars and fifty cents for each other person served at that time and location; (e) making a return of each summons, subpoena, order of attachment, order of replevin, other order of the court, notice of motion, other notice, or other writ or document, whether served or not, five dollars; (f) taking and filing a replevin bond or other indemnification to be furnished and approved by the sheriff, one dollar; (g) making a copy of any process, bond, or other paper not otherwise provided for in this section, twenty-five cents per page; (h) traveling each mile actually and necessarily traveled within or without their several counties in their official duties, three cents more per mile than the rate provided in section 81-1176, except that the minimum fee shall be fifty cents when the service is made within one mile of the courthouse, and, as far as is expedient, all papers in the hands of the sheriff at any one time shall be served in one or more trips by the most direct route or routes and only one mileage fee shall be charged for a single trip, the total mileage cost to be computed as a unit for each trip and the combined mileage cost of each trip to be prorated among the persons or parties liable for the payment of same; (i) levying a writ or a court order and return thereof, fifteen dollars; (j) summoning a grand jury, not including mileage to be paid by the county, ten dollars; (k) summoning a petit jury, not including mileage to be paid by the county, twelve dollars; (l) summoning a special jury, for each person impaneled, fifty cents; (m) calling a jury for a trial of a case or cause, fifty cents; (n) executing a writ of restitution or a writ of assistance and return, fifteen dollars; (o) calling an inquest to appraise lands and tenements levied on by execution, one dollar; (p) calling an inquest to appraise goods and chattels taken by an order of attachment or replevin, one dollar; (q) advertising a sale in a newspaper in addition to the price of printing, one dollar; (r) advertising in writing for a sale of real or personal property, five dollars; and (s) making deeds for land sold on execution or order of sale, five dollars.

(2)(a) Except as provided in subdivision (b) of this subsection, the commission due a sheriff on an execution or order of sale, an order of attachment decree, or a sale of real or personal property shall be: For each dollar not exceeding four hundred dollars, six cents; for every dollar above four hundred

dollars and not exceeding one thousand dollars, four cents; and for every dollar above one thousand dollars, two cents.

(b) In real estate foreclosure, when any party to the original action purchases the property or when no money is received or disbursed by the sheriff, the commission shall be computed pursuant to subdivision (a) of this subsection but shall not exceed two hundred dollars.

(3) The sheriff shall, on the first Tuesday in January, April, July, and October of each year, make a report to the county board showing (a) the different items of fees, except mileage, collected or earned, from whom, at what time, and for what service, (b) the total amount of the fees collected or earned by the officer since the last report, and (c) the amount collected or earned for the current year. He or she shall pay all fees earned to the county treasurer who shall credit the fees to the general fund of the county.

(4) Any future adjustment made to the reimbursement rate provided in subsection (1) of this section shall be deemed to apply to all provisions of law which refer to this section for the computation of mileage.

(5) Commencing on and after January 1, 1988, all fees earned pursuant to this section, except fees for mileage, by any constable who is a salaried employee of the State of Nebraska shall be remitted to the clerk of the county court. The clerk of the county court shall pay the same to the General Fund.

Source: R.S.1866, c. 19, § 5, p. 161; Laws 1877, § 1, p. 40; Laws 1877, § 5, p. 217; Laws 1907, c. 53, § 1, p. 225; R.S.1913, §§ 2421, 2441; Laws 1915, c. 37, § 1, p. 106; Laws 1921, c. 102, § 1, p. 371; C.S.1922, §§ 2362, 2381; C.S.1929, §§ 33-101, 33-120; Laws 1933, c. 96, § 7, p. 386; Laws 1935, c. 79, § 1, p. 266; C.S.Supp.,1941, § 33-120; Laws 1943, c. 86, § 1(1), p. 286; R.S.1943, § 33-117; Laws 1947, c. 123, § 1, p. 358; Laws 1951, c. 266, § 1, p. 895; Laws 1953, c. 118, § 1, p. 373; Laws 1957, c. 70, § 5, p. 297; Laws 1959, c. 84, § 3, p. 385; Laws 1961, c. 161, § 1, p. 487; Laws 1961, c. 162, § 1, p. 489; Laws 1965, c. 186, § 1, p. 575; Laws 1967, c. 125, § 4, p. 401; Laws 1969, c. 273, § 1, p. 1037; Laws 1974, LB 625, § 3; Laws 1978, LB 691, § 3; Laws 1980, LB 615, § 3; Laws 1980, LB 628, § 2; Laws 1981, LB 204, § 51; Laws 1982, LB 662, § 1; Laws 1984, LB 394, § 9; Laws 1987, LB 223, § 1; Laws 1988, LB 1030, § 34; Laws 1996, LB 1011, § 22.

Cross References

For other provisions for fees of sheriff:
- Certificate of title, inspection fees, see sections 60-106 and 60-145.
- Distraint and sale of taxpayer's property, see section 77-3906.
- Distress warrant, issuance, levy, and return, fee, see section 77-1720.
- Handgun, application, filing fee, see section 69-2404.
- Summons in error, see section 25-1904.
- Summons of county board of equalization, see section 77-1509.
- Summons out of county, see section 25-1713.
- Transporting mental health patients, see section 83-337.
- Transporting prisoners, see section 83-424.

1. Reporting fees
2. Mileage
3. Miscellaneous

1. **Reporting fees**

The provisions of this section requiring quarterly reports to the county board are mandatory. Quinton v. State, 112 Neb. 684, 200 N.W. 881 (1924).

Mandamus will lie to compel a county sheriff to comply with this section by reporting to the county commissioners the fees collected by him for his services attending on district court and summoning juries. State ex rel. Antelope County v. Miller, 98 Neb. 179, 152 N.W. 326 (1915).

2. **Mileage**

Mileage fees earned by the deputy traveling in his own conveyance are the property of the deputy and not of the sheriff. State ex rel. Tomka v. Janing, 183 Neb. 76, 158 N.W.2d 213 (1968).

Under this section, a sheriff is not required to report or pay into the county treasury the mileage fees earned and collected by him. Red Willow County v. Peterson, 91 Neb. 750, 137 N.W. 987 (1912).

3. **Miscellaneous**

No commission is allowed where redemption is made from sheriff's sale. Muinch v. Hull, 181 Neb. 571, 149 N.W.2d 527 (1967).

Sheriff cannot make charge for making return to execution of no property found. Ehlers v. Gallagher, 147 Neb. 97, 22 N.W.2d 396 (1946).

A sheriff is not entitled to any reward for the capture of a person who absconded after being charged with the crime of murder. Ward v. Adams, 95 Neb. 781, 146 N.W. 950 (1914).

Under this section, as it existed in 1903, the fees pertaining to the office of sheriff belonged to the sheriff even though they might have been earned by his deputy, and in such a case, the sheriff could recover against the county without an assignment from the deputy. Dakota County v. Borowsky, 67 Neb. 317, 93 N.W. 686 (1903).

A sheriff or his deputy is not entitled to a fee for making a search and return upon a distress warrant where no property subject to levy was found. Red Willow County v. Smith, 67 Neb. 213, 93 N.W. 151 (1903).

A sheriff is not entitled to a commission upon money which never comes into his hands, but was paid directly by a purchaser to the plaintiff in a foreclosure suit. O'Shea v. Kavanaugh, 65 Neb. 639, 91 N.W. 578 (1902).

An agreement that a sheriff shall be paid fees in excess of those prescribed by the statute for his services is contrary to public policy and void. Phoenix Ins. Co. v. McEvony, 52 Neb. 566, 72 N.W. 956 (1897).

A sheriff is not entitled to a fee for his attendance during the trial of a civil action in a justice of the peace court. Kissinger v. Staley, 44 Neb. 783, 63 N.W. 55 (1895).

A sheriff is entitled to a commission on money paid to him by the purchaser at a foreclosure sale even though the money is in the form of a check which was later returned without being cashed. Kent v. Shickle, Harrison & Howard Iron Co., 42 Neb. 274, 60 N.W. 563 (1894).

33-117.01 Repealed. Laws 1980, LB 628, § 9.

33-118 Transferred to section 23-1704.04.

33-119 Sheriffs and constables; fees for serving process.

No sheriff or constable shall be entitled to receive on mesne or final process any fees provided for in section 33-117, unless he shall return upon the process, upon which any charge shall be made, the particular items of such charge.

Source: R.S.1866, c. 19, § 29, p. 171; R.S.1913, § 2444; Laws 1915, c. 38, § 1, p. 108; C.S.1922, § 2384; C.S.1929, § 33-123.

A constable cannot recover his fees for serving a writ unless he makes return upon the writ of the particular fees charged. Van Etten v. Selden, 36 Neb. 209, 54 N.W. 261 (1893).

This section does not apply to a sheriff's fee for care, preservation, and custody of attached property because the statute provided compensation for officers serving orders of attachment does not provide compensation for such services. Reed v. Smith, 25 Neb. 64, 40 N.W. 591 (1888).

33-120 Fees; payment or security in advance; who may require.

The clerks of the Supreme Court and of each district court, the county judge, sheriff, constable, register of deeds, and county clerk may in all cases require the party for whom any service is to be rendered to pay the fees in advance of the rendition of such service, or give security for the same to be approved by the officer.

Source: R.S.1866, c. 19, § 27, p. 171; R.S.1913, § 2445; C.S.1922, § 2385; C.S.1929, § 33-124; R.S.1943, § 33-120; Laws 1972, LB 1032, § 219; Laws 1979, LB 85, § 1.

Where sheriff demanded in advance fifty cents for return to execution of no property found, under mistake of law, he was not liable for extortion. Ehlers v. Gallagher, 147 Neb. 97, 22 N.W.2d 396 (1946).

This section, which is permissive in form, contemplates the giving of credit for fees and is a legislative recognition of that practice. Douglas County v. Vinsonhaler, 82 Neb. 810, 118 N.W. 1058 (1908).

It is the duty of the clerk of the district court to collect in advance all fees provided by the statute for any service required of him. State v. Several Parcels of Land, 82 Neb. 51, 117 N.W. 450 (1908).

It is the duty of the clerk of the district court to require payment in advance or security for the payment of all fees for his services, and the sureties on his official bond are liable for all fees remaining uncollected at the expiration of his term. Boettcher v. Lancaster County, 74 Neb. 148, 103 N.W. 1075 (1905).

Where a subpoena had been issued and delivered to a constable commanding him to summon jurors to hear a complaint before a justice of the peace charging a misdemeanor, the constable was not entitled to demand that his fees be paid in advance before he summoned the jurors. Beach v. State ex rel. Emmons, 27 Neb. 398, 43 N.W. 177 (1889).

Court costs may be required to be paid in advance of the performance of the required service, and the fact that it is not done in all cases is due merely to official favor. Sechler & Brotherton v. Stark, 12 Neb. 242, 11 N.W. 320 (1882).

33-121 Writs of attachment; fees; expenses; taxed as costs.

In all cases where writs of attachment against property are issued, the officers to whom such writ is directed for service shall be empowered to demand in advance, and receive before said service, the regular fees for service of papers, and in addition thereto a sum of money sufficient to defray the expenses incurred for work and labor in the taking possession of or removal of the property ordered attached, and for the safekeeping thereof; said sum to be taxed in the costs.

Source: Laws 1871, § 1, p. 116; R.S.1913, § 2446; C.S.1922, § 2386; C.S.1929, § 33-125.

A sheriff may return as costs in an attachment suit all actual, necessary, and reasonable charges and expenses which he incurs in taking possession, removing, and preserving the attached property, such as the cost of hiring men to husk standing corn and to look after and feed livestock. William Deering & Company v. Wisherd, 46 Neb. 720, 65 N.W. 788 (1896).

33-122 Attachment; appraisers; compensation.

In all cases of attachment, when the property ordered attached consists of merchandise or miscellaneous goods, and time is absolutely necessary to properly appraise the same as required by law, the residents of the county, summoned to appraise said property, shall be entitled to a just and fair compensation for their time, labor and mileage, when necessary to go any distance exceeding one mile, and the sheriff or other officer is empowered to demand and collect the same as other fees; *Provided*, travel expenses by way of mileage shall be computed at the rate per mile as prescribed in section 33-117.

Source: Laws 1871, § 2, p. 117; R.S.1913, § 2447; C.S.1922, § 2387; C.S.1929, § 33-126; Laws 1933, c. 96, § 8, p. 388; C.S.Supp.,1941, § 33-126.

Cross References

Attachment, fees for services of officers, see section 25-1046.

33-123 County court; civil matters; fees.

The county court shall be entitled to the following fees in civil matters: For any and all services rendered up to and including the judgment or dismissal of the action other than for a domestic relations matter, twenty dollars of which two dollars shall be remitted to the State Treasurer for credit to the Nebraska Retirement Fund for Judges, and for any and all services rendered up to and including the judgment or dismissal of a domestic relations matter, forty dollars; for filing a foreign judgment or a judgment transferred from another court in this state, fifteen dollars; and for writs of execution, writs of restitution, garnishment, and examination in aid of execution, five dollars each.

Source: R.S.1866, c. 19, § 8, p. 164; Laws 1887, c. 41, § 1, p. 458; Laws 1907, c. 56, § 1, p. 229; Laws 1909, c. 58, § 1, p. 286; R.S.1913, § 2449; Laws 1915, c. 39, § 1, p. 110; Laws 1917, c. 45, § 1, p. 125; Laws 1921, c. 95, § 1, p. 357; C.S.1922, § 2388; Laws

1925, c. 98, § 1, p. 284; C.S.1929, § 33-127; Laws 1931, c. 64, § 1, p. 171; Laws 1937, c. 86, § 1, p. 283; C.S.Supp.,1941, § 33-127; R.S.1943, § 33-123; Laws 1945, c. 74, § 1, p. 276; Laws 1972, LB 1032, § 220; Laws 1974, LB 739, § 2; Laws 1981, LB 99, § 2; Laws 1982, LB 928, § 29; Laws 1983, LB 617, § 6; Laws 1989, LB 233, § 2; Laws 1995, LB 270, § 2; Laws 1996, LB 1296, § 7; Laws 2005, LB 348, § 10.

33-124 County court; criminal cases; fee.

In criminal matters, including preliminary and juvenile hearings, the county court shall receive, for any and all services rendered up to and including the judgment or dismissal of the action and the issuance of mittimus or discharge to the jailer, the sum of twenty dollars of which two dollars shall be remitted to the State Treasurer for credit to the Nebraska Retirement Fund for Judges.

Source: Laws 1915, c. 39, § 1, p. 110; Laws 1917, c. 45, § 1, p. 126; Laws 1921, c. 95, § 1, p. 359; C.S.1922, § 2388; Laws 1925, c. 98, § 1, p. 285; C.S.1929, § 33-127; Laws 1931, c. 64, § 1, p. 172; Laws 1937, c. 86, § 1, p. 284; C.S.Supp.,1941, § 33-127; R.S.1943, § 33-124; Laws 1945, c. 74, § 2, p. 276; Laws 1972, LB 1032, § 221; Laws 1981, LB 99, § 3; Laws 1982, LB 928, § 30; Laws 1983, LB 617, § 7; Laws 1989, LB 233, § 3; Laws 2005, LB 348, § 11.

The independent act considered herein is not unconstitutional for failure to mention in the incidental provision for payment or exemption from payment of costs, nor for failing to refer to and repeal certain other statutes. State ex rel. Douglas v. Gradwohl, 194 Neb. 745, 235 N.W.2d 854 (1975).

33-125 County court; probate fees; how determined.

(1) In probate matters the county court shall be entitled to receive the following fees:

(a) For probate proceedings commenced and closed informally, twenty-two dollars of which two dollars shall be remitted to the State Treasurer for credit to the Nebraska Retirement Fund for Judges; for each petition or application filed within the informal proceedings, twenty-two dollars of which two dollars shall be remitted to the State Treasurer for credit to the Nebraska Retirement Fund for Judges; and for any other proceeding under the Nebraska Probate Code for which no court fee is established by statute, twenty-two dollars of which two dollars shall be remitted to the State Treasurer for credit to the Nebraska Retirement Fund for Judges. The fees assessed under this subdivision shall not exceed the fees which would be assessed for a formal probate under subdivision (b) of this subsection; and

(b) For probate proceedings commenced or closed formally:

(i) When the value does not exceed one thousand dollars, twenty-two dollars;

(ii) When the value exceeds one thousand dollars and is not more than two thousand dollars, thirty dollars;

(iii) When the value exceeds two thousand dollars and is not more than five thousand dollars, fifty dollars;

(iv) When the value exceeds five thousand dollars and is not more than ten thousand dollars, seventy dollars;

(v) When the value exceeds ten thousand dollars and is not more than twenty-five thousand dollars, eighty dollars;

(vi) When the value exceeds twenty-five thousand dollars and is not more than fifty thousand dollars, one hundred dollars;

(vii) When the value exceeds fifty thousand dollars and is not more than seventy-five thousand dollars, one hundred twenty dollars;

(viii) When the value exceeds seventy-five thousand dollars and is not more than one hundred thousand dollars, one hundred sixty dollars;

(ix) When the value exceeds one hundred thousand dollars and is not more than one hundred twenty-five thousand dollars, two hundred twenty dollars;

(x) When the value exceeds one hundred twenty-five thousand dollars and is not more than one hundred fifty thousand dollars, two hundred fifty dollars;

(xi) When the value exceeds one hundred fifty thousand dollars and is not more than one hundred seventy-five thousand dollars, two hundred seventy dollars;

(xii) When the value exceeds one hundred seventy-five thousand dollars and is not more than two hundred thousand dollars, three hundred dollars;

(xiii) When the value exceeds two hundred thousand dollars and is not more than three hundred thousand dollars, three hundred fifty dollars;

(xiv) When the value exceeds three hundred thousand dollars and is not more than four hundred thousand dollars, four hundred dollars;

(xv) When the value exceeds four hundred thousand dollars and is not more than five hundred thousand dollars, five hundred dollars;

(xvi) When the value exceeds five hundred thousand dollars and is not more than seven hundred fifty thousand dollars, six hundred dollars;

(xvii) When the value exceeds seven hundred fifty thousand dollars and is not more than one million dollars, seven hundred dollars;

(xviii) When the value exceeds one million dollars and is not more than two million five hundred thousand dollars, eight hundred dollars;

(xix) When the value exceeds two million five hundred thousand dollars and is not more than five million dollars, one thousand dollars; and

(xx) On all estates when the value exceeds five million dollars, one thousand five hundred dollars.

(2) The fees prescribed in subdivision (1)(b) of this section shall be based on the gross value of the estate, including both real and personal property in the State of Nebraska at the time of death. The gross value shall mean the actual value of the estate less liens and joint tenancy property. Formal fees shall be charged in full for all services performed by the court, and no additional fees shall be charged for petitions, hearing, and orders in the course of such administration. The court shall provide one certified copy of letters of appointment without charge. In other cases when it is necessary to copy instruments, the county court shall be allowed the fees provided in section 33-126.05. In all cases when a petition for probate of will or appointment of an administrator, special administrator, personal representative, guardian, or trustee or any other

petition for an order in probate matters is filed and no appointment is made or order entered and the cause is dismissed, the fee shall be ten dollars.

Source: R.S.1866, c. 19, § 8, p. 164; Laws 1887, c. 41, § 1, p. 459; Laws 1907, c. 56, § 1, p. 230; Laws 1909, c. 58, § 1, p. 287; R.S.1913, § 2449; Laws 1915, c. 39, § 1, p. 111; Laws 1917, c. 45, § 1, p. 126; Laws 1921, c. 95, § 1, p. 358; C.S.1922, § 2388; Laws 1925, c. 98, § 1, p. 285; C.S.1929, § 33-127; Laws 1931, c. 64, § 1, p. 172; Laws 1937, c. 86, § 1, p. 284; C.S.Supp.,1941, § 33-127; R.S.1943, § 33-125; Laws 1945, c. 74, § 3, p. 277; Laws 1963, c. 187, § 1, p. 629; Laws 1975, LB 481, § 22; Laws 1982, LB 928, § 31; Laws 1983, LB 2, § 1; Laws 1984, LB 373, § 2; Laws 1984, LB 492, § 1; Laws 1989, LB 233, § 4; Laws 2005, LB 348, § 12.

Cross References

Nebraska Probate Code, see section 30-2201.

33-126 Repealed. Laws 1989, LB 233, § 11.

33-126.01 Repealed. Laws 1988, LB 799, § 1.

33-126.02 County court; guardianships; conservatorships; fees; how determined.

In matters of guardianship and conservatorship, the county court shall be entitled to receive the following fees: Upon the filing of a petition for the appointment of a guardian, twenty-two dollars; upon the filing of a petition for the appointment of a conservator, twenty-two dollars; upon the filing of one petition for a consolidated appointment of both a guardian and conservator, twenty-two dollars; for the appointment of a successor guardian or conservator, twenty-two dollars; for the appointment of a temporary guardian or temporary or special conservator, twenty-two dollars; and for proceedings for a protective order in the absence of a guardianship or conservatorship, twenty-two dollars. If there is more than one ward listed in a petition for appointment of a guardian or conservator or both, only one filing fee shall be assessed. Two dollars of each twenty-two-dollar fee shall be remitted to the State Treasurer for credit to the Nebraska Retirement Fund for Judges. While such guardianship or conservatorship is pending, the court shall receive five dollars for filing and recording each report. When the appointment of a custodian as provided for in the Nebraska Uniform Transfers to Minors Act is made, the county court shall be entitled to receive a fee of twenty dollars.

Source: R.S.1866, c. 19, § 8, p. 164; Laws 1887, c. 41, § 1, p. 460; Laws 1907, c. 56, § 1, p. 231; Laws 1909, c. 58, § 1, p. 288; R.S.1913, § 2449; Laws 1915, c. 39, § 1, p. 111; Laws 1917, c. 45, § 1, p. 127; Laws 1921, c. 95, § 1, p. 359; C.S.1922, § 2388; Laws 1925, c. 98, § 1, p. 286; C.S.1929, § 33-127; Laws 1931, c. 64, § 1, p. 173; Laws 1937, c. 86, § 1, p. 286; C.S.Supp.,1941, § 33-127; R.S.1943, § 33-126; Laws 1945, c. 74, § 4, p. 278; Laws 1949, c. 95, § 1(2), p. 255; Laws 1951, c. 103, § 1, p. 508; Laws 1963, c. 189, § 1, p. 633; Laws 1975, LB 481, § 23; Laws 1982, LB 928, § 33; Laws 1984, LB 492, § 2; Laws 1988, LB 790, § 5; Laws 1989, LB 233, § 5; Laws 1992, LB 907, § 27; Laws 2005, LB 348, § 13.

Cross References

Nebraska Uniform Transfers to Minors Act, see section 43-2701.

33-126.03 County court; inheritance tax proceedings; fees; by whom paid.

In all matters for the determination of inheritance tax under Chapter 77, article 20, the county court shall be entitled to receive fees of twenty-two dollars. Fees under this section shall not be charged if fees have been imposed pursuant to subdivision (1)(b) of section 33-125. Except in cases instituted by the county attorney, such fee shall be paid by the person petitioning for such determination. Two dollars of such fee shall be remitted to the State Treasurer for credit to the Nebraska Retirement Fund for Judges.

Source: R.S.1866, c. 19, § 8, p. 164; Laws 1887, c. 41, § 1, p. 460; Laws 1907, c. 56, § 1, p. 231; Laws 1909, c. 58, § 1, p. 288; R.S.1913, § 2449; Laws 1915, c. 39, § 1, p. 111; Laws 1917, c. 45, § 1, p. 127; Laws 1921, c. 95, § 1, p. 359; C.S.1922, § 2388; Laws 1925, c. 98, § 1, p. 286; C.S.1929, § 33-127; Laws 1931, c. 64, § 1, p. 173; Laws 1937, c. 86, § 1, p. 286; C.S.Supp.,1941, § 33-127; R.S.1943, § 33-126; Laws 1945, c. 74, § 4, p. 278; Laws 1949, c. 95, § 1(3), p. 256; Laws 1959, c. 376, § 1, p. 1316; Laws 1975, LB 481, § 24; Laws 1982, LB 928, § 34; Laws 1984, LB 373, § 3; Laws 1989, LB 233, § 6; Laws 2005, LB 348, § 14.

33-126.04 County court; adoption; fees.

In all matters of adoption, for each child adopted five dollars shall be allowed the court for the entire proceeding.

Source: R.S.1866, c. 19, § 8, p. 164; Laws 1887, c. 41, § 1, p. 460; Laws 1907, c. 56, § 1, p. 231; Laws 1909, c. 58, § 1, p. 288; R.S.1913, § 2449; Laws 1915, c. 39, § 1, p. 111; Laws 1917, c. 45, § 1, p. 127; Laws 1921, c. 95, § 1, p. 359; C.S.1922, § 2388; Laws 1925, c. 98, § 1, p. 286; C.S.1929, § 33-127; Laws 1931, c. 64, § 1, p. 173; Laws 1937, c. 86, § 1, p. 286; C.S.Supp.,1941, § 33-127; R.S.1943, § 33-126; Laws 1945, c. 74, § 4, p. 278; Laws 1949, c. 95, § 1(4), p. 256; Laws 1961, c. 163, § 1, p. 493; Laws 1975, LB 481, § 25; Laws 1982, LB 928, § 35; Laws 1984, LB 492, § 3; Laws 1989, LB 233, § 7.

33-126.05 County court; miscellaneous fees.

The county court shall be allowed the following miscellaneous fees: For delayed birth registration, for the entire proceedings, ten dollars; for depositing will for safekeeping and indexing the same, two dollars; and for each use of any credit card authorized by the court for any payment, a fee established in the manner provided in subsection (3) of section 81-118.01. The legal fees for printing notices required by law to be printed in some newspaper shall be allowed in addition to the fees allowed in this section. For the following services performed by the county court, it shall be entitled to receive the following fees: For temporary restraining order in injunction, in the absence of the district judge, five dollars; for appointment of appraisers in condemnation proceedings, fifteen dollars, plus one dollar for each additional parcel of land included in the petition when there is more than one; and for certifying report of appraisers to the county clerk or register of deeds and making transcript of

the same to the district court, one dollar per page. In addition to the fees provided in sections 33-123 to 33-125, the county court shall be entitled to the following fees: For providing photocopies, twenty-five cents per page; and for executing certificate and affixing the seal, one dollar.

Source: R.S.1866, c. 19, § 8, p. 164; Laws 1887, c. 41, § 1, p. 460; Laws 1907, c. 56, § 1, p. 231; Laws 1909, c. 58, § 1, p. 288; R.S.1913, § 2449; Laws 1915, c. 39, § 1, p. 111; Laws 1917, c. 45, § 1, p. 127; Laws 1921, c. 95, § 1, p. 359; C.S.1922, § 2388; Laws 1925, c. 98, § 1, p. 286; C.S.1929, § 33-127; Laws 1931, c. 64, § 1, p. 173; Laws 1937, c. 86, § 1, p. 286; C.S.Supp.,1941, § 33-127; R.S.1943, § 33-126; Laws 1945, c. 74, § 4, p. 278; Laws 1949, c. 95, § 1(5), p. 256; Laws 1961, c. 164, § 1, p. 494; Laws 1969, c. 275, § 1, p. 1041; Laws 1971, LB 383, § 1; Laws 1975, LB 481, § 26; Laws 1982, LB 928, § 36; Laws 1984, LB 492, § 4; Laws 1986, LB 525, § 3; Laws 1988, LB 370, § 11; Laws 1989, LB 233, § 8; Laws 1999, LB 51, § 2; Laws 2002, LB 57, § 1; Laws 2005, LB 348, § 15.

33-126.06 County court; matters relating to trusts; fees.

The county court shall be entitled to collect the following fees: For the registration of any trust, whether testamentary or not, twenty-two dollars; for each proceeding initiated in county court concerning the administration and distribution of trusts, the declaration of rights, and the determination of other matters involving trustees and beneficiaries of trusts, twenty-two dollars; for the appointment of a successor trustee, twenty-two dollars; and for filing and recording each report, five dollars. Two dollars of each twenty-two-dollar fee shall be remitted to the State Treasurer for credit to the Nebraska Retirement Fund for Judges.

Source: Laws 1975, LB 481, § 27; Laws 1982, LB 928, § 37; Laws 1989, LB 233, § 9; Laws 2005, LB 348, § 16.

33-127 Repealed. Laws 1972, LB 1032, § 287.

33-128 Repealed. Laws 1961, c. 96, § 11.

33-128.01 Repealed. Laws 1959, c. 266, § 1.

33-128.02 Repealed. Laws 1959, c. 266, § 1.

33-128.03 Repealed. Laws 1959, c. 266, § 1.

33-129 Transferred to section 77-401.02.

33-130 County clerk or register of deeds; fees; payment to county treasurer; credited to general fund.

Each county clerk or register of deeds shall, not later than the fifteenth day of the month following the calendar month in which fees are received, pay over to the county treasurer all fees received and take the receipt of the county treasurer therefor. Except as provided by section 25-2712, all fees received by

the county treasurer pursuant to this section shall be credited to the general fund of the county.

Source: Laws 1877, § 2, p. 216, § 5, p. 217; Laws 1913, c. 83, § 1, p. 226; R.S.1913, §§ 2421, 2454; Laws 1917, c. 49, § 1, p. 140; C.S.1922, § 2396; C.S.1929, §§ 33-101, 33-135; Laws 1941, c. 66, § 1, p. 291; C.S.Supp.,1941, § 33-135; R.S.1943, § 33-130; Laws 1961, c. 158, § 3, p. 482; Laws 1972, LB 1032, § 222; Laws 1975, LB 286, § 4.

1. Reporting of fees
2. Remedies
3. Miscellaneous

1. Reporting of fees

County judge must report costs received. State ex rel. Nebraska State Bar Assn. v. Conover, 166 Neb. 132, 88 N.W.2d 135 (1958).

County clerk is required to pay over fees received by him quarterly to county treasurer, and this applies to fees earned from duties performed with reference to certificates of title for motor vehicles. Hoctor v. State, 141 Neb. 329, 3 N.W.2d 558 (1942).

Fees received or collected are required to be entered upon the books and reported, and fees earned but not collected need not be reported. Douglas County v. Vinsonhaler, 82 Neb. 810, 118 N.W. 1058 (1908).

It is the duty of the county treasurer to account for the compensation paid to him by the state for collecting and remitting educational land funds, and to add such compensation to the other fees of his office when determining the amount which he must pay into the treasurer of the county. Bedwell v. Custer County, 51 Neb. 387, 70 N.W. 945 (1897).

This section is mandatory and requires the county clerk to make an accurate report to the county board of all fees received by him for official services. State ex rel Board of Supervisors of Holt County v. Hazelet, 41 Neb. 257, 59 N.W. 891 (1894).

A county clerk must report all fees received by him for performing his duties as county clerk irrespective of the fact that in performing such duties he acted as an abstracter or as a notary public. State ex rel. Frontier County v. Kelly, 30 Neb. 574, 46 N.W. 714 (1890).

A county clerk must report all fees received by him for preparing abstracts of title. State ex rel. Miller v. Sovereign, 17 Neb. 173, 22 N.W. 353 (1885).

A county clerk who is ex officio clerk of the district court must report all fees received by him including those pertaining to the district court. State ex rel. Board of County Commissioners of Hamilton County v. Whittemore, 12 Neb. 252, 11 N.W. 310 (1882).

2. Remedies

A cause of action for a writ of mandamus to compel a county clerk to pay into the county treasury the amount of fees received by him as county clerk and ex officio clerk of the district court accrues at the time the report for the current year is made. State ex rel. County Commissioners of Brown County v. Boyd, 49 Neb. 303, 68 N.W. 510 (1896).

Mandamus will lie to compel a county clerk to pay into the county treasury the fees which he received even though his term of office has expired. State ex rel. Cuming County v. Shearer, 29 Neb. 477, 45 N.W. 784 (1890).

The fact that the defendant's term of office had expired and that his successor had been elected did not abate a mandamus action that had been commenced while the defendant was the incumbent county clerk to compel him to report the fees he had collected during his term of office. State ex rel. Franklin County v. Cole, 25 Neb. 342, 41 N.W. 245 (1889).

3. Miscellaneous

This section does not apply to the office of the clerk of the district court. Buffalo County v. Bowker, 111 Neb. 762, 197 N.W. 620 (1924).

It is obligatory upon the officers for whom a fee is provided for performing a marriage ceremony to perform such ceremonies at the request of the public. Douglas County v. Vinsonhaler, 82 Neb. 810, 118 N.W. 1058 (1908).

In an action brought to recover fees received by a county judge, clerk, treasurer, or sheriff, it was essential that the petition allege that the amount sought to be recovered was in excess of the amount which the officer was entitled to retain as compensation for himself and his assistants. Saunders County v. Slama, 82 Neb. 724, 118 N.W. 573 (1908).

This action makes no provision for fees to be paid to a county judge for services performed by him with reference to the appointment of judges and clerks of election. Nuckolls County v. Peebler, 65 Neb. 356, 91 N.W. 289 (1902).

A county clerk is not entitled to a credit for preparing road books and assessor's books and must report in full all fees received by him for preparing certificates of encumbrances. Hazelet v. Holt County, 51 Neb. 716, 71 N.W. 717 (1897).

Where the statute failed to provide extra compensation for the county clerk for preparing the tax list, the county was allowed to recover a fee paid to the county clerk for preparing the tax list where the clerk failed to account for such fee to the county. Heald v. Polk County, 46 Neb. 28, 64 N.W. 376 (1895).

33-131 County officers; records of fees; duty to keep.

The clerks of the district court, sheriffs, county judges, county treasurers, county clerks, and registers of deeds of the several counties of the state shall each keep a book, unless authorized to use a computerized system, which shall be provided by the county, which shall be known as the fee book, which shall be a part of the records of such office, and in which shall be entered each and every item of fees collected showing in separate columns the name of the party from whom received, the date of receiving the same, the amount received, and for what service the same was charged.

Source: Laws 1877, § 3, p. 216; R.S.1913, § 2455; C.S.1922, § 2397; Laws 1925, c. 88, § 1, p. 267; C.S.1929, § 33-136; R.S.1943, § 33-131; Laws 1984, LB 679, § 12.

An instruction to the jury that this section included sheriffs and required them to keep a fee book was not prejudicial to a defendant in a prosecution for his failure to report fees. Quinton v. State, 112 Neb. 684, 200 N.W. 881 (1924).

Fees received or collected are required to be entered upon the books and reported, and fees earned but not collected need not be reported. Douglas County v. Vinsonhaler, 82 Neb. 810, 118 N.W. 1058 (1908).

Mandamus will lie to compel a county clerk to enter on his fee book the compensation he received for his services as clerk of the county board and for making out the tax lists even though his term has expired. State ex rel. Wayne County v. Russell, 51 Neb. 774, 71 N.W. 785 (1897).

It is the duty of the county clerk to enter in the fee book in full all fees received by him for preparing certificates of encumbrances. Hazelet v. Holt County, 51 Neb. 716, 71 N.W. 717 (1897).

A cause of action for a writ of mandamus to compel a county clerk to enter upon his fee book all fees earned by him as county clerk and ex officio clerk of the district court accrues not later than the time when the report for the current year is made. State ex rel. County Commissioners of Brown County v. Boyd, 49 Neb. 303, 68 N.W. 510 (1896).

This section is mandatory and requires the county clerk to keep a fee book and enter therein all fees received by him for official services. State ex rel. Board of Supervisors of Holt County v. Hazelet, 41 Neb. 257, 59 N.W. 891 (1894).

33-132 Violations; penalties.

Any officer who shall fail to comply with the provisions of sections 33-130 and 33-131, or shall fail or neglect to keep correct account of the fees by him received, or shall fail and neglect to make a report to the county board as herein provided, or shall willfully or intentionally omit to charge the fees provided by law, with intent to evade the provisions of said sections, shall be guilty of a Class V misdemeanor. Any such officer who shall make a false report under oath shall be guilty of perjury, and punished accordingly.

Source: Laws 1877, § 4, p. 216; R.S.1913, § 2456; C.S.1922, § 2398; C.S.1929, § 33-137; R.S.1943, § 33-132; Laws 1977, LB 40, § 169.

Failure of county judge to report costs received is an offense for which sanctions are prescribed. State ex rel. Nebraska State Bar Assn. v. Conover, 166 Neb. 132, 88 N.W.2d 135 (1958).

A county judge, clerk, treasurer, or sheriff is liable for fees earned by him but not collected where he willfully omitted to charge the fee, or where he negligently omitted to collect the fee, or had taken security therefore and had negligently failed to require sufficient security. Douglas County v. Vinsonhaler, 82 Neb. 810, 118 N.W. 1058 (1908).

Under this section it is the duty of a county clerk to charge and collect the full amount of fees authorized by statute for official services, and he is liable for such fees if he fails or neglects to collect the full fees authorized for the services performed. State ex rel. Board of Supervisors of Holt County v. Hazelet, 41 Neb. 257, 59 N.W. 891 (1894).

33-133 Notaries public; fees; governmental employee; limitation.

Except as otherwise provided in this section, notaries public may charge and collect fees as follows: For each protest, one dollar; for recording the same, two dollars; for each notice of protest, two dollars; for taking affidavits and seal, two dollars; for administering oath or affirmation, two dollars; for each certificate and seal, five dollars; for taking acknowledgment of deed or other instrument, five dollars; and for each mile traveled in serving notice, mileage at the rate provided in section 81-1176. An employee of the state or its political subdivisions may not charge the fees prescribed in this section if his or her governmental employer paid the commission and bonding fees required of notaries public.

Source: R.S.1866, c. 19, § 19, p. 169; Laws 1875, § 1, p. 84; Laws 1911, c. 52, § 1, p. 235; R.S.1913, § 2457; C.S.1922, § 2399; C.S. 1929, § 33-138; R.S.1943, § 33-133; Laws 1981, LB 204, § 52; Laws 1994, LB 1004, § 4; Laws 2004, LB 315, § 1.

It is the official duty of a notary public to give notice of dishonor of paper intrusted to him and this section provides the fee therefor. Williams v. Parks, 63 Neb. 747, 89 N.W. 395 (1902), 56 L.R.A. 759 (1902).

The fees paid to a notary public for presentation and protest of a negotiable instrument are incident to a recovery on the protested instrument and may be recovered as costs, but they are not part of the debt sued for and cannot be included as part of the amount in dispute when determining jurisdiction in a federal court. Baker v. Howell, 44 F. 113 (D. Neb. 1890).

33-134 Repealed. Laws 1972, LB 1032, § 287.

33-135 Repealed. Laws 1972, LB 1032, § 287.

33-135.01 Constables; fees; mileage.

Constables shall be allowed the same fees, including mileage, as are allowed sheriffs for like services as provided in section 33-117.

Source: Laws 1974, LB 739, § 3; Laws 1981, LB 204, § 53.

33-136 Sheriffs; fees; audit and allowance.

The county boards of the several counties in this state are hereby authorized to audit and allow the fees that may be fixed by law for services that may hereafter be performed by sheriffs in their respective counties in the arrest and examination of offenders charged with felonies.

Source: Laws 1871, § 1, p. 133; Laws 1903, c. 33, § 1, p. 282; R.S.1913, § 2640; C.S.1922, § 2402; C.S.1929, § 33-141; R.S.1943, § 33-136; Laws 1969, c. 276, § 1, p. 1041; Laws 1972, LB 1032, § 223; Laws 1988, LB 1030, § 35.

This section is constitutional and not in conflict with other statutory provisions. Boggs v. Board of Commissioners of Washington County, 10 Neb. 297, 4 N.W. 984 (1880).

33-137 Repealed. Laws 1973, LB 553, § 1.

33-137.01 Repealed. Laws 1949, c. 97, § 1.

33-138 Juror; compensation; mileage.

(1) Each member of a grand or petit jury in a district court or county court shall receive for his or her services thirty dollars for each day employed in the discharge of his or her duties prior to January 1, 1994, and thirty-five dollars for each such day on or after such date and mileage at the rate provided in section 81-1176 for each mile necessarily traveled. No juror shall be entitled to pay for the days he or she is voluntarily absent or excused from service by order of the court. No juror shall be entitled to pay for nonjudicial days unless actually employed in the discharge of his or her duties as a juror on such days.

(2) In the event that any temporary release from service, other than that obtained by the request of a juror, shall occasion an extra trip or trips to and from the residence of any juror or jurors the court may, by special order, allow mileage for such extra trip or trips.

(3) Payment of jurors for service in the district and county courts shall be made by the county.

Source: Laws 1867, § 2, p. 90; Laws 1911, c. 51, § 1, p. 234; R.S.1913, § 2463; Laws 1919, c. 115, § 1, p. 280; C.S.1922, § 2404; Laws 1929, c. 105, § 1, p. 395; C.S.1929, § 33-143; Laws 1933, c. 62, § 1, p. 296; C.S.Supp.,1941, § 33-143; R.S.1943, § 33-138; Laws 1947, c. 125, § 1, p. 364; Laws 1957, c. 134, § 1, p. 450; Laws 1965, c. 187, § 1, p. 578; Laws 1969, c. 278, § 1, p. 1045; Laws 1974, LB 736, § 1; Laws 1981, LB 204, § 54; Laws 1984, LB 13, § 75; Laws 1991, LB 147, § 1; Laws 2003, LB 760, § 14.

A juror summoned for three weeks' service is entitled to be paid for every day except Sunday during the three weeks unless finally discharged before the three weeks have expired. Cochran v. Lancaster County, 94 Neb. 130, 142 N.W. 862 (1913).

A juror is entitled to compensation for every day that he is in attendance in court and not excused from service. Spalding v. Douglas County, 85 Neb. 265, 122 N.W. 889 (1909).

A juror who served on a jury impaneled in an insanity inquest was entitled to the fee provided by this section. Chappell v. Lancaster County, 84 Neb. 301, 120 N.W. 1116 (1909).

33-139 Witnesses; compensation; mileage.

Witnesses before the district court and the county court, except the Small Claims Court, and the grand jury shall receive twenty dollars, and witnesses before the Small Claims Court shall receive eight dollars, for each day actually employed in attendance on the court or grand jury, and if the witness shall reside more than one mile from the courthouse or place where the court is held, he or she shall receive mileage at the rate provided in section 81-1176 for state employees for each mile necessarily traveled.

Source: Laws 1867, § 3, p. 90; R.S.1913, § 2464; C.S.1922, § 2405; Laws 1929, c. 111, § 1, p. 405; C.S.1929, § 33-144; Laws 1933, c. 62, § 2, p. 297; C.S.Supp.,1941, § 33-144; R.S.1943, § 33-139; Laws 1963, c. 190, § 1, p. 635; Laws 1974, LB 736, § 2; Laws 1975, LB 282, § 2; Laws 1981, LB 204, § 55; Laws 1984, LB 13, § 76.

1. Witness fee
2. Mileage
3. Miscellaneous

1. Witness fee

Absent a contract for services setting a different fee, an expert witness is entitled only to the fee set by this statute. Lockwood v. Lockwood, 205 Neb. 818, 290 N.W.2d 636 (1980); Hefti v. Hefti, 166 Neb. 181, 88 N.W.2d 231 (1958); Main v. Sherman County, 74 Neb. 155, 103 N.W. 1038 (1905).

This section does not authorize the payment of twenty dollars per day to a material witness during the time that he is confined while unable to post bond. Cochran v. County of Lincoln, 203 Neb. 818, 280 N.W.2d 897 (1979).

Entitlement to witness fee by testifying officers and stockholders of plaintiff corporation is unambiguous and statute contains no exceptions. Nebraska Im-Pruv-All, Inc. v. Sass, 197 Neb. 261, 247 N.W.2d 924 (1976).

In the absence of special contract, expert witness is entitled to statutory fee only. Hefti v. Hefti, 166 Neb. 181, 88 N.W.2d 231 (1958).

Our statutes having fixed the amount to be paid matter of fact witnesses residing within the jurisdiction of the court and subject to its process, for their attendance at trial therein, a special contract to pay such witnesses more than the regular witness fee is illegal, contrary to public policy, and void. State ex rel. Spillman v. First Bank of Nickerson, 114 Neb. 423, 207 N.W. 674 (1926).

A witness summoned to appear before a grand jury was not entitled to a witness fee for merely going to the courthouse where he did not appear before the grand jury or failed to report his presence to the foreman, the bailiff or the county attorney. Dunn v. Douglas County, 61 Neb. 179, 85 N.W. 56 (1901).

A witness who testifies as an expert on a subject requiring special knowledge and skill is, in the absence of a contract for those services, entitled only to the statutory witness fee set out in this section. Davis v. Davis, 7 Neb. App. 78, 578 N.W.2d 907 (1998).

2. Mileage

As a general rule, mileage for witnesses in a civil action is taxed only for the distance that a subpoena will run and become effective. Smith v. Bartlett, 78 Neb. 359, 110 N.W. 991 (1907).

A witness who resides in another state, and who accepts service and testifies for the state in a criminal prosecution, is entitled to mileage for the whole distance that he necessarily travels, and the state is entitled to have such witness fees taxed against the defendant in the event that the prosecution is successful. Ried v. State, 19 Neb. 695, 28 N.W. 300 (1886).

3. Miscellaneous

This section, in conjunction with sections 14-205(25), 14-501, 26-108, and 26-114, is sufficient to determine that the city has the ultimate responsibility to pay for costs incurred in the prosecution of offenders for city ordinances. Jasa v. City of Omaha, 218 Neb. 314, 352 N.W.2d 913 (1984).

33-139.01 Witness; certain employees; compensated for actual and necessary expenses; when.

Notwithstanding any existing provision to the contrary, when any employee of the State of Nebraska or of any political subdivision thereof is called as a witness in connection with his or her officially assigned duties, or when any privately employed security guard is called as a witness by his or her employer in connection with his or her officially assigned duties, in any action or proceeding in any court in this state, he or she shall not receive any witness fee, attendance fee, or mileage fee which shall be taxed as court costs in such action or proceeding, except that he or she shall be compensated for his or her actual

and necessary expenses when required to travel outside of the county of his or her residence. Payment for such actual and necessary expenses shall be made by the party who calls the employee as a witness.

For purposes of this section, volunteer firefighters and rescue squad members and persons authorized by a city or village ordinance or county resolution to issue handicapped parking citations in a volunteer capacity pursuant to section 18-1741.01 testifying in that capacity alone shall not be deemed employees of the State of Nebraska or of any political subdivision of this state.

Source: Laws 1972, LB 1162, § 2; Laws 1973, LB 191, § 1; C.S.Supp.,1974, § 26-173.01; Laws 1975, LB 282, § 1; Laws 1984, LB 703, § 1; Laws 1985, LB 233, § 1; Laws 1995, LB 593, § 10; Laws 1996, LB 1211, § 12.

33-140 Unclaimed witness fees; report to county board by clerk; when filed.

When witness fees are paid to the clerk of the district or county court in pursuance of judgment of the court and remain uncalled for by the parties entitled to the fees for the period of six months after they have been paid in, the clerk shall prepare a list, under oath, of the causes in which such fees have been paid and remain uncalled for, with the amounts in each cause and the date of judgment, and file the list with the county board of the respective county on the first Tuesday in January, April, July, and October in each year.

Source: Laws 1877, § 1, p. 225; R.S.1913, § 6676; C.S.1922, § 6213; C.S.1929, § 77-2602; R.S.1943, § 77-2401; Laws 1972, LB 1032, § 271; R.S.1943, (1986), § 77-2401; Laws 1989, LB 11, § 1.

County is entitled to any interest earned upon public funds in the hands of a county officer. Scotts Bluff County v. McHenry, 130 Neb. 717, 266 N.W. 586 (1936).

Section is constitutional. Douglas County v. Moores, 66 Neb. 284, 92 N.W. 199 (1902).

33-140.01 Unclaimed witness fees; notice by county board; publication.

It shall be the duty of the county board, within twenty days after the filing of the list provided by section 33-140, to cause to be published in some weekly newspaper of general circulation, published in the county, for at least two consecutive issues of the paper, a notice in a form substantially as follows:

To whom it may concern: Report has been made to the county board of .... County, Nebraska, by the clerk of the district or county court of the county, which report shows that there is now and has been for the last six months remaining in the hands of the clerk certain witness fees which have been uncalled for. If the fees are not called for within six months from .... (insert the day upon which the first report was made), they will be considered as forfeited and will be paid into the common school fund of .... County.

Source: Laws 1877, § 1, p. 225; R.S.1913, § 6676; C.S.1922, § 6213; C.S.1929, § 77-2602; R.S.1943, § 77-2402; Laws 1972, LB 1032, § 272; R.S.1943, (1986), § 77-2402; Laws 1989, LB 11, § 2.

33-140.02 Unclaimed witness fees; payment to county treasurer; credited to school fund.

All unclaimed witness fees remaining in the hands of the clerk of the district or county court for the period of six months after the list has been filed with the

county board shall be paid over to the county treasurer who shall receipt in duplicate for the fees, one of which receipts shall be filed with the county clerk. All such fees shall be credited to the common school fund of the county.

Source: Laws 1877, § 2, p. 226; R.S.1913, § 6677; C.S.1922, § 6214; C.S.1929, § 77-2603; R.S.1943, § 77-2403; Laws 1972, LB 1032, § 273; R.S.1943, (1986), § 77-2403; Laws 1989, LB 11, § 3.

33-140.03 Unclaimed witness fees; duty of county board to make examination; failure of clerk to pay; suit authorized to recover.

The county board shall examine the books and dockets of the clerk of the county and district courts of the county. If the board finds that a clerk has failed to report or pay over any of the fees required by section 33-140 to be paid over or reported, the board shall notify the clerk to pay over the fees at once. If the clerk fails to pay over such fees to the county treasurer, the county board shall commence suit in any court having jurisdiction against the clerk and the person who issued the clerk's bond. The action shall be commenced in the name of the county for the benefit of the common schools of the county.

Source: Laws 1877, § 3, p. 226; R.S.1913, § 6678; C.S.1922, § 6215; C.S.1929, § 77-2604; R.S.1943, § 77-2404; R.S.1943, (1986), § 77-2404; Laws 1989, LB 11, § 4.

Legislature may impose condition that witness fees and costs shall be called for within a certain specified time. Douglas County v. Moores, 66 Neb. 284, 92 N.W. 199 (1902).

33-141 Legal notices; rates.

(1) Until one year after September 9, 1995, the legal rate for the publication of all legal notices other than those exceptional legal notices described in section 33-142 shall be forty-one cents per line, single column, standard newspaper measurements of eight-point type and pica width of eleven for the first insertion and thirty-five and nine-tenths cents per line, single column, standard newspaper measurements of eight-point type and pica width of eleven for each subsequent insertion. Publication of such notices may be in any type selected by the publisher. For the purpose of uniformity, the calculation of fees for such publication shall be based on the official conversion table that follows:

CONVERSION TABLE

Five-and-One-Half-Point Type

Pica Width	First Insertion	Subsequent Insertions
9	48.791 ¢	42.721 ¢
9 1/2	51.502	45.095
10	54.213	47.469
10 1/2	56.924	49.843
11	59.635	52.217
11 1/2	62.346	54.591
12	65.057	56.965
12 1/2	67.768	59.339
13	70.479	61.713
13 1/2	73.190	64.087
14	75.901	66.461
14 1/2	78.612	68.835

Pica Width	First Insertion	Subsequent Insertions
15	81.323	71.209
15 1/2	84.034	73.583
16	86.745	75.957

Six-Point Type

Pica Width	First Insertion	Subsequent Insertions
9	44.725 ¢	39.161 ¢
9 1/2	47.210	41.337
10	49.695	43.513
10 1/2	52.180	45.689
11	54.665	47.865
11 1/2	57.150	50.041
12	59.635	52.217
12 1/2	62.120	54.393
13	64.605	56.569
13 1/2	67.090	58.745
14	69.575	60.921
14 1/2	72.060	63.097
15	74.545	65.273
15 1/2	77.030	67.449
16	79.515	69.625

Seven-Point Type

Pica Width	First Insertion	Subsequent Insertions
9	38.339 ¢	33.570 ¢
9 1/2	40.469	35.435
10	42.599	37.300
10 1/2	44.729	39.165
11	46.859	41.030
11 1/2	48.989	42.895
12	51.119	44.760
12 1/2	53.249	46.625
13	55.379	48.490
13 1/2	57.509	50.355
14	59.639	52.220
14 1/2	61.769	54.085
15	63.899	55.950
15 1/2	66.029	57.815
16	68.159	59.680

Eight-Point Type

Pica Width	First Insertion	Subsequent Insertions
9	33.544 ¢	29.372 ¢
9 1/2	35.408	31.004
10	37.272	32.636
10 1/2	39.136	34.268
11	41.000	35.900
11 1/2	42.864	37.532
12	44.728	39.164
12 1/2	46.592	40.796
13	48.456	42.428
13 1/2	50.320	44.060
14	52.184	45.692
14 1/2	54.048	47.324

Pica Width	First Insertion	Subsequent Insertions
15	55.912	48.956
15 1/2	57.776	50.588
16	59.640	52.220

Nine-Point Type

Pica Width	First Insertion	Subsequent Insertions
9	29.817 ¢	26.108 ¢
9 1/2	31.474	27.559
10	33.131	29.010
10 1/2	34.788	30.461
11	36.445	31.912
11 1/2	38.102	33.363
12	39.759	34.814
12 1/2	41.416	36.265
13	43.073	37.716
13 1/2	44.730	39.167
14	46.387	40.618
14 1/2	48.044	42.069
15	49.701	43.520
15 1/2	51.358	44.971
16	53.015	46.422

Ten-Point Type

Pica Width	First Insertion	Subsequent Insertions
9	26.836 ¢	23.496 ¢
9 1/2	28.327	24.802
10	29.818	26.108
10 1/2	31.309	27.414
11	32.800	28.720
11 1/2	34.291	30.026
12	35.782	31.332
12 1/2	37.273	32.638
13	38.764	33.944
13 1/2	40.255	35.250
14	41.746	36.556
14 1/2	43.237	37.862
15	44.728	39.168
15 1/2	46.219	40.474
16	47.710	41.780.

(2) Commencing one year after September 9, 1995, the legal rate for the publication of all legal notices other than those exceptional legal notices described in section 33-142 shall be forty-five cents per line, single column, standard newspaper measurements of eight-point type and pica width of eleven for the first insertion and thirty-nine and four-tenths cents per line, single column, standard newspaper measurements of eight-point type and pica width of eleven for each subsequent insertion. Publication of such notices may be in any type selected by the publisher. For the purpose of uniformity, the calculation of fees for such publication shall be based on the official conversion table that follows:

CONVERSION TABLE

Five-and-One-Half-Point Type

Pica Width	First Insertion	Subsequent Insertions
9	53.553 ¢	46.887 ¢
9 1/2	56.528	49.492
10	59.503	52.097
10 1/2	62.478	54.702
11	65.453	57.307
11 1/2	68.428	59.912
12	71.403	62.517
12 1/2	74.378	65.122
13	77.353	67.727
13 1/2	80.328	70.332
14	83.303	72.937
14 1/2	86.278	75.542
15	89.253	78.147
15 1/2	92.228	80.752
16	95.203	83.357

Six-Point Type

Pica Width	First Insertion	Subsequent Insertions
9	49.087 ¢	42.980 ¢
9 1/2	51.815	45.368
10	54.543	47.756
10 1/2	57.271	50.144
11	59.999	52.532
11 1/2	62.727	54.920
12	65.455	57.308
12 1/2	68.183	59.696
13	70.911	62.084
13 1/2	73.639	64.472
14	76.367	66.860
14 1/2	79.095	69.248
15	81.823	71.636
15 1/2	84.551	74.024
16	87.279	76.412

Seven-Point Type

Pica Width	First Insertion	Subsequent Insertions
9	42.079 ¢	36.842 ¢
9 1/2	44.417	38.889
10	46.755	40.936
10 1/2	49.093	42.983
11	51.431	45.030
11 1/2	53.769	47.077
12	56.107	49.124
12 1/2	58.445	51.171
13	60.783	53.218
13 1/2	63.121	55.265
14	65.459	57.312
14 1/2	67.797	59.359
15	70.135	61.406
15 1/2	72.473	63.453
16	74.811	65.500

Eight-Point Type

Pica Width	First Insertion	Subsequent Insertions
9	36.816 ¢	32.236 ¢
9 1/2	38.862	34.027
10	40.908	35.818
10 1/2	42.954	37.609
11	45.000	39.400
11 1/2	47.046	41.191
12	49.092	42.982
12 1/2	51.138	44.773
13	53.184	46.564
13 1/2	55.230	48.355
14	57.276	50.146
14 1/2	59.322	51.937
15	61.368	53.728
15 1/2	63.414	55.519
16	65.460	57.310

Nine-Point Type

Pica Width	First Insertion	Subsequent Insertions
9	32.724 ¢	28.655 ¢
9 1/2	34.543	30.247
10	36.362	31.839
10 1/2	38.181	33.431
11	40.000	35.023
11 1/2	41.819	36.615
12	43.638	38.207
12 1/2	45.457	39.799
13	47.276	41.391
13 1/2	49.095	42.983
14	50.914	44.575
14 1/2	52.733	46.167
15	54.552	47.759
15 1/2	56.371	49.351
16	58.190	50.943

Ten-Point Type

Pica Width	First Insertion	Subsequent Insertions
9	29.452 ¢	25.788 ¢
9 1/2	31.089	27.221
10	32.726	28.654
10 1/2	34.363	30.087
11	36.000	31.520
11 1/2	37.637	32.953
12	39.274	34.386
12 1/2	40.911	35.819
13	42.548	37.252
13 1/2	44.185	38.685
14	45.822	40.118
14 1/2	47.459	41.551
15	49.096	42.984
15 1/2	50.733	44.417
16	52.370	45.850.

Source: R.S.1866, c. 19, § 17, p. 168; Laws 1869, § 1, p. 159; R.S.1913, § 2466; Laws 1921, c. 181, § 1, p. 682; C.S.1922, § 2407;

C.S.1929, § 33-146; R.S.1943, § 33-141; Laws 1951, c. 105, § 1, p. 511; Laws 1965, c. 189, § 1, p. 580; Laws 1971, LB 401, § 1; Laws 1982, LB 629, § 1; Laws 1989, LB 298, § 1; Laws 1995, LB 418, § 1.

This section prescribes a maximum rate for printing legal notices, and it is the rate to be charged in the absence of a specific agreement for a lower rate. Wisner v. Morrill County, 117 Neb. 324, 220 N.W. 280 (1928).

The first subdivision of this section, prior to its amendment in 1921, governed the computation of fees for publishing the notice of suit and list of lands necessary to an action under the scavenger law. Bee Publishing Co. v. Douglas County, 78 Neb. 244, 110 N.W. 624 (1907).

A printer is not required to charge the full legal rate prescribed by the statute, and if a printer charges less than the full legal rate for printing a notice of sale in a foreclosure action, that is the amount which the sheriff may charge as costs in the case. Phoenix Ins. Co. v. McEvony, 52 Neb. 566, 72 N.W. 956 (1897).

33-142 Legal notices; separate contract rate; authorized.

A public official or other legal notice purchaser who determines it is necessary or for purposes of public information desirable to publish a legal notice using (1) a type size larger than shown in the conversion table in section 33-141, (2) placement of the legal notice in a place more prominent than the regular legal notice portion of the legal newspaper, or (3) a legal newspaper with a paid statewide circulation in excess of one hundred thousand may negotiate with any legal newspaper for a separate contract rate different from the rates set forth in section 33-141 but no higher than the newspaper's lowest scheduled rate for classified advertisements of the type sought to be purchased.

Source: Laws 1989, LB 298, § 2.

33-143 Legal notice; substitute notice; authorized.

If a legal notice required by any statute of this state cannot be purchased at the rate set forth in section 33-141 or at the fraction of that rate specified by the particular statute requiring the legal notice, the legal notice purchaser may substitute for published legal notice a form of legal notice which includes, but is not limited to, posting the notice for the full period specified in the statute at the place or places specified in the statute. If no place is specified, then the posting shall be in full public view at the regular meeting place or office of any public entity involved, at the place where the particular meeting, act, or event described by the notice is to occur, and on a public bulletin board in the municipal office building and the county office building of the municipality and county nearest to the place of the meeting, act, or event described in the notice.

Source: Laws 1989, LB 298, § 3.

33-144 Repealed. Laws 1959, c. 140, § 7.

33-145 Court costs; how taxed and entered.

In all actions, motions, and proceedings in the Supreme Court, Court of Appeals, district courts, separate juvenile courts, and county courts, the costs of the parties shall be taxed and entered on the record separately.

Source: R.S.1866, c. 19, § 26, p. 170; R.S.1913, § 2470; C.S.1922, §§ 2411, 2412; C.S.1929, § 33-150; R.S.1943, § 33-145; Laws 1991, LB 1, § 4; Laws 1991, LB 732, § 98.

The requirement of this section is satisfied if a separate itemized statement of the costs appears on the margin of the record. Kissenger v. Staley, 44 Neb. 783, 63 N.W. 55 (1895).

It is the duty of the clerk to tax the costs of each party separately, and where all costs have been entered up in one

general fee bill, a motion to retax the costs separately is proper. Wallace v. Flierschman, 22 Neb. 203, 34 N.W. 372 (1887).

Where the costs of each party have not been taxed separately and a motion to retax costs separately has been filed, the judgment may be reversed, not upon the merits, but only so far as is necessary to correct the error in the taxation of costs. Cooper & Co. v. Hall, 22 Neb. 168, 34 N.W. 349 (1887).

33-146 Fees; refusal to pay; when justified.

It shall be lawful for any person to refuse payment of fees to any officer who will not make out a fee bill signed by him if required, and also a receipt or discharge signed by him for fees paid.

Source: R.S.1866, c. 19, § 28, p. 171; R.S.1913, § 2471; C.S.1922, § 2413; C.S.1929, § 33-151.

Under this section the furnishing of an itemized bill of fees to the party for whom the services were rendered is a condition precedent to bringing suit to recover the fees if such a bill has been requested and the right to it has not been waived. Van Etten v. Selden, 36 Neb. 209, 54 N.W. 261 (1893).

33-147 Illegal fees; taking; penalty.

If any officer shall take greater fees than those prescribed in sections 33-101 to 33-146, for any service to be done by him in his office, or shall charge or demand, and take any of the fees prescribed in said sections without performing the service for which such fees are authorized, he shall forfeit and pay the sum of fifty dollars to the party injured, to be recovered as debts of the same amount are recoverable by law.

Source: R.S.1866, c. 19, § 30, p. 171; R.S.1913, § 2472; C.S.1922, § 2414; C.S.1929, § 33-152.

1. Constitutionality
2. Actions
3. Defenses
4. Miscellaneous

1. Constitutionality

This section provides a fixed sum in the nature of liquidated damages to be recovered by a person who suffered an injury through the wrongful act or oppression of a public officer and does not violate the constitutional provision relating to the disposition of fines, penalties, and license money. Graham v. Kibble, 9 Neb. 182, 2 N.W. 455 (1879).

2. Actions

The penalty prescribed by this section cannot be recovered in a suit on the officer's bond. A cause of action under this section arises whenever an officer receives fees in excess of those prescribed by law, or for services not performed, during his term of office. Sheibley v. Cooper, 79 Neb. 232, 112 N.W. 363 (1907); rehearing denied, 79 Neb. 236, 113 N.W. 626 (1907).

The remedy provided by this section is cumulative and is not ban to a suit in equity for an accounting against an officer for receiving illegal or excessive fees. McGlave v. Fitzgerald, 67 Neb. 417, 93 N.W. 692 (1903).

The penalty provided by this section may be recovered against an officer who charges a fee for performing services for which the statute has not provided a fee. Courier Printing & Publishing Co. v. Leese, 65 Neb. 581, 91 N.W. 357 (1902).

A cause of action to recover the penalty provided by this section and a cause of action to recover illegal fees charged by a sheriff may be properly joined where both causes of action arise from the fees charged by a sheriff for his services in one action. Phoenix Ins. Co. v. McEvony, 52 Neb. 566, 72 N.W. 956 (1897).

The last clause of this section provides the manner in which the penalty may be recovered, and does not confer jurisdiction upon the county courts to hear and determine actions brought to recover the penalty. Crow v. Bowen, 19 Neb. 528, 26 N.W. 251 (1886).

Where an action to recover the penalty provided by this section has been commenced, a constable cannot amend his return so as to show that the fees charged were actually earned unless the parties in interest are given notice of the application for leave to amend. Newby v. Miller, 5 Neb. Unof. 468, 98 N.W. 1066 (1904).

3. Defenses

Where payment of fee is made voluntarily, with full knowledge of the facts and at most only under mistake of law, the fee paid cannot be recovered. Ehlers v. Gallagher, 147 Neb. 97, 22 N.W.2d 396 (1946).

A cause of action based on this section is highly penal, and where there was no evidence as to the value of the services performed, a clerk of the district court who had performed the services and collected a fee on the supposition that he was entitled to it as compensation was not liable under this section. Sheibley v. Hurley, 74 Neb. 31, 103 N.W. 1082 (1905).

This section was enacted to provide against the collection of illegal costs by public officers in all cases, and the fact that an injured party could obtain relief through a motion to retax costs is not a ban to an action brought to recover the costs and the penalty provided by this section. O'Shea v. Kavanaugh, 65 Neb. 639, 91 N.W. 578 (1902).

Mistake or ignorance is not a defense in an action brought under this section. Phoenix Ins. Co. v. Bohman, 28 Neb. 251, 44 N.W. 111 (1889).

The fact that the excessive fees were demanded and received by the defendant in good faith is not a defense to an action brought to recover the penalty prescribed by this section. Cobbey v. Burks, 11 Neb. 157, 8 N.W. 386 (1881), 38 Am. R. 364 (1881).

4. Miscellaneous

Police judges are included within the scope of this section as officers whose fees are hereinbefore expressed and limited. Downey v. Coykendall, 81 Neb. 648, 116 N.W. 503 (1908), affirmed on second appeal, 89 Neb. 21, 130 N.W. 983 (1911).

The sureties upon the official bond of an officer are not liable for the penalty prescribed by this section. Eccles v. Walker, 75 Neb. 722, 106 N.W. 977 (1906), reversing Eccles v. United States Fidelity & Guaranty Co., 72 Neb. 734, 101 N.W. 1023, 117 A.S.R. 830 (1904).

Although the effect of payment of excessive fees by an execution debtor may be to reduce the amount realized on the sale of the property, the execution creditor cannot recover the penalty prescribed by this section where the evidence fails to show that the execution debtor is insolvent and unable to pay the judgment. Iler & Co. v. Cronin, 34 Neb. 424, 51 N.W. 970 (1892).

Where three items of illegal fees are paid to a clerk of the district court in one sum and included in one receipt, the overcharge is but one transaction and only fifty dollars may be recovered as a penalty. Lydick v. Palmquist, 31 Neb. 300, 47 N.W. 918 (1891).

33-148 Fees; schedule; failure to post; penalty.

All officers whose fees are prescribed in sections 33-101 to 33-147 are hereby required to make fair tables of their respective fees, and keep the same in their respective offices in some conspicuous place, for the inspection of all persons who shall have business in said offices. If any such officer shall neglect to keep a table of fees of his office as aforesaid, such officer shall, for each day of such neglect so to keep a table of fees of his office, forfeit and pay the sum of five dollars, to be recovered by action at law before the county court, for the use of the county in which the offense shall have been committed.

Source: R.S.1866, c. 19, § 31, p. 171; R.S.1913, § 2473; C.S.1922, § 2415; C.S.1929, § 33-153; R.S.1943, § 33-148; Laws 1972, LB 1032, § 225.

33-149 Repealed. Laws 1961, c. 165, § 1.

33-150 Repealed. Laws 1999, LB 828, § 178.

33-151 Fees of state boards and agencies; amount available for use of each.

All money now in the state treasury to the credit of the Board of Barber Examiners, the State Real Estate Commission, the Board of Engineers and Architects, the State Athletic Commissioner, the Nebraska Oil and Gas Conservation Commission pursuant to sections 57-906 and 57-911, and any other state board, bureau, division, fund, or commission not mentioned in this section, and all money collected by each of such boards, bureaus, divisions, or commissions during any biennium, if and when specifically appropriated by the Legislature for that purpose, are made immediately available for the use and benefit of such board, bureau, division, or commission. This section shall not be construed to apply to the fees inuring to the Nebraska Brand Inspection and Theft Prevention Fund.

Source: Laws 1941, c. 68, § 2, p. 295; C.S.Supp.,1941, § 33-163; Laws 1943, c. 89, § 1, p. 294; R.S.1943, § 33-151; Laws 1945, c. 77, § 1, p. 285; Laws 1947, c. 126, § 1, p. 365; Laws 1996, LB 33, § 2; Laws 1999, LB 828, § 2; Laws 2003, LB 242, § 4.

33-152 Fees of state boards and agencies; withdrawal.

The Director of Administrative Services is authorized and empowered to draw his or her warrants against the several fee fund accounts of each of the special boards, bureaus, commissions, or divisions enumerated in section 33-151, upon duly itemized and verified vouchers approved by the person or persons having supervision or charge of the respective funds and who are authorized by law to approve such vouchers. Upon presentation of the warrants

the State Treasurer shall countersign the same and shall pay the warrants out of, but never in excess of, the amount of the fee funds specifically appropriated.

Source: Laws 1941, c. 68, § 3, p. 295; C.S.Supp.,1941, § 33-164; R.S. 1943, § 33-152; Laws 1999, LB 828, § 3.

33-153 Fees for acknowledgments, oaths, affirmations; report to county board; payment to county treasurer.

All fees received for taking acknowledgments, oaths and affirmations, by any county officer, or any deputy or employee in his office, whether received for taking acknowledgments, oaths and affirmations, in an official capacity as a county officer or while acting in the capacity of a notary public, must be reported to the county board and paid into the county treasury. Any person who shall violate any of the provisions of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined in a sum not in excess of one hundred dollars. Any county officer or deputy so offending shall also be subject to removal from office.

Source: Laws 1943, c. 85, § 1, p. 285.

33-154 Additional court cost; training fee.

In addition to all other court costs assessed according to law, a training fee of one dollar shall be taxed as costs for each case filed in each county court and district court, including appeals to such courts, and for each appeal and original action filed in the Court of Appeals and the Supreme Court. The fees shall be remitted to the State Treasurer on forms prescribed by the State Treasurer within ten days after the end of each month. The State Treasurer shall credit the fees to the Supreme Court Education Fund.

Source: Laws 2003, LB 760, § 3.

33-155 Additional court cost; dispute resolution fee.

In addition to all other court costs assessed according to law, a dispute resolution fee of seventy-five cents shall be taxed as costs for each case filed in each county court and district court, including appeals to such courts, and for each appeal and original action filed in the Court of Appeals and the Supreme Court. The fees shall be remitted to the State Treasurer on forms prescribed by the State Treasurer within ten days after the end of each month. The State Treasurer shall credit the fees to the Dispute Resolution Cash Fund.

Source: Laws 2003, LB 760, § 7.

33-156 Additional court cost; indigent defense fee.

(1) In addition to all other court costs assessed according to law, an indigent defense fee of three dollars shall be taxed as costs for each case filed in each county court and district court, including appeals to such courts, and for each appeal and original action filed in the Court of Appeals and the Supreme Court. The fees shall be remitted to the State Treasurer on forms prescribed by the State Treasurer within ten days after the end of the month. The State Treasurer shall credit the fees to the Commission on Public Advocacy Operations Cash Fund.

(2) In cases under the DNA Testing Act, costs shall be paid as provided in such act.

Source: Laws 1995, LB 646, § 13; Laws 1997, LB 108, § 2; Laws 2000, LB 1085, § 1; Laws 2001, LB 659, § 18; Laws 2002, LB 876, § 67; R.S.Supp.,2002, § 29-3931; Laws 2003, LB 760, § 12; Laws 2005, LB 348, § 17.

Cross References

DNA Testing Act, see section 29-4116.

CHAPTER 34
FENCES, BOUNDARIES, AND LANDMARKS

Article.

1. Division Fences. 34-101 to 34-117.
2. Protection and Perpetuation of Landmarks and Corners. 34-201, 34-202.
3. Court Action for Settling Disputed Corners. 34-301.

ARTICLE 1
DIVISION FENCES

Section

34-101. Repealed. Laws 2007, LB 108, § 10.
34-102. Division fence; adjoining landowners; apportionment of cost.
34-103. Repealed. Laws 2007, LB 108, § 10.
34-104. Repealed. Laws 2007, LB 108, § 10.
34-105. Repealed. Laws 2007, LB 108, § 10.
34-106. Repealed. Laws 2007, LB 108, § 10.
34-107. Repealed. Laws 2007, LB 108, § 10.
34-108. Repealed. Laws 2007, LB 108, § 10.
34-109. Repealed. Laws 2007, LB 108, § 10.
34-110. Repealed. Laws 2007, LB 108, § 10.
34-111. Repealed. Laws 2007, LB 108, § 10.
34-112. Division fence; injury or destruction; repair.
34-112.01. Division fence; entry upon land authorized.
34-112.02. Division fence; construction, maintenance, or repair; notice; court action authorized; hearing; mediation; costs.
34-112.03. Division fence; changes made by Laws 2007, LB 108; applicability.
34-113. Repealed. Laws 2007, LB 108, § 10.
34-114. Repealed. Laws 1994, LB 882, § 6.
34-115. Lawful fences, defined.
34-116. Lawful fences; height and spaces.
34-117. Lawful fences; Warner's Patent; requirements.

34-101 Repealed. Laws 2007, LB 108, § 10.

34-102 Division fence; adjoining landowners; apportionment of cost.

(1) When there are two or more adjoining landowners, each of them shall construct and maintain a just proportion of the division fence between them, except that if the adjoining landowners each cause or allow the use of the division fence to confine livestock upon their respective properties, each landowner shall construct and maintain the division fence between them in equal shares. This section shall not be construed to compel the erection and maintenance of a division fence if neither of the adjoining landowners desires such division fence.

(2) Unless the adjoining landowners have agreed otherwise, such fence shall be a lawful fence, as defined in section 34-115.

(3) The duty assigned to adjoining landowners by this section applies (a) when either or both of the adjoining lands lie within an area zoned for agricultural or horticultural purposes as defined in section 77-1359 and either or both of the adjoining lands are utilized as agricultural or horticultural land

and (b) in all other areas of the state when both of the adjoining lands are utilized as agricultural or horticultural land.

Source: R.S.1866, c. 1, § 13, p. 8; R.S.1913, § 476; Laws 1919, c. 94, § 2, p. 237; C.S.1922, § 2418; C.S.1929, § 34-102; Laws 2007, LB108, § 3.

Cross References

Game and Parks Commission, division fence responsibilities, see section 37-1012.

Failure of plaintiff to maintain just proportion of division fence did not justify or excuse trespass by defendant's cattle; this article provides remedy for defendant to compel plaintiff to maintain proportion of fence. Fiene v. Robertson, 184 Neb. 668, 171 N.W.2d 179 (1969).

A cause of action for contribution does not arise from the erection of a partition fence, in the absence of any agreement, unless the method provided by statute is followed. Burr v. Hamer, 12 Neb. 483, 11 N.W. 741 (1882).

34-103 Repealed. Laws 2007, LB 108, § 10.

34-104 Repealed. Laws 2007, LB 108, § 10.

34-105 Repealed. Laws 2007, LB 108, § 10.

34-106 Repealed. Laws 2007, LB 108, § 10.

34-107 Repealed. Laws 2007, LB 108, § 10.

34-108 Repealed. Laws 2007, LB 108, § 10.

34-109 Repealed. Laws 2007, LB 108, § 10.

34-110 Repealed. Laws 2007, LB 108, § 10.

34-111 Repealed. Laws 2007, LB 108, § 10.

34-112 Division fence; injury or destruction; repair.

Whenever a division fence is injured or destroyed by fire, floods, or other casualty, the person bound to construct and maintain such fence, or any part thereof, shall make repairs to the same, or his or her just proportion thereof, as provided in section 34-102.

Source: R.S.1866, c. 1, § 23, p. 9; R.S.1913, § 2486; C.S.1922, § 2426; C.S.1929, § 34-110; Laws 2007, LB108, § 4.

34-112.01 Division fence; entry upon land authorized.

An owner of land may enter upon adjacent land owned by another person to construct, maintain, or repair a division fence pursuant to sections 34-102 and 34-112, but such access shall be allowed only to the extent reasonably necessary to construct, maintain, or repair the division fence. This section does not authorize any alterations to adjacent land owned by another person, including the removal of trees, buildings, or other obstacles, without the consent of the adjacent landowner or a court order or the removal of any items of personal property lying thereon without the consent of the adjacent landowner or a court order.

Source: Laws 2007, LB108, § 5.

34-112.02 Division fence; construction, maintenance, or repair; notice; court action authorized; hearing; mediation; costs.

(1) Whenever a landowner desires to construct a division fence or perform maintenance or repairs to an existing division fence, such landowner shall give written notice of such intention to any person who is liable for the construction, maintenance, or repair of the division fence. Such notice may be served upon any nonresident by delivering the written notice to the occupant of the land or the landowner's agent in charge of the land. The written notice shall request that the person liable for the construction, maintenance, or repair satisfy his or her obligation by performance or by other manner of contribution. After giving written notice, a landowner may commence or complete construction of a division fence, or commence or complete maintenance or repair upon an existing division fence, in which cases any cause of action under this section and sections 34-102, 34-112, and 34-112.01 shall be an action for contribution.

(2) If the person so notified either fails to respond to such request or refuses such request, the landowner sending notice may commence an action in the county court of the county where the land is located. If the landowners cannot agree what proportion of a division fence each shall construct, maintain, or repair, whether by performance or by contribution, either landowner may commence an action, without further written notice, in the county court of the county where the land is located. An action shall be commenced by filing a fence dispute complaint on a form prescribed by the State Court Administrator and provided to the plaintiff by the clerk of the county court. The complaint shall be executed by the plaintiff in the presence of a judge, a clerk or deputy or assistant clerk of a county court, or a notary public or other person authorized by law to take acknowledgments and be accompanied by the fee provided in section 33-123. A party shall not commence an action under this subsection until seven days after giving notice under subsection (1) of this section and shall commence the action within one year after giving such notice.

(3) Upon filing of a fence dispute complaint, the court shall set a time for hearing and shall cause notice to be served upon the defendant. Notice shall be served not less than five days before the time set for hearing. Notice shall consist of a copy of the complaint and a summons directing the defendant to appear at the time set for hearing and informing the defendant that if he or she fails to appear, judgment will be entered against him or her. Notice shall be served in the manner provided for service of a summons in a civil action. If the notice is to be served by certified mail, the clerk shall provide the plaintiff with written instructions, prepared and provided by the State Court Administrator, regarding the proper procedure for service by certified mail. The cost of service shall be paid by the plaintiff, but such cost and filing fee shall be added to any judgment awarded to the plaintiff.

(4) In any proceeding under this section, subsequent to the initial filing, the parties shall receive from the clerk of the court information regarding availability of mediation through the farm mediation service of the Department of Agriculture or the state mediation centers as established through the Office of Dispute Resolution. Development of the informational materials and the implementation of this subsection shall be accomplished through the State Court Administrator. With the consent of both parties, a court may refer a case to mediation and may state a date for the case to return to court, but such date shall be no longer than ninety days from the date the order is signed unless the court grants an extension. If the parties consent to mediate and if a mediation agreement is reached, the court shall enter the agreement as the judgment in the action. The costs of mediation shall be shared by the parties according to

the schedule of fees established by the mediation service and collected directly by the mediation service.

(5) If the case is not referred to mediation or if mediation is terminated or fails to reach an agreement between the parties, the action shall proceed as a civil action subject to the rules of civil procedure.

Source: Laws 2007, LB108, § 6.

34-112.03 Division fence; changes made by Laws 2007, LB 108; applicability.

The changes made to sections 34-102, 34-112, and 37-1012 by Laws 2007, LB 108, sections 34-112.01 and 34-112.02, and the repeal of sections 34-101, 34-103 to 34-111, and 34-113 by Laws 2007, LB 108, apply commencing on March 8, 2007, except that prior law applies to any division fence dispute commenced prior to such date.

Source: Laws 2007, LB108, § 7.

34-113 Repealed. Laws 2007, LB 108, § 10.

34-114 Repealed. Laws 1994, LB 882, § 6.

34-115 Lawful fences, defined.

Lawful fences of different kinds used for fence to enclose lands shall be as hereinafter defined. (1) A rail fence shall consist of at least six rails, such rails to be secured by stakes at the end of each panel, well set in the ground, with a rider on the stakes. (2) A board fence shall consist of not less than three boards of at least five inches in width and one inch thick; such boards to be well secured to posts; the posts to be not more than eight feet apart. (3) A rail and post fence shall consist of at least three rails, well secured at each end to posts; the posts not to be more than ten feet apart. (4) A pole and post fence shall consist of not less than four poles, to be well secured to posts; the posts not to be more than seven feet apart. (5) A wire fence shall consist of at least four wires, of a size not less than number nine fencing wire, to be well secured to posts, the posts to be at no greater distance than one rod from each other; and there shall be placed between every two of the posts one stake or post to which the wire shall be attached. Any of such wires may be a barbed wire composed of two or more single wire strands twisted into a cable wire with metal barbs thereon averaging not more than five inches apart, each of such single wire strands to be of a size not less than number twelve and one-half gauge fencing wire. (6) A hog and sheep tight fence shall consist of one barb wire at the ground, next above, one section of woven wire twenty-six inches high, consisting of not less than seven strands, the upper and lower strands to be number nine wire, intermediate strands to be number eleven wire with stays not more than twelve inches apart, and at the top, three barb wires at intervals of six, nine, and nine inches; and the whole shall be securely fastened to posts at no greater distance than one rod from each other, and there shall be placed between every two of the posts one stake or post to which the wire shall be attached. (7) All other fences made and constructed of boards, rails, poles, stones, hedge plants, or other material which upon evidence is declared to be as

strong and well calculated to protect enclosures and is as effective for resisting breaching stock shall be considered a lawful fence.

Source: Laws 1867 (Ter.), § 1, p. 17; R.S.1913, § 2492; Laws 1915, c. 43, § 18, p. 120; C.S.1922, § 2431; C.S.1929, § 34-115; R.S. 1943, § 34-115; Laws 1947, c. 127, § 1, p. 366; Laws 1999, LB 776, § 3.

This section was not intended to apply to railroads. Chicago, B. & Q. R. R. Co. v. James, 26 Neb. 188, 41 N.W. 992 (1889).

Lawful wire fence must consist of at least four wires. Baltensperger v. United States, 174 F.Supp. 601 (D. Neb. 1959).

34-116 Lawful fences; height and spaces.

The fences described in section 34-115 shall be at least four and one-half feet in height; and in the construction of such fences the spaces between the boards, rails, poles, and wires shall not exceed one foot each, measuring from the top.

Source: Laws 1867 (Ter.), § 2, p. 17; R.S.1913, § 2493; C.S.1922, § 2432; C.S.1929, § 34-116.

This section was not intended to apply to railroads. Chicago, B. & Q. R. R. Co. v. James, 26 Neb. 188, 41 N.W. 992 (1889).

34-117 Lawful fences; Warner's Patent; requirements.

Fence known as Warner's Patent shall be at least four and one-half feet in height, and consist of not less than five boards; such boards to be of a width of not less than five inches, and one inch thick.

Source: Laws 1867 (Ter.), § 3, p. 18; R.S.1913, § 2495; C.S.1929, § 34-117.

This section was not intended to apply to railroads. Chicago, B. & Q. R. R. Co. v. James, 26 Neb. 188, 41 N.W. 992 (1889).

ARTICLE 2
PROTECTION AND PERPETUATION OF LANDMARKS AND CORNERS

Cross References

Corner markers, failure to report loss or destruction, penalties, see sections 39-1708 and 39-1709.
County resurveys, procedure, see sections 23-301 to 23-303.
County surveyor, duties, see Chapter 23, article 19.
Destruction of established landmarks, penalty, see section 39-806.
Irregular tracts, special surveys, see sections 23-304 to 23-307.
Oregon Trail monuments, penalty for damaging, see section 82-111.
Perpetuating corners along county roads, duties of county board, see sections 39-1410 and 39-1708.
Road markers or monuments, damaging, penalties, see sections 39-304, 39-1709, 60-6,130, and 82-111.

Section
34-201. Preservation during construction and other work.
34-202. Failure to protect; liability for damages.

34-201 Preservation during construction and other work.

It shall be the duty of every individual or corporation engaged either directly or indirectly in the construction of any irrigation ditch, drainage ditch, railroad, side track or spur track, or any other construction, or in any other activity whatsoever, that endangers or may endanger or may cause the loss or destruction of any landmark or corner of land surveys or boundaries, to employ the county surveyor of the county wherein they are situated to properly perpetuate or witness said landmarks and corners according to law.

Source: Laws 1929, c. 129, § 1, p. 479; C.S.1929, § 34-201.

34-202 Failure to protect; liability for damages.

Any individual or corporation who shall fail to protect such landmarks or corners shall be responsible for all damage that may accrue to the party injured by reason of such loss or destruction.

Source: Laws 1929, c. 129, § 2, p. 479; C.S.1929, § 34-202.

ARTICLE 3

COURT ACTION FOR SETTLING DISPUTED CORNERS

Section
34-301. Disputed corners and boundaries; court action to settle; procedure.

34-301 Disputed corners and boundaries; court action to settle; procedure.

When one or more owners of land, the corners and boundaries of which are lost, destroyed or in dispute, desire to have the same established, they may bring an action in the district court of the county where such lost, destroyed or disputed corners or boundaries, or part thereof, are situated, against the owners of the other tracts which will be affected by the determination or establishment thereof, to have such corners or boundaries ascertained and permanently established. If any public road is likely to be affected thereby, the proper county shall be made defendant. Notice of such action shall be given as in other cases, and if the defendants or any of them are nonresidents of the state, or unknown, they may be served by publication as is provided by law. The action shall be a special one, and the only necessary pleading therein shall be the petition of plaintiff describing the land involved, and, so far as may be, the interest of the respective parties and asking that certain corners and boundaries therein described, as accurately as may be, shall be established. Either the plaintiff or defendant may, by proper plea, put in issue the fact that certain alleged boundaries or corners are the true ones, or that such have been recognized and acquiesced in by the parties or their grantors for a period of ten consecutive years, which issue shall be tried before the district court under its equity jurisdiction without the intervention of a jury, and appeals from such proceedings shall be had and taken in conformity with the equity rules.

Source: Laws 1923, c. 103, § 1, p. 258; C.S.1929, § 34-301.

1. Adverse possession
2. Equity action
3. Recognition and acquiescence
4. Miscellaneous

1. Adverse possession

Where an exact metes and bounds description is impossible to ascertain from the record, the failure to adequately describe the proposed boundary is fatal to a claim of adverse possession. Matzke v. Hackbart, 224 Neb. 535, 399 N.W.2d 786 (1987).

Adverse possession is recognized as a defense in a proceeding under this section. Petsch v. Widger, 214 Neb. 390, 335 N.W.2d 254 (1983).

When properly pleaded, the theory of adverse possession, as well as the theory of mutual recognition and acquiescence, may be raised under this section. Layher v. Dove, 207 Neb. 736, 301 N.W.2d 90 (1981).

Evidence was insufficient to show acquisition of title by adverse possession. Randall v. Liakos, 181 Neb. 326, 148 N.W.2d 204 (1967).

Adverse possession is recognized as a defense in a proceeding under this section. Converse v. Kenyon, 178 Neb. 151, 132 N.W.2d 334 (1965).

Adverse possession or acquiescence must be put in issue by proper plea. Hehnke v. Starr, 158 Neb. 575, 64 N.W.2d 68 (1954).

Acquiescence in boundary is separate and distinct from claim of title by adverse possession. Hakanson v. Manders, 158 Neb. 392, 63 N.W.2d 436 (1954).

In determining whether an adverse possessor had exclusive use of the disputed property, it is irrelevant whether the title-holders communicated their use of the disputed property to the adverse possessor or his or her predecessor in interest. Madson v. TBT Ltd. Liability Co., 12 Neb. App. 773, 686 N.W.2d 85 (2004).

2. Equity action

This statute provides that whenever one or more owners of land, the corners and boundaries of which are lost, destroyed, or in dispute, desire to have the same established, they may bring an action in the district court to have them ascertained

and permanently established. The case is tried as an equity case and is reviewable in the Supreme Court de novo on the record. State v. Jarchow, 219 Neb. 88, 362 N.W.2d 19 (1985).

An action to establish boundaries under this section is an equity action and triable de novo on appeal to the Supreme Court. Cofer v. Kuhlmann, 214 Neb. 341, 333 N.W.2d 905 (1983).

This section authorizes actions in equity to determine boundaries of real estate, the ownership of which is in whole or in part in dispute. Shirk v. Schmunk, 192 Neb. 25, 218 N.W.2d 433 (1974).

This section is broad enough to authorize action in equity to determine boundaries of real estate. Elsasser v. Szymanski, 163 Neb. 65, 77 N.W.2d 815 (1956).

Where defendant in his answer and cross-petition asked for determination of boundary lines, he was precluded from objecting to jurisdiction of equity to fully determine issues joined. Hardt v. Orr, 142 Neb. 460, 6 N.W.2d 589 (1942).

Equity action is available to determine corners and boundaries to real estate to which the right or title is in dispute, irrespective of whether or not there is an adequate remedy at law. McGowan v. Neimann, 139 Neb. 639, 298 N.W. 411 (1941).

3. Recognition and acquiescence

Rule of recognition and acquiescence embodied in this section is separate and distinct from the theory of adverse possession. Such rule requires more than the mere establishment of a line but requires the other party to have knowledge of the line and the possession taken as well as assent thereto. Spilinek v. Spilinek, 215 Neb. 35, 337 N.W.2d 122 (1983).

A boundary line may be established by mutuality of recognition and acquiescence for a period of ten consecutive years. Swanson v. Dalton, 178 Neb. 55, 131 N.W.2d 704 (1964).

Issue of recognition of and acquiescence in boundary line must be raised by proper pleading. McDermott v. Boman, 165 Neb. 429, 86 N.W.2d 62 (1957).

4. Miscellaneous

Boundary disputes cannot be determined in a quiet title action. Rather, boundary disputes are properly brought as an action in ejectment or pursuant to this section. Rush Creek Land & Live Stock Co. v. Chain, 255 Neb. 347, 586 N.W.2d 284 (1998).

This statute provides that whenever one or more owners of land, the corners and boundaries of which are lost, destroyed, or in dispute, desire to have the same established, they may bring an action in the district court to have them ascertained and permanently established. The case is tried as an equity case and is reviewable in the Supreme Court de novo on the record. State v. Jarchow, 219 Neb. 88, 362 N.W.2d 19 (1985).

This section provides for court action to settle disputed corners and boundary line questions. McGowan v. Neimann, 144 Neb. 652, 14 N.W.2d 326 (1944).

In a proceeding to establish lost corners and boundary lines, where the evidence is conflicting, trial court's finding will not be disturbed when sustained by competent evidence. Kennedy v. Gottschalk, 138 Neb. 842, 295 N.W. 813 (1941).

This section authorizes the district court to ascertain and permanently establish the corners or boundaries to lands which have been lost, destroyed, or are in dispute in a suit in equity. State v. Cheyenne County, 123 Neb. 1, 241 N.W. 747 (1932).

CHAPTER 35
FIRE COMPANIES AND FIREFIGHTERS

Article.

1. Volunteer Fire Companies. 35-101 to 35-109.
2. Firefighters' Pension in First-Class Cities Having Paid Fire Departments. Repealed.
3. Hours of Duty of Firefighters. 35-301, 35-302.
4. Rural Fire Protection Districts. Repealed.
5. Rural and Suburban Fire Protection Districts. 35-501 to 35-536.
6. Emergency Firefighting. 35-601 to 35-603.
7. Commission on Firefighting. Repealed.
8. Clothing and Equipment. 35-801.
9. Volunteer Fire and Rescue Departments. 35-901.
10. Death or Disability. 35-1001.
11. Fire Recognition Day. 35-1101.
12. Mutual Finance Assistance Act. 35-1201 to 35-1207.
13. Volunteer Emergency Responders Recruitment and Retention Act. 35-1301 to 35-1330.
14. Volunteer Emergency Responders Job Protection Act. 35-1401 to 35-1408.

ARTICLE 1
VOLUNTEER FIRE COMPANIES

Section

35-101. Volunteer firefighters; exemptions enumerated; retired firefighters; exemptions.
35-102. Volunteer fire department; number of members; copy of roll; filing.
35-103. Volunteer firefighters; members in good standing.
35-104. Repealed. Laws 1955, c. 126, § 2.
35-105. Equipment; exemption from execution and sale.
35-106. Fire insurance companies; occupation tax; levy; collection.
35-107. Volunteer department; emergency first aid; members; immunity from liability; when.
35-108. Volunteer fire and rescue personnel; group life insurance; municipality or district; purchase; maintain; coverage termination.
35-109. Sirens; restriction on use.

35-101 Volunteer firefighters; exemptions enumerated; retired firefighters; exemptions.

All volunteer members in good standing in any fire company or hook and ladder company in this state shall be exempt from militia duty in time of peace; *Provided*, that said certificate of exemption shall be approved and authorized by the council or board of trustees under the seal of the city or village in which the fire department issuing the same is located. When any member shall have retired from such company after having served ten years or more he shall be furnished a certificate of exemption. Any member in good standing in any fire company or hook and ladder company in this state on September 20, 1957, shall be furnished a certificate of exemption after five years of service; *Provided*, when a member serves in different fire companies or hook and ladder companies in this state, or at different times in the same company, he may add the years he previously served to his present membership in order to qualify for such exemption. Persons who received certificates of exemption for five years'

service prior to September 20, 1957, shall be entitled to all exemptions theretofore enjoyed by holders of such certificates.

Source: Laws 1867 (Ter.), § 1, p. 16; Laws 1871, § 1, p. 131; G.S.1873, c. 24, § 1, p. 390; R.S.1913, § 2496; Laws 1915, c. 44, § 1, p. 122; C.S.1922, § 2434; C.S.1929, § 35-101; R.S.1943, § 35-101; Laws 1955, c. 126, § 1, p. 359; Laws 1957, c. 135, § 1, p. 452; Laws 1959, c. 143, § 2, p. 553; Laws 1961, c. 166, § 1, p. 496; Laws 1963, c. 194, § 1, p. 639; Laws 1971, LB 14, § 1; Laws 1972, LB 1032, § 226; Laws 1973, LB 99, § 1.

Cross References

Military exemption, see sections 55-106 and 55-174.

35-102 Volunteer fire department; number of members; copy of roll; filing.

No volunteer fire department shall have upon its rolls at one time more than twenty-five persons, for each engine and hose company in said fire department, and no hook and ladder company shall have upon its rolls at any one time more than twenty-five members. The foreman and secretary of every such company shall, on the first day of April and October in each year, file in the office of the clerk of the district court in and for the respective counties a certified copy of the rolls of their respective companies so as to obtain for the members thereof the privilege of the exemption mentioned in section 35-101. No organization shall be deemed to be a bona fide fire, or hook and ladder company until it shall have procured for active service apparatus for the extinguishment or prevention of fires, in case of a hose company, to the value of seven hundred dollars, and of a hook and ladder company to the value of five hundred dollars.

Source: Laws 1867 (Ter.), § 2, p. 16; G.S.1873, c. 24, § 2, p. 390; R.S.1913, § 2497; Laws 1915, c. 44, § 1, p. 122; C.S.1922, § 2435; C.S.1929, § 35-102.

35-103 Volunteer firefighters; members in good standing.

Members in good standing are hereby defined to be those who keep their dues promptly paid up, and are present and render active service when called out for the legitimate purposes of their organization.

Source: Laws 1867 (Ter.), § 3, p. 16; G.S.1873, c. 24, § 3, p. 390; R.S.1913, § 2498; C.S.1922, § 2436; C.S.1929, § 35-103.

35-104 Repealed. Laws 1955, c. 126, § 2.

35-105 Equipment; exemption from execution and sale.

All fire engines, hose, hose carriages, ladders, buckets, and all vehicles, machinery, and appliances of every kind used or kept by incorporated cities, villages, or fire companies for the purpose of extinguishing fires are hereby exempt from execution and sale to satisfy any debt, judgment, or decree arising upon contract or otherwise. The provisions of this section shall not affect any voluntary lien created by bill of sale, security agreement as defined in article 9, Uniform Commercial Code, or otherwise, on such property, by the proper owner.

Source: Laws 1869, § 1, p. 17; R.S.1913, § 2499; C.S.1922, § 2438; C.S.1929, § 35-105; R.S.1943, § 35-105; Laws 1972, LB 1055, § 1; Laws 1999, LB 550, § 5.

35-106 Fire insurance companies; occupation tax; levy; collection.

The municipal authorities of any city of the first or second class or village, shall have authority, by ordinance, to impose an occupation tax of not more than five dollars per annum on each fire insurance corporation, company or association, doing business in such city or village, for the use, support, and benefit of volunteer fire departments, regularly organized under the laws of the State of Nebraska regulating the same. The municipal clerk shall collect with diligence the occupation tax so imposed. Upon the receipt of said tax the municipal clerk shall pay over the proceeds thereof to the municipal treasurer who shall credit the same to a fund to be known as special occupation tax fund for benefit of the volunteer fire department. Upon proper claim filed by the chief of the fire department and allowed by the local governing body of the municipality, the municipal treasurer shall pay over the proceeds of the tax in the fund from time to time for the use of the fire department, as hereinbefore provided.

Source: Laws 1895, c. 38, § 1, p. 167; R.S.1913, § 2525; C.S.1922, § 2448; C.S.1929, § 35-401; Laws 1939, c. 37, § 1, p. 190; C.S.Supp.,1941, § 35-401.

Volunteer fire department receives occupation taxes levied by city or village. State ex rel. Retchless v. Cook, 181 Neb. 863, 152 N.W.2d 23 (1967).

Ordinance of village imposing tax for support of fire department was not subject to construction as to meaning of the words doing business by proposed legislative amendment which was never enacted. Village of Axtell v. Nebraska Hardware Mutual Ins. Co., 142 Neb. 657, 7 N.W.2d 471 (1943).

Unless this section was merely declaratory of the law which existed when it was enacted, it is invalid because of its failure to refer to the existing laws which it amended. German-American Fire Ins. Co. v. City of Minden, 51 Neb. 870, 71 N.W. 995 (1897).

35-107 Volunteer department; emergency first aid; members; immunity from liability; when.

No member of a volunteer fire department or of a volunteer first-aid, rescue, or emergency squad which provides emergency public first-aid and rescue services shall be liable in any civil action to respond in damages as a result of his acts of commission or omission arising out of and in the course of his rendering in good faith any such services as such member but such immunity from liability shall not extend to the operation of any motor vehicle in connection with such services.

Nothing in this section shall be deemed to grant any such immunity to any person causing damage by his willful or wanton act of commission or omission.

Source: Laws 1963, c. 192, § 1, p. 638.

To prevent a demurrer for lack of subject matter jurisdiction based on the immunity conferred by this section, the plaintiff must allege facts which show either that the general immunity does not apply or that the actions fall within the exceptions set forth in this section. Whether a public entity maintains private liability insurance at public expense is not a condition for immunity under this section. Drake v. Drake, 260 Neb. 530, 618 N.W.2d 650 (2000).

35-108 Volunteer fire and rescue personnel; group life insurance; municipality or district; purchase; maintain; coverage termination.

The governing body of any incorporated municipality having a volunteer fire department or the board of directors of each rural or suburban fire protection district shall purchase and maintain in force a policy of group term life insurance to age sixty-five covering the lives of all of its active volunteer fire and rescue personnel, except that when any such person serves more than one municipality or district such policy shall be purchased only by the first munici-

pality or district which he or she serves. Such policy shall provide a minimum death benefit of ten thousand dollars for death from any cause and shall, at the option of the insured, be convertible to a permanent form of life insurance at age sixty-five. The coverage of such policy shall terminate as to any individual who ceases to be an active volunteer member of the fire department of the municipality or district.

Source: Laws 1971, LB 750, § 1; Laws 1973, LB 249, § 1; Laws 2003, LB 167, § 1.

35-109 Sirens; restriction on use.

No siren or other similar device whose primary purpose is to warn the public of a natural or manmade emergency or disaster shall be used to notify volunteer firefighters of a fire or to summon volunteer firefighters to a fire. This section applies only to cities of the first class located within a county which contains a city of the metropolitan class.

Source: Laws 1997, LB 589, § 3.

ARTICLE 2

FIREFIGHTERS' PENSION IN FIRST-CLASS CITIES HAVING PAID FIRE DEPARTMENTS

Section
35-201. Repealed. Laws 1983, LB 531, § 26.
35-202. Repealed. Laws 1983, LB 531, § 26.
35-203. Repealed. Laws 1983, LB 531, § 26.
35-203.01. Repealed. Laws 1983, LB 531, § 26.
35-204. Repealed. Laws 1983, LB 531, § 26.
35-205. Repealed. Laws 1983, LB 531, § 26.
35-206. Repealed. Laws 1983, LB 531, § 26.
35-207. Repealed. Laws 1983, LB 531, § 26.
35-208. Repealed. Laws 1983, LB 531, § 26.
35-209. Repealed. Laws 1983, LB 531, § 26.
35-210. Repealed. Laws 1983, LB 531, § 26.
35-211. Repealed. Laws 1983, LB 531, § 26.
35-212. Repealed. Laws 1983, LB 531, § 26.
35-212.01. Repealed. Laws 1983, LB 531, § 26.
35-212.02. Repealed. Laws 1983, LB 531, § 26.
35-213. Repealed. Laws 1983, LB 531, § 26.
35-214. Repealed. Laws 1983, LB 531, § 26.
35-215. Repealed. Laws 1983, LB 531, § 26.
35-216. Repealed. Laws 1983, LB 531, § 26.

35-201 Repealed. Laws 1983, LB 531, § 26.

35-202 Repealed. Laws 1983, LB 531, § 26.

35-203 Repealed. Laws 1983, LB 531, § 26.

35-203.01 Repealed. Laws 1983, LB 531, § 26.

35-204 Repealed. Laws 1983, LB 531, § 26.

35-205 Repealed. Laws 1983, LB 531, § 26.

35-206 Repealed. Laws 1983, LB 531, § 26.

35-207 Repealed. Laws 1983, LB 531, § 26.

35-208 Repealed. Laws 1983, LB 531, § 26.

35-209 Repealed. Laws 1983, LB 531, § 26.

35-210 Repealed. Laws 1983, LB 531, § 26.

35-211 Repealed. Laws 1983, LB 531, § 26.

35-212 Repealed. Laws 1983, LB 531, § 26.

35-212.01 Repealed. Laws 1983, LB 531, § 26.

35-212.02 Repealed. Laws 1983, LB 531, § 26.

35-213 Repealed. Laws 1983, LB 531, § 26.

35-214 Repealed. Laws 1983, LB 531, § 26.

35-215 Repealed. Laws 1983, LB 531, § 26.

35-216 Repealed. Laws 1983, LB 531, § 26.

ARTICLE 3

HOURS OF DUTY OF FIREFIGHTERS

Cross References

Cities of the metropolitan class, regulations, see section 14-102.02.

Section
35-301. Repealed. Laws 1961, c. 284, § 1.
35-302. Paid fire departments; firefighters; hours of duty; alternating day schedule.

35-301 Repealed. Laws 1961, c. 284, § 1.

35-302 Paid fire departments; firefighters; hours of duty; alternating day schedule.

Firefighters employed in the fire departments of cities having paid fire departments shall not be required to remain on duty for periods of time which will aggregate in each month more than an average of sixty hours per week. Each single-duty shift shall consist of twenty-four consecutive hours and shall be followed by an off-duty period as necessary to assure compliance with the requirements of this section unless by voluntary agreement between the city and the firefighter, any firefighter may be permitted to work an additional period of consecutive time and may return to work after less than a twenty-four-hour off-duty period. Any firefighter may be assigned to work less than a twenty-four-hour shift, but in such event the firefighter shall not work in excess of forty hours per week. No firefighter shall be required to perform any work or service as such firefighter during any period in which he or she is off duty except in cases of extraordinary conflagration or emergencies or job-related court appearances.

Source: Laws 1953, c. 119, § 1(2), p. 377; Laws 1963, c. 196, § 1, p. 642; Laws 1971, LB 773, § 1; Laws 1979, LB 80, § 101.

ARTICLE 4

RURAL FIRE PROTECTION DISTRICTS

Section
35-401. Repealed. Laws 1949, c. 98, § 19.
35-402. Repealed. Laws 1949, c. 98, § 19.
35-403. Repealed. Laws 1949, c. 98, § 19.
35-404. Repealed. Laws 1949, c. 98, § 19.
35-405. Repealed. Laws 1949, c. 98, § 19.
35-406. Repealed. Laws 1949, c. 98, § 19.
35-407. Repealed. Laws 1949, c. 98, § 19.
35-408. Repealed. Laws 1949, c. 98, § 19.
35-409. Repealed. Laws 1949, c. 98, § 19.

35-401 Repealed. Laws 1949, c. 98, § 19.

35-402 Repealed. Laws 1949, c. 98, § 19.

35-403 Repealed. Laws 1949, c. 98, § 19.

35-404 Repealed. Laws 1949, c. 98, § 19.

35-405 Repealed. Laws 1949, c. 98, § 19.

35-406 Repealed. Laws 1949, c. 98, § 19.

35-407 Repealed. Laws 1949, c. 98, § 19.

35-408 Repealed. Laws 1949, c. 98, § 19.

35-409 Repealed. Laws 1949, c. 98, § 19.

ARTICLE 5

RURAL AND SUBURBAN FIRE PROTECTION DISTRICTS

Cross References

Audit, see section 84-304.

Section
35-501. Rural and suburban fire protection districts; organization; necessity.
35-502. District; organization; conversion from rural to suburban fire protection district; conditions.
35-503. Repealed. Laws 1998, LB 1120, § 33.
35-504. Repealed. Laws 1998, LB 1120, § 33.
35-505. Repealed. Laws 1998, LB 1120, § 33.
35-506. District; vote on organization; officers; terms; compensation.
35-507. District; meeting; when held.
35-508. District; directors; powers.
35-509. District; budget; tax to support; limitation; how levied; county treasurer; duties.
35-509.01. District; secretary-treasurer; bond; amount; premium; failure to furnish; effect.
35-510. Repealed. Laws 1975, LB 375, § 3.
35-511. District funds; where deposited; how disbursed; annual report.
35-512. Districts; warrants; amount authorized; rate of interest.
35-513. Districts; consolidation; contracts for fire protection; cities and villages; power to contract; service award benefit program; authorized.
35-513.01. Repealed. Laws 1998, LB 1120, § 33.
35-513.02. Repealed. Laws 1998, LB 1120, § 33.
35-513.03. Repealed. Laws 1998, LB 1120, § 33.

Section
35-513.04. Repealed. Laws 1998, LB 1120, § 33.
35-513.05. Repealed. Laws 1998, LB 1120, § 33.
35-514. District; annexation of territory; procedure.
35-514.01. Repealed. Laws 1998, LB 1120, § 33.
35-514.02. Emergency medical or fire protection service; contract; agreement; notice; hearing; cost; levy; limitation.
35-515. Repealed. Laws 1959, c. 130, § 5.
35-516. District; boundaries; change; procedure; merger.
35-516.01. Repealed. Laws 1959, c. 130, § 5.
35-517. District; boundaries; county board; duties.
35-518. District; contract for protection with counties of adjoining state; terms; damages.
35-519. Rural fire protection district; conversion to suburban fire protection district; procedure; effect.
35-520. Rural fire protection district; false alarm; false report; violation; penalty.
35-521. Rural or suburban fire protection district; dissolution; petition; election; disbursement of funds.
35-522. Rural or suburban fire protection district; inactive for five years; county board; dissolution.
35-523. Repealed. Laws 1998, LB 1120, § 33.
35-524. Repealed. Laws 1998, LB 1120, § 33.
35-525. Repealed. Laws 1998, LB 1120, § 33.
35-526. Repealed. Laws 1998, LB 1120, § 33.
35-527. Repealed. Laws 1998, LB 1120, § 33.
35-528. Repealed. Laws 1998, LB 1120, § 33.
35-529. Rural or suburban fire protection district; radio equipment; purchase; reimbursement.
35-530. Territory within village or city; inclusion within district; procedure.
35-531. Inclusion; procedure.
35-532. Inclusion; county clerk; duties.
35-533. Inclusion; map or plat; certificate; report; transmitted to county board; duties; district in more than one county; hearing; boundaries; determination.
35-534. Repealed. Laws 1998, LB 1120, § 33.
35-535. District; public meeting; board of directors.
35-536. Merged district; statutes applicable.

35-501 Rural and suburban fire protection districts; organization; necessity.

It is recognized, found, and declared: (1) That it is in the public interest to encourage residents and property owners in rural and suburban areas in the state to organize, equip, and maintain local firefighting bodies corporate and politic for the purpose of providing the same type of protection of their lives and property against loss or destruction by fire as is available to residents of incorporated cities and villages; and (2) that the organization and establishment of adequately equipped and maintained local bodies corporate and politic for such purposes will promote the public health, convenience, safety, and welfare through the preservation and protection of lives and resources in rural and suburban areas in the state.

Source: Laws 1949, c. 98, § 1, p. 262; Laws 1955, c. 128, § 1, p. 363.

City may annex territory within fire protection district. City of Bellevue v. Eastern Sarpy County S. F. P. Dist., 180 Neb. 340, 143 N.W.2d 62 (1966).

Cost of maintenance is provided by annual tax. Village of Niobrara v. Tichy, 158 Neb. 517, 63 N.W.2d 867 (1954).

35-502 District; organization; conversion from rural to suburban fire protection district; conditions.

(1) In order to provide for the protection of lives and property in rural and suburban areas against loss or damage by fire, more than fifty percent of the

registered voters residing in the following are hereby authorized and empowered to initiate the formation of rural or suburban fire protection districts under the conditions specified in this section:

(a)(i) Any territory in the State of Nebraska equivalent in area to one township or more which is situated outside the corporate limits of any city or village; or

(ii) Any area of less than one township which is surrounded by rural or suburban fire protection districts; or

(b) Any area situated in the State of Nebraska outside the corporate limits of any city or village in which there are at least two hundred homes and which has a taxable valuation of at least two million eight hundred sixty thousand dollars.

(2) Such districts shall be organized in the manner provided by sections 35-501 to 35-517. If the district is organized in an area set forth in subdivision (1)(a) of this section, it shall be a rural fire protection district and references in such sections to rural fire protection districts shall refer to such a district. If the district is organized in an area set forth in subdivision (1)(b) of this section, it shall be a suburban fire protection district and references in such sections to a suburban fire protection district shall refer to such a district. Unless the context indicates otherwise, district, when used in such sections, shall refer to either a rural or suburban fire protection district, as the case may be.

(3) Any rural fire protection district which has been duly organized under Chapter 35, which has within its boundaries at least two hundred homes, and which has a taxable valuation of at least two million eight hundred sixty thousand dollars is hereby authorized and empowered to convert to a suburban fire protection district in the manner provided by section 35-519.

(4) Beginning July 1, 1998, no new rural or suburban fire protection district shall be formed except by merger or reorganization of two or more existing rural or suburban fire protection districts.

Source: Laws 1907, c. 52, § 2, p. 203; Laws 1909, c. 49, § 1, p. 244; R.S.1913, § 2138; Laws 1915, c. 33, § 1, p. 101; C.S.1922, § 2096; C.S.1929, § 32-1106; Laws 1939, c. 106, § 2, p. 471; C.S.Supp.,1941, § 32-1106; R.S.1943, § 32-1105; Laws 1951, c. 99, § 214, p. 353; Laws 1969, c. 257, § 29, p. 946; Laws 1979, LB 187, § 148; Laws 1990, LB 918, § 1; Laws 1992, LB 719A, § 129; Laws 1998, LB 1120, § 8.

Organization of rural fire protection district may be collaterally attacked when defects complained of are jurisdictional. Kelle v. Crab Orchard Rural Fire Protection Dist., 164 Neb. 593, 83 N.W.2d 51 (1957).

35-503 Repealed. Laws 1998, LB 1120, § 33.

35-504 Repealed. Laws 1998, LB 1120, § 33.

35-505 Repealed. Laws 1998, LB 1120, § 33.

35-506 District; vote on organization; officers; terms; compensation.

(1) After formation of a district by merger or reorganization under section 35-517, at the time and place fixed by the county board for public hearing as provided in section 35-514, the registered voters who are residing within the boundaries of the district shall have the opportunity to decide by majority vote

of those present whether the organization of the district shall be completed. Permanent organization shall be effected by the election of a board of directors consisting of five residents of the district. Such directors shall at the first regular meeting after their election select from the board a president, a vice president, and a secretary-treasurer who shall serve as the officers of the board of directors for one year. The board shall reorganize itself annually. The elected member of the board of directors receiving the highest number of votes in the election shall preside over the first regular meeting until the officers of such board have been selected. The three members receiving the highest number of votes shall serve for a term of four years and the other two members for a term of two years; and this provision shall apply to directors elected at the organizational meeting of the district.

(2) The board shall reorganize itself annually. Election of directors of existing districts shall be held by the registered voters present at the regular annual meeting provided for in section 35-507 which is held in the calendar year during which the terms of directors are scheduled to expire. As the terms of these members expire, their successors shall be elected for four years and hold office until their successors have been elected. If the district contains more than one township, each township may be represented on the board of directors unless there are more than five townships within the district, and in such event there shall be only five directors on the board and no township shall have more than one member elected to such board of directors. In case of a vacancy on account of resignation, death, malfeasance, or nonfeasance of a member, the remaining members of the board shall fill the vacancy for the unexpired term. The person appointed to fill the vacancy shall be from the same area as the person whose office is vacated, if possible, otherwise from the district at large.

(3) The members of the board of directors of a rural or suburban fire protection district may receive up to twenty-five dollars for each meeting of the board, but not to exceed twelve meetings in any calendar year, and reimbursement for any actual expenses necessarily incurred as a direct result of their responsibilities and duties as members of the board engaged upon the business of the district. When it is necessary for any member of the board of directors to travel on business of the district and to attend meetings of the district, he or she shall be allowed mileage at the rate provided in section 81-1176 for each mile actually and necessarily traveled.

Source: Laws 1939, c. 38, § 4, p. 193; C.S.Supp.,1941, § 35-604; R.S. 1943, § 35-404; Laws 1949, c. 98, § 6, p. 264; Laws 1967, c. 208, § 1, p. 567; Laws 1969, c. 283, § 1, p. 1051; Laws 1969, c. 257, § 36, p. 950; Laws 1981, LB 204, § 56; Laws 1995, LB 756, § 1; Laws 1998, LB 1120, § 9.

35-507 District; meeting; when held.

A regular meeting of the registered voters who are residing within the boundaries of a district shall be held at the time of the budget hearing as provided by the Nebraska Budget Act, and special meetings may be called by the board of directors at any time. Notice of a meeting shall be given by the secretary-treasurer by one publication in a legal newspaper of general circulation in each county in which such district is situated. Notice of the place and

time of a meeting shall be published at least five days prior to the date set for meeting.

Source: Laws 1949, c. 98, § 7, p. 265; Laws 1971, LB 713, § 1; Laws 1992, LB 1063, § 34; Laws 1992, Second Spec. Sess., LB 1, § 34; Laws 1998, LB 1120, § 10.

Cross References

Nebraska Budget Act, see section 13-501.

35-508 District; directors; powers.

The board of directors shall have the following general powers:

(1) To determine a general fire protection and rescue program for the district;

(2) To make an annual estimate of the probable expense for carrying out such program;

(3) To annually certify such estimate to the county clerk in the manner provided by section 35-509;

(4) To manage and conduct the business affairs of the district;

(5) To make and execute contracts in the name of and on behalf of the district;

(6) To buy real estate when needed for the district and to sell real estate of the district when the district has no further use for it;

(7) To purchase or lease such firefighting and rescue equipment, supplies, and other real or personal property as necessary and proper to carry out the general fire protection and rescue program of the district;

(8) To incur indebtedness on behalf of the district;

(9) To authorize the issuance of evidences of the indebtedness permitted under subdivision (8) of this section and to pledge any real or personal property owned or acquired by the district as security for the same;

(10) To organize, establish, equip, maintain, and supervise a paid, volunteer, or combination paid and volunteer fire department or company to serve the district and to establish a service award benefit program pursuant to the Volunteer Emergency Responders Recruitment and Retention Act;

(11) To employ and compensate such personnel as necessary to carry out the general fire protection and rescue program of the district;

(12) To authorize the execution of a contract with the Game and Parks Commission or a public power district for fire protection of property of the commission or public power district located in or adjacent to the rural or suburban fire protection district;

(13) To levy a tax not to exceed ten and one-half cents on each one hundred dollars in any one year upon the taxable value of all taxable property within such district subject to section 77-3443, in addition to the amount of tax which may be annually levied to defray the general and incidental expenses of such district, for the purpose of establishing a sinking fund for the construction, purchase, improvement, extension, original equipment, or repair, not including maintenance, of district buildings to house equipment or personal belongings of a fire department, for the purchase of firefighting and rescue equipment or apparatus, for the acquisition of any land incidental to such purposes, or for

payment of principal and interest on any evidence of indebtedness issued pursuant to subdivisions (8) and (9) of this section. For purposes of section 77-3443, the county board of the county in which the greatest portion of the valuation of the district is located shall approve the levy;

(14) To adopt and enforce fire codes and establish penalties at annual meetings, except that the code must be available prior to annual meetings and notice shall so provide; and

(15) Generally to perform all acts necessary to fully carry out the purposes of sections 35-501 to 35-517.

Source: Laws 1949, c. 98, § 8, p. 265; Laws 1953, c. 120, § 1, p. 378; Laws 1967, c. 209, § 1, p. 568; Laws 1967, c. 210, § 1, p. 570; Laws 1971, LB 583, § 2; Laws 1971, LB 691, § 1; Laws 1972, LB 849, § 2; Laws 1975, LB 375, § 1; Laws 1979, LB 187, § 149; Laws 1985, LB 308, 1; Laws 1986, LB 831, § 1; Laws 1990, LB 918, § 2; Laws 1992, LB 719A, § 130; Laws 1996, LB 1114, § 54; Laws 1998, LB 1120, § 11; Laws 1999, LB 849, § 31.

Cross References

Volunteer Emergency Responders Recruitment and Retention Act, see section 35-1301.

Pursuant to subsection (11) of this section, contributions made to individuals who are not on a payroll cannot be considered related payroll expenses. Southeast Rur. Vol. Fire Dept. v. Neb. Dept. of Rev., 251 Neb. 852, 560 N.W.2d 436 (1997).

35-509 District; budget; tax to support; limitation; how levied; county treasurer; duties.

(1) The board of directors shall have the power and duty to determine a general fire protection and rescue policy for the district and shall annually fix the amount of money for the proposed budget statement as may be deemed sufficient and necessary in carrying out such contemplated program for the ensuing fiscal year, including the amount of principal and interest upon the indebtedness of the district for the ensuing year. After the adoption of the budget statement, the president and secretary of the district shall request the amount of tax to be levied which the district requires for the adopted budget statement for the ensuing year to the proper county board on or before August 1 of each year. Such board shall levy a tax not to exceed ten and one-half cents on each one hundred dollars upon the taxable value of all the taxable property in such district when the district is a rural or suburban fire protection district, for the maintenance of the fire protection district for the fiscal year as provided by law, plus such levy as is authorized to be made under subdivision (13) of section 35-508, all such levies being subject to section 77-3443. The tax shall be collected as other taxes are collected in the county, deposited with the county treasurer, and placed to the credit of the rural or suburban fire protection district so authorizing the same on or before the fifteenth day of each month or more frequently as provided in section 77-1759 or be remitted to the county treasurer of the county in which the greatest portion of the valuation of the district is located as is provided for by subsection (2) of this section. For purposes of section 77-3443, the county board of the county in which the greatest portion of the valuation of the district is located shall approve the levy.

(2) All such taxes collected or received for the district by the treasurer of any other county than the one in which the greatest portion of the valuation of the district is located shall be remitted to the treasurer of the county in which the

greatest portion of the valuation of the district is located at least quarterly. All such taxes collected or received shall be placed to the credit of such district in the treasury of the county in which the greatest portion of the valuation of the district is located.

(3) In no case shall the amount of tax levy exceed the amount of funds to be received from taxation according to the adopted budget statement of the district.

Source: Laws 1939, c. 38, § 5, p. 193; C.S.Supp.,1941, § 35-605; R.S. 1943, § 35-405; Laws 1947, c. 128, § 1, p. 368; Laws 1949, c. 98, § 9, p. 266; Laws 1953, c. 121, § 1, p. 383; Laws 1953, c. 287, § 54, p. 962; Laws 1955, c. 127, § 1, p. 360; Laws 1955, c. 128, § 4, p. 365; Laws 1969, c. 145, § 34, p. 693; Laws 1972, LB 849, § 3; Laws 1975, LB 375, § 2; Laws 1979, LB 187, § 150; Laws 1990, LB 918, § 3; Laws 1992, LB 719A, § 131; Laws 1996, LB 1114, § 55; Laws 1998, LB 1120, § 12; Laws 2007, LB334, § 5.

35-509.01 District; secretary-treasurer; bond; amount; premium; failure to furnish; effect.

The secretary-treasurer of each district shall, within ten days after his or her election, execute to the county and file with the county clerk a bond of not less than two thousand dollars in any instance nor less than the amount of money, as nearly as can be ascertained, to come into his or her hands as secretary-treasurer at any one time, with a surety company or companies of recognized responsibility as surety or sureties, to be approved by the president of such district, conditioned for the faithful discharge of the duties of his or her office. The premium on the bond shall be paid by the district. The bond when approved shall be filed in the office of the county clerk of the county in which the rural or suburban fire protection district is situated. If the district is located in two or more counties, such bond shall be filed in the office of the county clerk of the county in which the greatest portion of the valuation of the district is located. If the secretary-treasurer fails to execute such bond, his or her office shall be declared vacant by the board, and the board shall immediately appoint a secretary-treasurer, who shall be subject to the same conditions and possess the same powers as if elected to that office. The secretary-treasurer shall have no power or authority to withdraw or disburse the money of the district prior to his or her filing the bond required in this section.

Source: Laws 1953, c. 121, § 2, p. 384; Laws 1955, c. 128, § 5, p. 366; Laws 1998, LB 1120, § 13.

35-510 Repealed. Laws 1975, LB 375, § 3.

35-511 District funds; where deposited; how disbursed; annual report.

All donations, contributions, bequests, annuities, or borrowed money received by or on behalf of the district shall be deposited with the secretary-treasurer of the district and shall be drawn out only upon proper check. Such check shall be authorized by the board of directors and shall bear the signature of the secretary-treasurer and the countersignature of the president of such district. The secretary-treasurer of the district shall, at each annual public

meeting of the district, present a financial report concerning the affairs of the district.

Source: Laws 1939, c. 38, § 7, p. 193; C.S.Supp.,1941, § 35-607; R.S. 1943, § 35-407; Laws 1949, c. 98, § 11, p. 267; Laws 1993, LB 516, § 3; Laws 1998, LB 1120, § 14.

35-512 Districts; warrants; amount authorized; rate of interest.

All warrants for payment of any indebtedness of a rural fire protection district which are unpaid for want of funds shall bear interest at a rate specified by the issuing district and endorsed on the warrant, from the date of the registering of such unpaid warrants with the county treasurer; *Provided*, that the amount of such warrants does not exceed the revenue provided for the year in which the indebtedness was incurred.

Source: Laws 1939, c. 38, § 9, p. 194; C.S.Supp.,1941, § 35-609; R.S. 1943, § 35-409; Laws 1949, c. 98, § 12, p. 267; Laws 1969, c. 51, § 102, p. 336.

35-513 Districts; consolidation; contracts for fire protection; cities and villages; power to contract; service award benefit program; authorized.

(1) Any rural or suburban fire protection district may elect to enter into a contract with another rural or suburban fire protection district to consolidate or cooperate for mutual fire protection and prevention purposes, or may enter into a contract with an incorporated city or village for fire protection service or fire protection cooperation, upon terms suitable to all concerned, and power to make such contracts is hereby conferred upon such city or village in addition to such other powers as have been heretofore provided by law.

(2) A rural or suburban fire protection district may establish a service award benefit program pursuant to the Volunteer Emergency Responders Recruitment and Retention Act and may appropriate and expend funds for the cost of any such program for volunteer members of a volunteer department of a city of the first or second class or village or other rural or suburban fire protection district with which the district has a contract for emergency response services.

Source: Laws 1939, c. 38, § 8, p. 194; C.S.Supp.,1941, § 35-608; R.S. 1943, § 35-408; Laws 1949, c. 98, § 13, p. 267; Laws 1955, c. 128, § 7, p. 367; Laws 1999, LB 849, § 32.

Cross References

Other provisions regarding contracts for fire protection, see sections 13-303, 13-318, 18-1707, and 18-1709.
Volunteer Emergency Responders Recruitment and Retention Act, see section 35-1301.

35-513.01 Repealed. Laws 1998, LB 1120, § 33.

35-513.02 Repealed. Laws 1998, LB 1120, § 33.

35-513.03 Repealed. Laws 1998, LB 1120, § 33.

35-513.04 Repealed. Laws 1998, LB 1120, § 33.

35-513.05 Repealed. Laws 1998, LB 1120, § 33.

35-514 District; annexation of territory; procedure.

(1) Any territory which is outside the limits of any incorporated city may be annexed to an adjacent district in the manner provided in this section, whether or not the territory is in an existing rural or suburban fire protection district.

(2) The proceedings for the annexation may be initiated by either (a) the presentation to the county clerk of a petition signed by sixty percent or more of the registered voters who are residing within the boundaries of the territory to be annexed stating the desires and purposes of such petitioners or (b) the presentation to the county clerk of certified copies of resolutions passed by the board of directors of the annexing district and any other district from which the property would be annexed supporting the proposed annexation. The petition or resolutions shall contain a description of the boundaries of the territory proposed to be annexed. The petition or resolutions shall be accompanied by a map or plat and a deposit for publication costs.

(3) The county clerk shall verify the petition as provided in section 32-631 and determine and certify whether or not such petition or resolution complies with the requirements of subsection (2) of this section and that the persons signing the petition appear to reside at the addresses indicated by such petition. Thereafter, the county clerk shall forward any petition, map or plat, and certificate to the board of directors of the districts concerned.

(4) Within thirty days after receiving the petition, map or plat, and certificate of the county clerk, in accordance with subsection (3) of this section, from the county clerk, the board of directors of all affected districts shall transmit the same to the proper county board, accompanied by a report in writing approving or disapproving the proposal contained in the petition, or approving such proposal in part and disapproving it in part. If the annexation is proposed by resolutions of the affected districts, the resolutions shall be transmitted to the proper county board.

(5) The county board shall promptly designate a time and place for a hearing upon the annexation. Notice of such hearing shall be given by publication two weeks in a newspaper of general circulation in the county, the last publication appearing at least seven days prior to the hearing. The notice shall be addressed to ''all registered voters residing in the following boundaries'' and shall include a description of the proposed boundaries as set forth in the petition or resolutions. At such hearing, any person shall have the opportunity to be heard respecting the proposed annexation.

(6) The county board shall, within forty-five days after the hearing referred to in subsection (5) of this section, determine whether such territory should be annexed and shall fix the boundaries of the territory to be annexed. No annexation shall be approved which would leave any district with less than the minimum valuation of two million eight hundred sixty thousand dollars. The determination of the county board shall be set forth in a written order which shall describe the boundaries determined upon and shall be filed in the office of the county clerk.

(7) Any area annexed from a rural or suburban fire protection district, except areas duly incorporated within the boundaries of a municipality, shall be subject to assessment and be otherwise chargeable for the payment and discharge of all the obligations of the rural or suburban fire protection district outstanding at the time of the filing of the petition or resolution for the annexation of the area as fully as though the area had not been annexed. All procedures which could be used to compel the annexed area, except for areas

duly incorporated within the boundaries of a municipality, to pay its portion of the outstanding obligations had the annexation not occurred may be used to compel such payment. Areas duly incorporated within the boundaries of a municipality shall be automatically annexed from the boundaries of the district notwithstanding the provisions of section 31-766 and shall not be subject to further tax levy or other charges by the district, except that before the annexation is complete, the municipality shall assume and pay that portion of all outstanding obligations of the district which would otherwise constitute an obligation of the area annexed or incorporated. An area annexed from a rural or suburban fire protection district shall not be subject to assessment or otherwise chargeable for any obligation of any nature or kind incurred by the district after the annexation of the area from the district.

Source: Laws 1949, c. 98, § 14, p. 268; Laws 1953, c. 120, § 2, p. 379; Laws 1955, c. 128, § 9, p. 368; Laws 1957, c. 136, § 1, p. 454; Laws 1981, LB 310, § 1; Laws 1998, LB 1120, § 15.

No appeal having been taken from judgment in an error proceeding involving merger of two fire protection districts, it was conclusive of all matters which were or could have been raised therein and they cannot be relitigated in subsequent action for enforcement of that judgment. State ex rel. Southeast Rural Fire P. Dist. v. Grossman, 188 Neb. 424, 197 N.W.2d 398 (1972).

Petition and notice are required in county where land proposed to be annexed is situated. Seward County Rural Fire Protection Dist. v. County of Seward, 156 Neb. 516, 56 N.W.2d 700 (1953).

35-514.01 Repealed. Laws 1998, LB 1120, § 33.

35-514.02 Emergency medical or fire protection service; contract; agreement; notice; hearing; cost; levy; limitation.

A rural or suburban fire protection district may establish an emergency medical service, including the provision of scheduled or unscheduled ambulance service, or provide fire protection service either within or without the district, may enter into agreements under the Interlocal Cooperation Act and the Joint Public Agency Act for the purpose of establishing an emergency medical service or providing fire protection service, may contract with any city, person, firm, corporation, or other fire protection district to provide such services, may expend funds of the district, and may charge a reasonable fee to the user. Before any such services are established under the authority of this section, the rural or suburban fire protection district shall hold a public hearing after giving at least ten days' notice, which notice shall include a brief summary of the general plan for establishing the emergency medical service or providing fire protection service, including an estimate of the initial cost and the possible continuing cost of operating the emergency medical service or fire protection service. If the board after such hearing determines that an emergency medical service or fire protection service 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 fire protection district providing any service under this section may pay the cost for the service out of available funds or may levy a tax for the purpose of supporting an emergency medical service or providing fire protection service, which levy shall be in addition to any other tax for such fire protection district and shall be subject to section 77-3443. When a fire protection district levies a tax for the purpose of supporting an emergency medical service, the taxpayers of such district shall be exempt from any tax levied under section 13-303. The board of a fire protection district which provides fire protection service outside of the district may charge

a political subdivision with which the district has entered into an agreement for such service on a per-call basis for such service.

Source: Laws 1967, c. 205, § 2, p. 562; Laws 1978, LB 560, § 3; Laws 1988, LB 1159, § 1; Laws 1996, LB 1114, § 56; Laws 1997, LB 138, § 37; Laws 1999, LB 87, § 69; Laws 2001, LB 808, § 4.

Cross References

Interlocal Cooperation Act, see section 13-801.
Joint Public Agency Act, see section 13-2501.
Other provisions regarding contracts for fire protection, see sections 13-303, 13-318, 18-1707, and 18-1709.

35-515 Repealed. Laws 1959, c. 130, § 5.

35-516 District; boundaries; change; procedure; merger.

(1) The boundaries of any rural or suburban fire protection district organized under sections 35-501 to 35-517 may be changed in the manner prescribed by section 35-514, but the changes of boundaries of any such district shall not impair or affect its organization or its right in or to property; nor shall it impair, affect, or discharge any contract, obligation, lien, or charge for or upon which it might be liable had such change of boundaries not been made.

(2) Any two or more rural or suburban fire protection districts may be merged by petition or resolution in the manner prescribed for annexation by section 35-514, and the resulting district shall succeed to all rights and property and be subject to any contracts, obligations, liens, or charges of the districts so merged.

Source: Laws 1949, c. 98, § 16, p. 270; Laws 1955, c. 128, § 10, p. 369; Laws 1961, c. 167, § 2, p. 499; Laws 1963, c. 197, § 1, p. 644; Laws 1996, LB 1085, § 50; Laws 1998, LB 1120, § 16.

No appeal having been taken from judgment in an error proceeding involving merger of two fire protection districts, it was conclusive of all matters which were or could have been raised therein and they cannot be relitigated in subsequent action for enforcement of that judgment. State ex rel. Southeast Rural Fire P. Dist. v. Grossman, 188 Neb. 424, 197 N.W.2d 398 (1972).

35-516.01 Repealed. Laws 1959, c. 130, § 5.

35-517 District; boundaries; county board; duties.

(1) By July 1, 1999, the county board shall set the boundaries of all rural or suburban fire protection districts in the county so that all areas within the county which are not within the incorporated areas of cities and villages are included within a rural or suburban fire protection district.

(2) By July 1 of the year following the dissolution of any rural or suburban fire protection district, the county board shall set the boundaries of all remaining rural and suburban fire protection districts so that all areas within the county which are not within the incorporated areas of cities and villages are included within a rural or suburban fire protection district.

(3) Any county may set the boundaries of all rural and suburban fire protection districts for which the county is responsible for allocating levy authority under section 77-3443 so that the highest levy of a rural or suburban fire protection district is no more than two times the average levy of all rural and suburban fire protection districts for which the county is responsible for allocating levy authority under section 77-3443 based on the property tax request and associated valuation for the current fiscal year. For purposes of this subsection, each county shall examine the property tax request of each rural or

suburban fire protection district in the county for all purposes except bonded indebtedness for the current fiscal year and lease-purchase contracts in existence on July 1, 1998, as compared to the valuation for the tax year against which the levy was imposed. If one or more fire protection districts do not meet the standard required by this subsection for the current year, boundaries may be relocated to place more valuation in the high levy districts and less in the low levy districts so that the standard is met. If any district is to be eliminated by the county to meet the standard, the property tax request for the current fiscal year will be assumed to be transferred to the other districts which are to be in the territory of the eliminated district in proportion to the valuation transferred to such districts for purposes of compliance with the standard, the district shall be deemed to be dissolved, and the obligations and assets of the district shall be disposed of as provided in section 35-521. For purposes of this subsection, the average levy of all rural and suburban fire protection districts means the total taxes levied by all rural and suburban fire protection districts for which the county is responsible for allocating levy authority divided by the total taxable valuation of all such districts.

(4) Before May 1 of the year in which any change in boundaries allowed or required under this section is to be effective, the county board shall forthwith designate a time and place for a hearing before the county board of such county and shall give due notice thereof in the manner prescribed by section 35-514. The hearing shall be prior to June 1. At the time and place so fixed the county board shall meet and all persons interested shall have opportunity to be heard. Thereupon, the county board shall consider the general rural fire protection policy for the county as a whole and shall determine the boundaries of the district or districts, whether as existing prior to such determination or otherwise, and shall make a written order of such determination which shall be filed in the office of the county clerk by July 1 of the year in which any change in boundaries under this section is to be effective. If all rural and suburban fire protection districts for which the county is responsible for allocating levy authority under section 77-3443 agree to a change in boundaries and submit a proposal to change boundaries to the county board prior to the hearing, the county shall adopt the proposal unless it finds that the proposal is not consistent with the fire protection policy in the county as a whole or does not result in levies which comply with the standard described in this section. Thereafter, such reorganized district or districts shall be deemed to be organized and operating under sections 35-501 to 35-517. Nothing herein contained shall impair, affect, or discharge any previously existing contract, obligation, lien, or charge of the district or districts.

Source: Laws 1949, c. 98, § 17, p. 270; Laws 1995, LB 589, § 8; Laws 1996, LB 1085, § 51; Laws 1998, LB 1120, § 17.

35-518 District; contract for protection with counties of adjoining state; terms; damages.

Any rural or suburban fire protection district may enter into contracts on an annual or other basis with any rural fire protection district of an adjoining county or counties of another state having a general fire protection program or firefighting equipment under the control of the fire protection district for the fire protection services or fire protection cooperation. All such contracts shall be upon terms suitable to all concerned. The terms and conditions upon and in compliance with which each district is to cooperate in furnishing, maintaining,

and operating fire equipment for outside aid, mutual aid, or making payment for such service shall be expressly stipulated. The secretary-treasurer of the fire protection district is authorized to pay over money to the treasurer or other proper officer of the fire protection district in an adjoining state authorized to receive the same in accordance with the terms of the contract and upon the order of the board of directors. Any fire protection district, department, company, or firefighters answering any fire alarm or performing fire prevention services or rescue, resuscitation, first-aid, inspection, or any other official work outside its state and within a rural or suburban fire protection district organized under the provisions of Chapter 35, article 5, shall be considered an agent of the rural or suburban fire protection district located in the State of Nebraska, and acting solely and alone in a governmental capacity, and such rural or suburban fire protection district located in another state shall not be liable in damages for any act of commission, omission, or negligence while answering or returning from any fire, or reported fire, or doing or performing any fire prevention work or rescue, resuscitation, first-aid, inspection, or other official work.

Source: Laws 1955, c. 128, § 13, p. 372; Laws 1979, LB 80, § 102.

35-519 Rural fire protection district; conversion to suburban fire protection district; procedure; effect.

(1) Whenever it is desired and proposed to convert a duly organized rural fire protection district to a suburban fire protection district as authorized by section 35-502, such conversion may be accomplished in the manner provided in this section.

(2) The board of directors of such district shall adopt by majority vote of all the directors thereof a resolution setting forth the proposal to convert such district to a suburban fire protection district. Such resolution shall then be submitted to the electors of the district for approval at a regular meeting or a special meeting thereof called for that purpose after due notice of such regular or special meeting and of the proposal for conversion has been given in the manner prescribed by section 35-507.

(3) If such resolution for conversion is approved by a majority vote of the electors present and voting at such meeting, the secretary-treasurer of the district shall prepare a certified copy of the resolution, shall certify that the resolution was duly adopted by the board of directors of the district and approved by a majority vote of the electors thereof, and shall forward the approved resolution to the county clerk of the county within which the district is located or, if such district is located within two or more counties, to the county clerk of the county within which the greater area of the district is situated. The secretary-treasurer of the district shall also deposit with the county clerk a sum sufficient to defray the expense of publishing the notices required.

(4) The county clerk shall then confer with the county clerk of any other county concerned and shall determine and certify that the district contains within its boundaries at least two hundred homes and has a taxable valuation of at least two million eight hundred sixty thousand dollars and shall thereafter designate a time and place for the proposal for conversion to be heard by the county board in which the district is located or, if the district is located within two or more counties, by a joint meeting of the county boards of the counties

concerned. Notice of such hearing shall be given by publication two weeks in a newspaper of general circulation within each county in which the district is located, the last publication appearing at least seven days prior to the hearing.

(5) At the time and place so fixed, the county board or boards shall meet and all persons residing in or owning taxable property within the district shall have an opportunity to be heard respecting the proposal for conversion. Thereupon, the county board or boards shall determine whether the proposed conversion is suited to the general fire protection policy of the county or each of such counties as a whole and shall make a written order of such determination which shall be filed in the office of the county clerk of each county in which such district is located. If the order and determination approves such conversion, the district shall thereafter cease to be a rural fire protection district and shall become a suburban fire protection district. The conversion of any such rural fire protection district to a suburban fire protection district shall not impair or affect its right in or to property and shall not impair, affect, or discharge any contract, obligation, lien, or charge for or upon which it might be liable had such conversion not been made.

Source: Laws 1959, c. 144, § 2, p. 555; Laws 1979, LB 187, § 153; Laws 1992, LB 719A, § 134.

35-520 Rural fire protection district; false alarm; false report; violation; penalty.

Whoever willfully or maliciously shall raise a false alarm or false report of a fire in any rural fire protection district or any rural area within the State of Nebraska shall be guilty of a Class III misdemeanor.

Source: Laws 1963, c. 193, § 1, p. 638; Laws 1977, LB 40, § 170.

35-521 Rural or suburban fire protection district; dissolution; petition; election; disbursement of funds.

A petition seeking the dissolution of a rural or suburban fire protection district, signed by the registered voters of the district equal in number to ten percent of the number of registered voters, may be filed with the board of directors. If the board finds that all indebtedness of the district can be satisfied from funds on hand or to be received from the then current levy, it shall submit the question of dissolution to the registered voters of the district at the next annual rural or suburban fire protection district election. If a majority of those voting on the question vote in favor of such dissolution, the board of directors shall declare the district dissolved and certify such action to the county boards of the counties in which the district is located. After satisfying the outstanding indebtedness of the district, the secretary-treasurer of the district shall transfer to the county treasurers of the counties in which the district is situated any remaining funds of the district in the same proportion as the area of the district in each county bears to the total area of the district, and such funds shall be deposited in the general fund of the respective counties.

Source: Laws 1967, c. 206, § 1, p. 563; Laws 1998, LB 1120, § 18.

35-522 Rural or suburban fire protection district; inactive for five years; county board; dissolution.

When any rural or suburban fire protection district is inactive for a period of at least five years, as determined by resolution of the county board in which the

greatest portion of the valuation of the district is located, the county board may order the district dissolved. The county board shall file copies of such order of dissolution with the county clerks and county treasurers of all counties in which such district is located. Upon receipt of such order, the county treasurer shall dispose of any remaining funds of such district in the manner provided by section 35-521.

Source: Laws 1967, c. 206, § 2, p. 564; Laws 1998, LB 1120, § 19.

35-523 Repealed. Laws 1998, LB 1120, § 33.

35-524 Repealed. Laws 1998, LB 1120, § 33.

35-525 Repealed. Laws 1998, LB 1120, § 33.

35-526 Repealed. Laws 1998, LB 1120, § 33.

35-527 Repealed. Laws 1998, LB 1120, § 33.

35-528 Repealed. Laws 1998, LB 1120, § 33.

35-529 Rural or suburban fire protection district; radio equipment; purchase; reimbursement.

The materiel administrator of the Department of Administrative Services is authorized to purchase radio equipment for any rural or suburban fire protection district when requested by the district. The district shall reimburse the state for the cost of any equipment so purchased for it.

Source: Laws 1969, c. 280, § 1, p. 1048; Laws 2000, LB 654, § 2.

Cross References

Materiel administrator, see sections 81-147 to 81-151.

35-530 Territory within village or city; inclusion within district; procedure.

The territory within the incorporated area of any village or city may be included within a rural or suburban fire protection district pursuant to sections 35-530 to 35-536.

Source: Laws 1978, LB 907, § 1; Laws 1998, LB 1120, § 20.

35-531 Inclusion; procedure.

The proceedings for the inclusion referred to in section 35-530 may be initiated by (1) the presentation to the county clerk of a petition signed by sixty percent or more of the registered voters who are residing within the boundaries of the territory to be included stating the desires and purposes of such petitioners or (2) adoption by a majority vote of a joint resolution or ordinance by the board of directors of the district and the city council or village board. The petition or joint resolution or ordinance shall contain a description of the boundaries of the territory proposed to be included and it shall be accompanied by a map or plat and a deposit for publications costs.

Source: Laws 1978, LB 907, § 2; Laws 1998, LB 1120, § 21.

35-532 Inclusion; county clerk; duties.

The county clerk shall verify the petition as provided in section 32-631 and determine and certify whether or not such petition or joint resolution or

ordinance complies with the requirements of section 35-531 and that the persons signing the petition appear to reside within the boundaries described by such petition. Thereafter, the county clerk shall forward such petition, map or plat, and certificate to the board of directors of the district and the village board or city council affected by such inclusion. If the inclusion proposed is by joint resolution or ordinance, the county clerk shall transmit the joint resolution or ordinance and map or plat to the county board for a hearing under section 35-533.

Source: Laws 1978, LB 907, § 3; Laws 1998, LB 1120, § 22.

35-533 Inclusion; map or plat; certificate; report; transmitted to county board; duties; district in more than one county; hearing; boundaries; determination.

(1) Within thirty days after receiving the petition, map or plat, and certificate of the county clerk, in accordance with section 35-532, the board of directors of the district and the city council or village board shall transmit the petition, map or plat, and certificate to the proper county board, accompanied by a report in writing approving or disapproving the proposal contained in the petition, or approving such proposal in part and disapproving it in part.

(2) Within thirty days after receiving the resolution or ordinance, map or plat, and certificate of the county clerk, the board of directors of the district and the city council or village board shall transmit the resolution or ordinance, map or plat, and certificate to the proper county board.

(3) If the proposed district will be situated within two or more counties, the county clerk of the county in which the largest number of petitioners have signed or, in the case of a joint resolution or ordinance, the county containing the greatest number of registered voters, shall confer with the clerk or clerks of the other county or counties concerned and shall obtain a certificate as to the adequacy of the petitions, resolutions, or ordinances pertaining to such county or counties, and thereafter he or she shall designate a time and place for a hearing before a joint meeting of the county boards of all counties in which the proposed district is to be situated. Notice of such hearing shall be given by publication two weeks in a newspaper of general circulation in the county, the last publication appearing at least seven days prior to the hearing. The notice shall be addressed to ''all registered voters residing in the following boundaries'' and shall include a description of the proposed boundaries as set forth in the petition, resolution, or ordinance. At the time and place so fixed, the county board or boards shall meet and all persons shall have an opportunity to be heard respecting the inclusion or the location of the boundaries of the district. Within forty-five days after such hearing, the county board or boards shall determine whether the proposed district is suited to the general fire protection policy of the county, or each of such counties, as a whole, determine the boundaries of the proposed district, and make a written order of such determination which shall describe the boundaries of the district and be filed in the office of the county clerk or clerks of each county in which such district is situated.

Source: Laws 1978, LB 907, § 4; Laws 1998, LB 1120, § 23.

35-534 Repealed. Laws 1998, LB 1120, § 33.

35-535 District; public meeting; board of directors.

After the filing of a written order by the county board pursuant to section 35-533, the county clerk shall then fix a time and place for a public meeting of all registered voters who are residing within the boundaries. A board of directors shall be elected as provided in section 35-506 and shall have the powers as provided in section 35-508.

Source: Laws 1978, LB 907, § 6; Laws 1998, LB 1120, § 24.

35-536 Merged district; statutes applicable.

Each rural or suburban fire protection district merged pursuant to sections 35-530 to 35-536 shall be subject to the provisions of sections 35-508, 35-509, 35-511, and 35-512. Such merged district shall operate under the same tax levy limit as a rural or suburban fire protection district.

Source: Laws 1978, LB 907, § 7; Laws 1979, LB 187, § 259; Laws 1998, LB 1120, § 25.

ARTICLE 6

EMERGENCY FIREFIGHTING

Section
35-601. Emergency Firefighting Fund; created; use; investment.
35-602. Emergency Firefighting Fund; State Fire Marshal; use; purpose.
35-603. Emergency Firefighting Fund; agreements with federal government; purpose.

35-601 Emergency Firefighting Fund; created; use; investment.

There is hereby created the Emergency Firefighting Fund, to be used by the State Fire Marshal to assist in controlling and extinguishing wildland fires. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1965, c. 190, § 1, p. 581; Laws 1969, c. 286, § 1, p. 1055; Laws 1969, c. 584, § 37, p. 2366; Laws 1995, LB 7, § 31.

Cross References

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

35-602 Emergency Firefighting Fund; State Fire Marshal; use; purpose.

Whenever the State Fire Marshal finds that conditions of extreme fire hazard exist he may use the proceeds of the Emergency Firefighting Fund for the purpose of preventing, controlling, or extinguishing any fires that are a hazard to state and private lands within the state.

Source: Laws 1965, c. 190, § 2, p. 581; Laws 1969, c. 286, § 2, p. 1055.

35-603 Emergency Firefighting Fund; agreements with federal government; purpose.

The State Fire Marshal may, for the purpose of maintaining a fire patrol in any timber, brush, grass, or other flammable vegetation or material, enter into cooperative agreements with the federal government under such terms as he deems advisable and may renew, revise and terminate such agreements. The

expenses incurred under such agreements shall be paid from the Emergency Firefighting Fund or funds available for wildland fire protection.

Source: Laws 1965, c. 190, § 3, p. 581; Laws 1969, c. 286, § 3, p. 1055.

ARTICLE 7

COMMISSION ON FIREFIGHTING

Section
35-701. Repealed. Laws 1980, LB 724, § 8.
35-702. Repealed. Laws 1980, LB 724, § 8.
35-703. Repealed. Laws 1980, LB 724, § 8.
35-704. Repealed. Laws 1980, LB 724, § 8.
35-705. Repealed. Laws 1980, LB 724, § 8.
35-706. Repealed. Laws 1980, LB 724, § 8.
35-707. Repealed. Laws 1980, LB 724, § 8.
35-708. Repealed. Laws 1980, LB 724, § 8.
35-709. Repealed. Laws 1980, LB 724, § 8.

35-701 Repealed. Laws 1980, LB 724, § 8.

35-702 Repealed. Laws 1980, LB 724, § 8.

35-703 Repealed. Laws 1980, LB 724, § 8.

35-704 Repealed. Laws 1980, LB 724, § 8.

35-705 Repealed. Laws 1980, LB 724, § 8.

35-706 Repealed. Laws 1980, LB 724, § 8.

35-707 Repealed. Laws 1980, LB 724, § 8.

35-708 Repealed. Laws 1980, LB 724, § 8.

35-709 Repealed. Laws 1980, LB 724, § 8.

ARTICLE 8

CLOTHING AND EQUIPMENT

Section
35-801. Clothing and equipment; prohibited acts; violation; penalty.

35-801 Clothing and equipment; prohibited acts; violation; penalty.

(1) No vendor or manufacturer shall knowingly transfer, sell, or offer for sale in this state to any fire department or firefighter any item of clothing or equipment designed and intended to protect firefighters from death or injury while fighting fires unless the item of clothing or equipment meets or exceeds the minimum standards established for such item of clothing or equipment by the National Fire Protection Association in effect at the time of such transfer, sale, or offer for sale.

(2) No fire department shall knowingly purchase and no fire department or firefighter shall knowingly accept from any vendor or manufacturer any item of clothing or equipment intended to protect firefighters from death or injury while fighting fires unless the item of clothing or equipment meets or exceeds the minimum standards established for such item of clothing or equipment by

the National Fire Protection Association in effect at the time of such purchase or acceptance.

(3) Any person violating subsection (1) or (2) of this section shall be guilty of a Class III misdemeanor.

(4) For purposes of this section:

(a) Clothing or equipment shall not include station or work uniforms or other items of personal clothing worn or intended to be worn under protective clothing or equipment while fighting fires; and

(b) Fire department means any paid or volunteer fire department, company, association, or organization or first-aid, rescue, or emergency squad serving a city, village, county, township, or rural or suburban fire protection district or any other public or private fire department.

Source: Laws 1992, LB 27, § 1; Laws 1993, LB 67, § 1; Laws 2007, LB160, § 2.

ARTICLE 9

VOLUNTEER FIRE AND RESCUE DEPARTMENTS

Section

35-901. Volunteer departments; trust fund; established; use; public funds; restrictions; express authorization required; when; section, how construed; expenditures of public funds; procedure; gambling money; restrictions.

35-901 Volunteer departments; trust fund; established; use; public funds; restrictions; express authorization required; when; section, how construed; expenditures of public funds; procedure; gambling money; restrictions.

(1) For purposes of this section, volunteer department shall mean volunteer fire department or volunteer first-aid, rescue, or emergency squad or volunteer fire company serving any city, village, county, township, or rural or suburban fire protection district.

(2) Except as provided in subsection (4) of this section, each volunteer department may establish a volunteer department trust fund. All general donations or contributions, bequests, or annuities made to the volunteer department and all money raised by or for the volunteer department shall be deposited in the trust fund. The trust fund shall be under the control of the volunteer department, and the volunteer department may make expenditures from the trust fund as it deems necessary. The treasurer of the volunteer department shall be the custodian of the trust fund.

(3) The trust fund shall not be considered public funds or funds of any city, village, county, township, or rural or suburban fire protection district for any purpose, including the Nebraska Budget Act, nor shall any city, village, county, township, or rural or suburban fire protection district incur any liability solely by reason of any expenditure from such fund except liability for property when any city, village, county, township, or rural or suburban fire protection district receives title to property acquired with money from such fund.

(4)(a) If the total amount of expenditures and receipts in the trust fund exceeds one hundred thousand dollars in any twelve-month period, the volunteer department shall inform any city, village, county, township, or rural or suburban fire protection district receiving service from the department and

such entity may examine or cause to be examined all books, accounts, vouchers, records, and expenditures with regard to the trust fund.

(b) Funds, fees, or charges solicited, collected, or received by a volunteer department that are (i) in consequence of the performance of fire or rescue services by the volunteer department at a given place and time, (ii) accomplished through the use by the volunteer department of equipment owned by the taxing authority supporting such department and provided to the volunteer department for that purpose, and (iii) paid by or on behalf of the recipient of those services shall not be deposited in a trust fund authorized by this section. Such funds are public funds of the taxing authority supporting the volunteer department and are deemed to have been collected by the volunteer department as the agent of the taxing authority and are held by the department on its behalf. If such funds are in the possession of a volunteer department, the taxing authority shall cause all the books, accounts, records, vouchers, expenditures, and statements regarding such funds to be examined and independently audited at the expense of the taxing authority by a qualified professional auditor or the Auditor of Public Accounts for the immediately preceding five years.

(5) Nothing in this section shall be construed or deemed to permit a violation of the Nebraska Liquor Control Act.

(6) All expenditures of public funds as defined in the Nebraska Budget Act for support of a volunteer department or its purposes shall be submitted as claims, approved by the taxing authority supporting such department or its purposes, and published as required by law. All such claims shall be properly itemized for proposed expenditure or reimbursement for costs already incurred and paid except as may be otherwise permitted pursuant to section 35-106.

(7) All money raised pursuant to the Nebraska Bingo Act, the Nebraska Lottery and Raffle Act, the Nebraska Pickle Card Lottery Act, and the Nebraska Small Lottery and Raffle Act shall be subject to such acts with respect to the deposit and expenditure of such money.

(8) No volunteer department shall solicit, charge, or collect any funds, fees, or charges as described in subdivision (4)(b) of this section without the express authorization of the taxing authority supporting the department by vote of a majority of the members of the governing body of such taxing authority. Such authorization shall not extend beyond a twelve-month period but may be renewed at the discretion of the taxing authority in the same manner in which it was initially granted. Upon collection or receipt, such funds, fees, or charges shall be remitted to the designated officer of the taxing authority for deposit to the account of the taxing authority. The taxing authority may appropriate and expend some or all of such funds for the support of a service award benefit program adopted and conducted pursuant to the Volunteer Emergency Responders Recruitment and Retention Act.

Source: Laws 1993, LB 516, § 1; Laws 2008, LB1096, § 4.
Effective date July 18, 2008.

Cross References

Nebraska Bingo Act, see section 9-201.
Nebraska Budget Act, see section 13-501.
Nebraska Liquor Control Act, see section 53-101.
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.
Volunteer Emergency Responders Recruitment and Retention Act, see section 35-1401.

ARTICLE 10
DEATH OR DISABILITY

Section
35-1001. Death or disability as a result of cancer; prima facie evidence.

35-1001 Death or disability as a result of cancer; prima facie evidence.

For a firefighter or firefighter-paramedic who is a member of a paid fire department of a municipality or a rural or suburban fire protection district in this state, including a municipality having a home rule charter, and who suffers death or disability as a result of cancer, including, but not limited to, cancer affecting the skin or the central nervous, lymphatic, digestive, hematological, urinary, skeletal, oral, or prostate systems, evidence which demonstrates that (1) such firefighter or firefighter-paramedic successfully passed a physical examination upon entry into such service or subsequent to such entry, which examination failed to reveal any evidence of cancer, (2) such firefighter or firefighter-paramedic was exposed to a known carcinogen, as defined on July 19, 1996, by the International Agency for Research on Cancer, while in the service of the fire department, and (3) such carcinogen is reported by the agency to be a suspected or known cause of the type of cancer the firefighter or firefighter-paramedic has, shall be prima facie evidence that such death or disability resulted from injuries, accident, or other cause while in the line of duty for the purposes of sections 16-1020 to 16-1042, a firefighter's pension plan established pursuant to a home rule charter, and a firefighter's pension or disability plan established by a rural or suburban fire protection district.

Source: Laws 1996, LB 1076, § 45.

ARTICLE 11
FIRE RECOGNITION DAY

Section
35-1101. Fire Recognition Day; designation.

35-1101 Fire Recognition Day; designation.

The second Saturday in May is designated and shall be known as Fire Recognition Day, and exercises appropriate for the subject and day may be exercised by any fire department.

Source: Laws 1997, LB 347, § 2.

Cross References

State Fire Day, see section 79-705.

ARTICLE 12
MUTUAL FINANCE ASSISTANCE ACT

Section
35-1201. Act, how cited.
35-1202. Mutual finance organization, defined.
35-1203. Mutual Finance Assistance Fund; created; use; investment.
35-1204. Mutual finance organization; creation by agreement.
35-1205. Distributions from fund; qualifications.
35-1206. Distributions from fund; amount; disqualification; when.

Section
35-1207. Application for distribution; financial information required; State Treasurer; duties.

35-1201 Act, how cited.

Sections 35-1201 to 35-1207 shall be known and may be cited as the Mutual Finance Assistance Act.

Source: Laws 1998, LB 1120, § 1.

35-1202 Mutual finance organization, defined.

For purposes of the Mutual Finance Assistance Act, mutual finance organization means a group of rural or suburban fire protection districts, cities, or villages which enter into an agreement pursuant to section 35-1204 to cooperate for purposes of financing operational and equipment needs for fire protection, emergency response, or training within their joint areas of operation.

Source: Laws 1998, LB 1120, § 2.

35-1203 Mutual Finance Assistance Fund; created; use; investment.

The Mutual Finance Assistance Fund is created. The fund shall be used to provide assistance to rural or suburban fire protection districts and mutual finance organizations which qualify under the Mutual Finance Assistance 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 1998, LB 1120, § 3.

Cross References

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

35-1204 Mutual finance organization; creation by agreement.

A mutual finance organization may be created by agreement among its members pursuant to the Interlocal Cooperation Act or the Joint Public Agency Act. The agreement shall contain a provision which requires all members of the mutual finance organization to levy the same property tax rate within their boundaries for the purpose of jointly funding the operations of all members of the mutual finance organization, except that the agreed-upon property tax rate shall exclude levies for bonded indebtedness and lease-purchase contracts in existence on July 1, 1998.

Source: Laws 1998, LB 1120, § 4; Laws 1999, LB 87, § 70.

Cross References

Interlocal Cooperation Act, see section 13-801.
Joint Public Agency Act, see section 13-2501.

35-1205 Distributions from fund; qualifications.

(1) Any rural or suburban fire protection district which contains within its boundaries (a) an assumed population of thirty thousand or more or (b) at least eighty percent of the assumed population of any one county which is contained in whole or in part within the district residing outside the city limits of any city of the first, primary, or metropolitan class in such county shall receive a

distribution from the Mutual Finance Assistance Fund pursuant to section 35-1206.

(2) Any mutual finance organization which (a) has entered into an agreement pursuant to section 35-1204 and (b) contains within the boundaries of its members (i) an assumed population of thirty thousand or more or (ii) at least eighty percent of the assumed county population of any one county which is contained in whole or in part within the mutual finance organization residing outside the city limits of any city of the first, primary, or metropolitan class in such county shall receive a distribution from the fund pursuant to section 35-1206.

(3) For purposes of this section:

(a) The assumed population residing within the boundaries of a rural or suburban fire protection district or mutual finance organization equals (i) the estimated county population as determined based on the most recent estimates of the United States Bureau of the Census for counties, minus (ii) the estimated population of all cities and villages in the county as certified pursuant to section 77-3,119, multiplied by (iii) a fraction, the numerator of which is the valuation within the rural or suburban fire protection district or mutual finance organization which is not within a city or village and the denominator of which is the valuation in the county which is not contained within a city of the first, primary, or metropolitan class, and added to (iv) the most recent estimated population of all cities of the second class and villages in the fire protection district or mutual finance organization as certified pursuant to section 77-3,119;

(b) The assumed county population residing outside the city limits of any city of the first, primary, or metropolitan class equals (i) the most recent estimated county population as determined based on the most recent estimates of the United States Bureau of the Census for counties minus (ii) the most recent estimated population of all cities of the first, primary, or metropolitan class in the county as certified pursuant to section 77-3,119;

(c) If a city or village is located in more than one county, the population of the city or village which resides in the county is presumed to be in proportion to the valuation of such city or village which is located in the county; and

(d) If the district or mutual finance organization is located in more than one county and the district or mutual finance organization meets the threshold in subsection (1) or (2) of this section in only one county, the district or mutual finance organization shall qualify for assistance under this section.

Source: Laws 1998, LB 1120, § 5; Laws 1999, LB 141, § 7.

35-1206 Distributions from fund; amount; disqualification; when.

(1) Rural and suburban fire protection districts or mutual finance organizations which qualify for assistance under section 35-1205 shall receive ten dollars times the assumed population of the fire protection district or mutual finance organization as calculated in subsection (3) of such section plus the population of any city of the first class that is part of the district or mutual finance organization, not to exceed three hundred thousand dollars for any one district or mutual finance organization. If the district or mutual finance organization is located in more than one county and meets the threshold for qualification in subsection (1) or (2) of section 35-1205 in one of such counties,

the district or mutual finance organization shall receive assistance under this section for all of its assumed population, including that which is assumed population in counties for which the threshold is not reached by the district or mutual finance organization.

(2) If a mutual finance organization qualifies for assistance under this section and one or more rural or suburban fire protection districts or cities or villages fail to levy a tax rate equal to the other districts or cities or villages as required under the mutual finance agreement, the mutual finance organization shall be disqualified for assistance in the following year and each subsequent year until the year following any year for which all districts and cities and villages in the mutual finance organization levy the same tax rate as required by a mutual finance organization agreement.

Source: Laws 1998, LB 1120, § 6; Laws 1999, LB 141, § 8.

35-1207 Application for distribution; financial information required; State Treasurer; duties.

(1) Any rural or suburban fire protection district or mutual finance organization seeking funds pursuant to the Mutual Finance Assistance Act shall submit an application for funding to the State Treasurer by July 1. The State Treasurer shall develop the application which requires calculations showing assumed population eligibility under section 35-1205 and the distribution amount under section 35-1206. If the applicant is a mutual finance organization, it shall attach to its first application a copy of the agreement pursuant to section 35-1204 and attach to any subsequent application a copy of an amended agreement or an affidavit stating that the previously submitted agreement is still accurate and effective. Any mutual finance organization making application pursuant to this section shall include with the application additional financial information regarding the manner in which any funds received by the mutual finance organization based upon the prior year's application pursuant to the act have been expended or distributed by that mutual finance organization. The State Treasurer shall provide copies of such reports on mutual finance organization expenditures and distributions to the Clerk of the Legislature by December 1 of each year in which any reports are filed.

(2) The State Treasurer shall review all applications for eligibility for funds under the act and approve any application which is accurate and demonstrates that the applicant is eligible for funds. On or before August 15, the State Treasurer shall notify the applicant of approval or denial of the application and certify the amount of funds for which an approved applicant is eligible. The decision of the State Treasurer may be appealed as provided in the Administrative Procedure Act.

(3) Except as provided in subsection (4) of this section, funds shall be disbursed by the State Treasurer in two payments which are as nearly equal as possible, to be paid on or before November 1 and May 1. If the Mutual Finance Assistance Fund is insufficient to make all payments to all applicants in the amounts provided in section 35-1206, the State Treasurer shall prorate payments to approved applicants. Funds remaining in the Mutual Finance Assistance Fund on June 1 shall be transferred to the General Fund before July 1.

(4) No funds shall be disbursed to an eligible mutual finance organization until it has provided to the State Treasurer the financial information regarding the manner in which it has expended or distributed prior disbursements made

pursuant to the Mutual Finance Assistance Act as provided in subsection (2) of this section.

Source: Laws 1998, LB 1120, § 7; Laws 2006, LB 1175, § 6.

Cross References

Administrative Procedure Act, see section 84-920.

ARTICLE 13

VOLUNTEER EMERGENCY RESPONDERS RECRUITMENT AND RETENTION ACT

Section
35-1301. Act, how cited.
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35-1305. Repealed. Laws 2001, LB 808, § 23.
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35-1324. Annual accounts; deposits and other property held in grantor trust; effect.
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35-1326. Administrative services agreements authorized.
35-1327. Agreement; provisions.
35-1328. Repealed. Laws 2001, LB 808, § 23.
35-1329. Service award benefit program; termination; effect.
35-1330. Unallocated contributions forfeited; use.

35-1301 Act, how cited.

Sections 35-1301 to 35-1330 shall be known and may be cited as the Volunteer Emergency Responders Recruitment and Retention Act.

Source: Laws 1999, LB 849, § 1; Laws 2001, LB 808, § 5.

35-1302 Legislative findings.

(1) The Legislature recognizes that volunteer firefighters and rescue squad personnel have provided fire suppression and emergency response services to their local communities for over a century at only a fraction of the cost to the taxpayers which would have resulted from implementing a system of paid fire departments and rescue squad services. Many cities, villages, and rural areas could not afford the cost of maintaining their current level of emergency response services without the presence of a local pool of committed and dedicated volunteer firefighters and volunteer rescue squad personnel. It is necessary for the public health, safety, and welfare of the people in many Nebraska communities to encourage the recruitment and retention of such individuals as volunteer emergency responders.

(2) The Legislature finds that the duties and responsibilities of the volunteer personnel in fire departments and rescue squads in the State of Nebraska have become increasingly complex and time-consuming, requiring an ever higher degree of dedication to cope with new challenges and technological change. The Legislature recognizes that volunteer fire departments and rescue squads must encourage a high level of training and professionalism among their volunteer personnel in order to respond to these increasingly complex and hazardous responsibilities.

(3) The Legislature finds that Nebraska communities which rely on volunteers to provide fire protection and emergency response services are faced with numerous economic and demographic trends and conditions which make the recruitment and retention of qualified volunteers increasingly difficult and that, as a consequence, some volunteer departments are trying to cope with declining rosters of active volunteers.

(4) The Legislature finds that the recruitment and retention of qualified men and women in emergency response capacities in volunteer fire departments is a matter of statewide as well as local concern and that it is appropriate for the state to assist local political subdivisions in achieving that goal. Further, the Legislature finds that the expenditure of local tax revenue for purposes of the Volunteer Emergency Responders Recruitment and Retention Act will significantly benefit the public health, safety, and welfare in participating cities, villages, counties, and fire protection districts and that such expenditures are for a public purpose.

(5) Therefor, the Legislature finds that cities of the first class, cities of the second class, villages, and rural and suburban fire protection districts should be encouraged and assisted in their efforts to retain trained and qualified volunteer fire safety, rescue squad, and emergency response personnel to serve their local communities and should be granted the authority to participate in a local option incentive program designed to provide for the payment of service award benefits which reward the length of service of active volunteer members of volunteer fire departments and volunteer rescue squads. It is the intent of the Legislature that such programs will be developed, organized, structured, and administered to satisfy the length of service award plan requirements of section 457(e)(11) of the Internal Revenue Code as modified by the Small Business Job Protection Act of 1996 so as to insure that benefits received by participants will not be subject to taxation until actually distributed at age sixty-five or as otherwise provided in the Volunteer Emergency Responders Recruitment and Retention Act.

Source: Laws 1999, LB 849, § 2.

35-1303 Terms, defined.

For purposes of the Volunteer Emergency Responders Recruitment and Retention Act:

(1) Active emergency responder means a person who has been approved by the duly constituted authority in control of a volunteer department as a volunteer member of the department who is performing service as both a firefighter and on a rescue squad in the protection of life, health, or property from fire or other emergency, accident, illness, or calamity in connection with which the services of such volunteer department are required and whose services and activities during a year of service meet the minimum requirements for qualification as an active member of his or her volunteer department as established by section 35-1309.01;

(2) Active rescue squad member means a person who has been approved by the duly constituted authority in control of a volunteer department as a volunteer member of the department who is performing service as part of a rescue squad in the protection of life or health from emergency, accident, illness, or calamity in connection with which the services of such volunteer department are required and whose services and activities during a year of service meet the minimum requirements for qualification as an active member of his or her volunteer department as established by section 35-1309.01;

(3) Active volunteer firefighter means a person who has been approved by the duly constituted authority in control of a volunteer department as a volunteer member of the department who is performing service as a firefighter in the protection of life or property from fire or other emergency, accident, or calamity in connection with which the services of such volunteer department are required and whose services and activities during a year of service meet the minimum requirements for qualification as an active member of his or her volunteer department as established by section 35-1309.01;

(4) Annual account means a separate account of a city, village, or rural or suburban fire protection district conducting a service award benefit program established for each year of service in which such program is being conducted to which is credited all funds, from whatever source, furnished for the purpose of providing service award benefits to qualifying participants in the service award benefit program during that year of service, with the funds in the account to be held in trust and invested for ultimate payment as service award benefits to those qualifying participants;

(5) City of the first class, city of the second class, village, rural fire protection district, and suburban fire protection district means such political subdivisions as they are defined in statute, and when such political subdivisions are granted authority pursuant to the Volunteer Emergency Responders Recruitment and Retention Act to engage in any conduct authorized by the act, the use of these terms shall be construed to mean and include any combination of two or more of these political subdivisions acting in concert pursuant to an agreement entered into under the terms of the Interlocal Cooperation Act or the Joint Public Agency Act;

(6) Emergency response services means the services provided by a volunteer department in the protection of life, health, or property from fire or other emergency, accident, illness, or calamity;

(7) Nonforfeitable means the unconditional and legally enforceable right by a participant or beneficiary to receive service award benefits pursuant to a service award benefit program at the entitlement age or under the circumstances specified in the Volunteer Emergency Responders Recruitment and Retention Act;

(8) Participant means an active emergency responder, active rescue squad member, or active volunteer firefighter who is currently eligible or who will, upon the completion of the requirements of the act, be eligible to receive a service award benefit;

(9) Service award benefit program means a program established, governed, administered, and maintained pursuant to the act which provides service award benefits for active emergency responders, active rescue squad members, and active volunteer firefighters, as provided for in the act, for each year of active service, as defined by the standard criteria for qualified active service, and which program meets the length of service award plan requirements of section 457(e)(11) of the Internal Revenue Code as defined in section 49-801.01;

(10) Specified years of service means the total number of years of service which must be served by a volunteer member of a volunteer department to qualify that member for a service award benefit as determined by the governing body of the city, village, or rural or suburban fire protection district conducting the program;

(11) Standard criteria for qualified active service means the minimum annual service requirements for the qualification of a volunteer member of a volunteer department as an active emergency responder, active rescue squad member, or active volunteer firefighter so as to enable such person to participate in a service award benefit program as provided in section 35-1309.01;

(12) Unallocated contributions means that portion of an annual account representing the proportionate equal shares of (a) the principal amount of all contributions from whatever source deposited into the annual account for such year of service and (b) all income derived therefrom, attributable to participants listed on the certification list for that year of service who have subsequently ceased to be volunteers or participants and, in consequence, failed to qualify for a service award benefit as provided in section 35-1312 or 35-1313;

(13) Volunteer means a person who meets the requirements necessary to qualify as a bona fide volunteer as defined in section 457(e)(11)(B)(i) of the Internal Revenue Code, as defined in section 49-801.01, and who, on behalf of and at the request or with the permission of a city, village, or rural or suburban fire protection district, engages in activities related to fire protection, fire suppression, or emergency response for the purpose of protecting human life, health, or property;

(14) Volunteer department means any volunteer fire department or volunteer first-aid, rescue, ambulance, or emergency squad or volunteer fire company, association, or organization serving any city, village, or rural or suburban fire protection district by providing fire protection or emergency response services for the purpose of protecting human life, health, or property; and

(15) Year of service means the twelve-month period established under a service award benefit program in which the services and activities of a volunteer member of a volunteer department are monitored to determine if the volunteer qualifies for certification by the duly constituted authority of the

volunteer department as meeting the standard criteria for qualified active service and each succeeding twelve-month period of the program.

Source: Laws 1999, LB 849, § 3; Laws 2000, LB 968, § 17; Laws 2001, LB 808, § 6; Laws 2002, LB 1110, § 1.

Cross References

Interlocal Cooperation Act, see section 13-801.
Joint Public Agency Act, see section 13-2501.

35-1304 Repealed. Laws 2001, LB 808, § 23.

35-1305 Repealed. Laws 2001, LB 808, § 23.

35-1306 Repealed. Laws 2001, LB 808, § 23.

35-1307 Repealed. Laws 2001, LB 808, § 23.

35-1308 Repealed. Laws 2001, LB 808, § 23.

35-1309 Service award benefit program; authorized.

(1) After March 1, 2000, any city of the first class, city of the second class, village, rural fire protection district, or suburban fire protection district which relies in whole or in part upon a volunteer department for emergency response services may adopt a service award benefit program as provided in the Volunteer Emergency Responders Recruitment and Retention Act.

(2) No city, village, or fire protection district shall be required to adopt a service award benefit program. Nothing in the act shall be construed to mandate the creation of a service award benefit program in any city, village, or fire protection district. The act shall not be construed to prohibit any city, village, or fire protection district from ending or eliminating any service award benefit program after its adoption, except that a city, village, or fire protection district may not end its program or its responsibility under its program with regard to any year of service completed prior to such elimination.

(3) Each service award benefit program shall include provisions governing the procedures to be followed in the tallying, recording, verifying, and auditing of points earned by volunteers and provisions which provide for the collection of such other information regarding participants as may be requested by the State Fire Marshal to facilitate administration of the program.

Source: Laws 1999, LB 849, § 9; Laws 2001, LB 808, § 7; Laws 2002, LB 1110, § 2.

35-1309.01 Standard criteria for qualified active service; computation.

(1) The standard criteria for qualified active service shall be based on a total of one hundred possible points per year. A person must accumulate at least fifty points out of the possible one hundred points during a year of service in order to qualify as an active emergency responder, active rescue squad member, or active volunteer firefighter. Points shall be awarded as provided in this section.

(2) A fixed amount of twenty-five points shall be awarded to a person for responding to ten percent of the emergency response calls which are (a) dispatched from his or her assigned station or company during a year of service and (b) relevant to the appropriate duty category of the person. An emergency response call shall mean any dispatch involving an emergency activity that an emergency responder, rescue squad member, or volunteer firefighter is directed

to do by the chief of the fire department, the chief of the ambulance service, or persons authorized to act for the chiefs. No points shall be awarded for responding to less than ten percent of the emergency response calls.

(3) For participation in training courses, a maximum total of not more than twenty-five points may be awarded on the following basis:

(a) For courses under twenty hours duration: One point shall be awarded per two hours, with a maximum of five points awarded per course;

(b) For courses of between twenty hours and forty hours duration: Five points shall be awarded, plus one point awarded for each hour after the first twenty hours, with a maximum of ten points awarded per course; and

(c) For courses over forty hours duration: Fifteen points shall be awarded per course.

(4) Drills shall mean regular monthly drills used for instructional and educational purposes, as well as mock emergency response exercises to evaluate the efficiency or performance by the personnel of a volunteer department. Each drill shall last at least two hours. One point shall be awarded per drill. For participation in drills, a maximum total of not more than twenty points shall be awarded.

(5) For attendance at an official meeting of the volunteer department or mutual aid organization, one point shall be awarded per meeting up to a maximum total of not more than ten points.

(6) A fixed award of ten points shall be awarded for completion of a term in one of the following elected or appointed positions: (a) An elected or appointed position defined in the volunteer department's constitution or bylaws; (b) an elected or appointed position of a mutual aid organization; or (c) an elected office of the Nebraska State Volunteer Firefighter's Association or other organized associations dealing with emergency response services in Nebraska.

(7) For participation in activities of fire prevention communicated to public, open house, speaking engagements on behalf of the volunteer department, presenting fire or rescue equipment at a parade or other public event, attendance at the Nebraska State Volunteer Firefighter's Association Convention, attendance at a meeting of a governing body of a city, village, or rural or suburban fire protection district on behalf of the department, or other activities related to emergency services not covered in this subsection, one point shall be awarded per activity, but no more than one point shall be awarded per day, up to a maximum total of not more than ten points.

(8) Activities which may qualify a person to receive points in more than one of the categories described in subsections (2) through (7) of this section shall only be credited in one category.

Source: Laws 2001, LB 808, § 8.

35-1310 Certification administrator; designation; duties; certification list; hearing; appeal.

Each volunteer department serving a city, village, or rural or suburban fire protection district conducting a service award benefit program shall designate one member of the department to serve as the certification administrator. The designation of such individual as the certification administrator shall be confirmed and approved by the governing body of that city, village, or rural or suburban fire protection district. It shall be the duty of the certification

administrator to keep and maintain records on the activities of all volunteer members and participants and award points for such activities based upon the standard criteria for qualified active service. Each volunteer member and participant shall be provided by the certification administrator with notice of the total points he or she has accumulated during each six-month period in which the program is in operation. No later than thirty days following the end of each year of service, the certification administrator shall forward to the governing body of the city, village, or fire protection district a report specifying the name of each volunteer member of the volunteer department, the number of points accumulated by each volunteer during the year of service, and the names of those volunteers who have qualified as active emergency responders, active rescue squad members, or active volunteer firefighters. At the time of the filing of the report, each volunteer member of the department whose name does not appear on the list of qualified volunteers shall be informed of such fact in writing by the certification administrator by mailing the same by first-class United States mail, postage prepaid. No sooner than forty-five days nor later than sixty days after the end of each year of service, the governing body of the city, village, or fire protection district conducting the program shall formally approve and certify the list of those volunteers who have qualified as active emergency responders, active rescue squad members, or active volunteer firefighters. Any volunteer member whose name does not appear on the approved certification list may, within fifteen days after the filing of the report, appeal in writing to the governing body to have his or her name added to the certification list by filing the same with the clerk of the governing body. The appeal shall set out the basis upon which the volunteer believes he or she should be placed upon the certification list and shall specify whether or not a public hearing is requested. If requested by the appealing party, the governing body shall hold a public hearing on the appeal prior to or upon the date upon which the certification list is approved. The governing body shall designate an appropriate person to investigate the appeal and report on its merits to the governing body which shall, by majority vote, add the name of the person to the certification list if there is sufficient evidence to indicate that the individual performed sufficient activities or services to qualify as an active emergency responder, active rescue squad member, or active volunteer firefighter as provided in the standard criteria for qualified active service during the prior year of service. The decision of the governing body may be appealed to the district court of the county in which the volunteer member resides.

Source: Laws 1999, LB 849, § 10; Laws 2001, LB 808, § 9; Laws 2005, LB 268, § 1.

35-1311 Repealed. Laws 2001, LB 808, § 23.

35-1311.01 Services of volunteers; reports.

Each city, village, or rural or suburban fire protection district that relies in whole or in part upon the services of volunteers to provide the jurisdiction with fire protection and emergency response services shall file with the State Fire Marshal no later than July 1 of each year a report specifying the number of volunteer members serving the city, village, or fire protection district, whether their responsibilities involved fire protection or emergency response, and such other information as may be requested by the State Fire Marshal for the period of the immediately preceding calendar year. The State Fire Marshal shall

compile the responses reported by the cities, villages, and rural and suburban fire protection districts and shall file a report on such information with the Clerk of the Legislature for distribution to the members of the Legislature no later than December 1, 2001, and no later than each succeeding December 1.

Source: Laws 2001, LB 808, § 10.

35-1312 Service award benefit payments; when; section; how construed.

(1) Except as provided in section 35-1313, service award benefits provided under a service award benefit program shall be paid to a participant only upon the date he or she reaches the age of sixty-five or upon the first day of the first year of service after the first year of service in which such participant was not on the certification list of his or her volunteer department, whichever is later, if the participant has been an active emergency responder, active rescue squad member, or active volunteer firefighter for the number of years of service specified by the city, village, or fire protection district administering the service award benefit program.

(2) Upon the completion of the specified years of service as determined by the city, village, or rural or suburban fire protection district, the participant shall have a nonforfeitable interest in the annual accounts of all years of service in which such participant is listed on the certification list. Such interest is equivalent to a proportionate equal share with all other participants listed on the certification list for a year of service in (a) the principal amount of all contributions deposited into the annual account for such year of service and (b) all income derived therefrom.

(3) Nothing in this section shall be construed as preventing a city, village, or rural or suburban fire protection district from establishing a vesting schedule under which a stated proportion of a participant's interest in his or her annual accounts becomes nonforfeitable upon completion of a specified number of years of service, subject to sections 35-1313, 35-1323, and 35-1329.

Source: Laws 1999, LB 849, § 12; Laws 2001, LB 808, § 11; Laws 2005, LB 268, § 2.

35-1313 Service award benefits; payment upon military service, disability, or death.

(1)(a) Service award benefits may be paid to a participant as provided in subsection (1) of section 35-1312 notwithstanding that such participant has not been an active emergency responder, active rescue squad member, or active volunteer firefighter for the specified years of service if in the years of service in which such participant did not qualify such failure was due (i) to a period during a year of service in the armed forces of the United States upon active duty or (ii) to an injury or disability incurred by the participant and directly related to the participant's duties or activities as a volunteer member of the volunteer department.

(b) Upon the completion of the specified years of service pursuant to this subsection, the participant shall have a nonforfeitable interest in the annual accounts of all years of service in which such participant is listed on the certification list. Such interest is equivalent to a proportionate equal share with all other participants listed on the certification list for a year of service in (i) the principal amount of all contributions deposited into the annual account for such year of service and (ii) all income derived therefrom.

(2) Service award benefits shall be paid to a participant as provided in subsection (1) of section 35-1312 notwithstanding that such participant had not been an active emergency responder, active rescue squad member, or active volunteer firefighter for the specified years of service if such participant suffered a permanent disability resulting from an injury incurred by the participant and directly related to the participant's duties or activities as a volunteer member of the volunteer department which disqualified the participant from further service as a volunteer. At the time such disability is confirmed and certified to the governing body of the city, village, or rural or suburban fire protection district conducting the service award benefit program, the participant shall have a nonforfeitable interest in the annual accounts of all years of service in which such participant is listed on the certification list. Such interest is equivalent to a proportionate equal share with all other participants listed on the certification list for a year of service in (a) the principal amount of all contributions deposited into the annual account for such year of service and (b) all income derived therefrom.

(3) Service award benefits shall be paid to the beneficiary of a participant notwithstanding that such participant has not been an active emergency responder, active rescue squad member, or active volunteer firefighter for the specified years of service if such participant dies in the course of his or her active service as a volunteer member of a volunteer department or dies as the result of injuries incurred by the participant directly related to his or her duties or activities as a volunteer member of a volunteer department. At the time of the participant's death, the beneficiary of the participant shall have a nonforfeitable interest in the annual accounts of all years of service in which the participant is listed on the certification list. Such interest is equivalent to a proportionate equal share with all other participants listed on the certification list for a year of service in (a) the principal amount of all contributions deposited into the annual account for such year of service and (b) all income derived therefrom.

(4) Service award benefits shall be paid to the beneficiary of a participant upon the death of a participant notwithstanding that such participant had not reached the age of sixty-five if such participant would have been entitled to receive service award benefits at age sixty-five pursuant to subsection (1) of section 35-1312 or subsection (1) or (2) of this section.

Source: Laws 1999, LB 849, § 13; Laws 2001, LB 808, § 12.

35-1314 Participant; failure to qualify; forfeiture.

Any participant in a service award benefit program who ceases to be a volunteer or participant and consequently fails to qualify for a service award benefit pursuant to section 35-1312 or 35-1313 shall forfeit all rights to any future distribution of any portion of the principal amount of any contributions made to an annual account for any service year in which such participant was on the certification list and any income derived from such contributions.

Source: Laws 1999, LB 849, § 14.

35-1315 Service award benefit program; annual account.

Each city, village, or rural or suburban fire protection district conducting a service award benefit program shall establish an annual account for each year of service in which such program is being conducted. All funds from whatever

source furnished for the purpose of providing service award benefits to active emergency responders, active rescue squad members, and active volunteer firefighters participating in the service award benefit program during a year of service shall be placed into the annual account for that year of service.

Source: Laws 1999, LB 849, § 15.

35-1316 Annual account; appropriations and contributions; liability; limitation.

(1) Each city, village, or rural or suburban fire protection district conducting a service award benefit program shall appropriate for the annual account for each year of service in which such program is in existence a sum to be determined by the governing body as sufficient to meet the purposes of the program.

(2) The total amount of all contributions from all sources made to any annual account shall not exceed three thousand dollars times the number of participants listed on the certification list for the year of service covered by that annual account. The service award benefit paid to a qualifying participant or beneficiary shall not include in any participant's share of an annual account any contributions made to the annual account for that year of service which are allocable to the participant or beneficiary in excess of the sum of three thousand dollars and any income derived from the investment of those excess sums.

(3) No city, village, or rural or suburban fire protection district conducting a service award benefit program shall incur any obligation or liability with regard to contributions into any annual account under such program beyond the amount of contributions actually appropriated by such local political subdivision for such purpose and actually distributed into such accounts.

Source: Laws 1999, LB 849, § 16; Laws 2001, LB 808, § 13.

35-1317 Service award benefit; how paid; exempt from judicial process.

(1) The service award benefit received by a qualifying participant or beneficiary shall, at the option of the recipient, be in the form of an annuity or lump-sum benefit. No portion of any annual account shall be subject to attachment, garnishment, execution, or other judicial process for the satisfaction of a debt or claim against any participant or beneficiary and assignments or transfers of any portion shall be void.

(2) The service award benefit paid to a participant or beneficiary qualifying pursuant to section 35-1312 or 35-1313 shall be the participant's or beneficiary's nonforfeitable share of all annual accounts upon the date of his or her qualification for the service award benefit.

Source: Laws 1999, LB 849, § 17.

35-1318 Eligibility.

Any person who is a paid member of a fire department or other emergency response organization and who receives retirement benefits in consequence of such employment shall not be eligible to participate in any service award benefit program being conducted by the same city, village, or rural or suburban fire protection district which employs the person or which contracts for

emergency response services with the fire department or emergency response organization which employs the person.

Source: Laws 1999, LB 849, § 18; Laws 2001, LB 808, § 14.

35-1319 Participant; status as volunteer.

The participation of a volunteer in any service award benefit program conducted pursuant to the Volunteer Emergency Responders Recruitment and Retention Act and his or her receipt of service award benefits pursuant to such a program shall not for that cause alone alter the relationship of such volunteer to the city, village, or rural or suburban fire protection district as being one of a volunteer for purposes of the Nebraska Workers' Compensation Act.

Source: Laws 1999, LB 849, § 19.

Cross References

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

35-1320 Service award benefit program; summary; information to participants; statement required; public records.

(1) Any city, village, or rural or suburban fire protection district conducting a service award benefit program shall, within thirty days after the adoption of a program, provide all volunteers providing its local political subdivision with emergency response services with a summary of the program's provisions, including the program's provisions relating to participation and the applicable standard criteria for qualified active service, the manner in which nonforfeitable interests in annual accounts are obtained, the amount of all contributions to the annual account, and any other information relating to participation in the program. The city, village, or rural or suburban fire protection district shall provide copies of the summary to all new volunteer members and to any applicant for membership to the volunteer department.

(2) Any summary of a program's provisions provided pursuant to this section shall include the following statement and such additional explanation as is deemed appropriate by the sponsoring city, village, or rural or suburban fire protection district: Due to definitive interpretations of the relevant provisions of the Internal Revenue Code, in order to insure that funds deposited on behalf of a participant are not taxable to the participant in that or any subsequent year in which they are nonforfeitable, any funds held by a city, village, or rural or suburban fire protection district on behalf of qualifying program participants will be subject to the claims of creditors of the city, village, or rural or suburban fire protection district conducting the program in the event of the insolvency or bankruptcy of that city, village, or district.

(3) Any material modification to the program shall be provided in writing to all participants within thirty days after its adoption by the city, village, or rural or suburban fire protection district.

(4) No later than December 1 of each year following the end of the first full year of service after the adoption of a service award benefit program, the city, village, or rural or suburban fire protection district shall provide to each participant listed in the certification list for that year of service a summary and copy of the relevant documents relating to the contributions to the annual account for such year of service. By December 1 of each subsequent year, the city, village, or rural or suburban fire protection district shall provide each

participant who appears for the first time in the certification list for the immediately preceding year of service with the same information.

(5) All documents relating to any program, the certification lists, the annual accounts, the investment of the funds of the annual accounts, the contributions to the account and the income derived therefrom, and the identity of the administrator of the annual accounts shall be public records within the meaning of section 84-712.01.

Source: Laws 1999, LB 849, § 20; Laws 2001, LB 808, § 15; Laws 2005, LB 268, § 3.

35-1321 Service award benefit program; adoption; notice to State Fire Marshal.

Within thirty days after the adoption of a service award benefit program, the city, village, or rural or suburban fire protection district shall notify the State Fire Marshal of such fact.

Source: Laws 1999, LB 849, § 21; Laws 2001, LB 808, § 16.

35-1322 Annexation, merger, or consolidation; established service award benefit program; effect.

Whenever by reason of annexation, merger, or consolidation a city, village, or rural or suburban fire protection district conducting a service award benefit program ceases to exist and becomes part of another city, village, or rural or suburban fire protection district which is conducting a service award benefit program, the annual accounts and certification lists of the city, village, or rural or suburban fire protection district which has ceased to exist shall be transferred and merged with the annual accounts and certification lists of the other city, village, or rural or suburban fire protection district. For purposes of the Volunteer Emergency Responders Recruitment and Retention Act, the prior participation of volunteers in the program of the city, village, or rural or suburban fire protection district which has ceased to exist up to the date upon which such body ceased to exist shall be treated as if the participation had been in the program of the other city, village, or rural or suburban fire protection district.

Source: Laws 1999, LB 849, § 22.

35-1323 Annexation, merger, or consolidation; no service award benefit program; effect.

Whenever by reason of annexation, merger, or consolidation a city, village, or rural or suburban fire protection district conducting a service award benefit program ceases to exist and becomes part of another city, village, or rural or suburban fire protection district which is not conducting a service award benefit program, each person listed on the certification lists for all years of service completed prior to the date upon which the city, village, or rural or suburban fire protection district ceased to exist shall be deemed to have a nonforfeitable interest in each annual account for the years of service in which he or she was listed, notwithstanding that the person may not have qualified pursuant to sections 35-1312 and 35-1313, and shall be entitled to receive a service award benefit as provided by the provisions of the Volunteer Emergency

Responders Recruitment and Retention Act as if he or she had met the qualification requirements of sections 35-1312 and 35-1313.

Source: Laws 1999, LB 849, § 23.

35-1324 Annual accounts; deposits and other property held in grantor trust; effect.

(1) All deposits made to annual accounts under any service award benefit program conducted pursuant to the Volunteer Emergency Responders Recruitment and Retention Act, all property and rights purchased with such deposits, and all investment income, property, or rights attributable to such deposits shall be held in a grantor trust within the meaning of subtitle A, chapter 1, subchapter J, part I, subpart E of the Internal Revenue Code, as defined in section 49-801.01, established by the city, village, or rural or suburban fire protection district conducting the program, until such time as payments shall be paid under the terms of a program and the act. All such assets held in trust shall be invested by the city, village, or rural or suburban fire protection district conducting the program in certificates of deposit, in time deposits, and in any securities in which the state investment officer is authorized to invest pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act and as provided in the authorized investment guidelines of the Nebraska Investment Council in effect on the date the investment is made.

(2) The trust established pursuant to subsection (1) of this section shall provide that all deposits made to the trust, all property and rights purchased with the deposits, and all investment income, property, or rights attributable to such deposits under the Volunteer Emergency Responders Recruitment and Retention Act, until paid to participants or their beneficiaries, are subject to the claims of the creditors of the city, village, or rural or suburban fire protection district conducting the program in the event of the insolvency or bankruptcy of the city, village, or rural or suburban fire protection district. With respect to any participant or beneficiary, the trust established pursuant to subsection (1) of this section shall not be subject to garnishment, attachment, levy, the operation of bankruptcy or insolvency laws, or any other process of law whatsoever and shall not be assignable.

(3) The trust established pursuant to subsection (1) of this section may contain such other terms and provisions as are necessary to insure that the participation by a participant in the service award benefit program does not result in taxable income to such participant under any provision of the Internal Revenue Code, as defined in section 49-801.01, until such time as service award benefits are paid pursuant to section 35-1312 or 35-1313.

Source: Laws 1999, LB 849, § 24; Laws 2001, LB 808, § 17; Laws 2005, LB 268, § 4.

Cross References

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

35-1325 Repealed. Laws 2001, LB 808, § 23.

35-1326 Administrative services agreements authorized.

Any city, village, or rural or suburban fire protection district conducting a program may enter into an administrative services agreement with an appropriate organization authorized to conduct business in Nebraska to administer

the service award benefit programs provided for in the Volunteer Emergency Responders Recruitment and Retention Act. No such agreement shall be entered into unless it will result in administrative economy and will be in the best interests of the participating cities, villages, and fire protection districts and the participants in such programs.

Source: Laws 1999, LB 849, § 26; Laws 2001, LB 808, § 18.

35-1327 Agreement; provisions.

The agreement authorized by section 35-1326 shall provide:

(1) That the organization shall make all disbursements under the contract or contracts issued by it, such disbursements to be made in such manner and amounts as directed by the city, village, or rural or suburban fire protection district conducting the service award benefit program whether on account of disability, death, the termination of a program, or the attainment of the appropriate age by a qualifying participant;

(2) That the organization shall include with each disbursement a statement showing the gross payment, any taxes withheld, and the net amount paid and an annual statement of account;

(3) That the organization shall furnish to the city, village, or district a statement of all disbursements and withholdings as stipulated in the agreement on at least an annual basis, as agreed by the parties;

(4) Hold-harmless clauses protecting each party thereto from the negligent acts of the other or for any loss or claim against one party resulting from release of incorrect or misleading information furnished by the other party;

(5) For the right of the city, village, or district, either directly or through independent auditors, to examine and audit the organization's records and accounts relating to disbursements made under the agreement;

(6) Protection to the city, village, or district against assignment of the agreement or the subletting of work done or services furnished under the agreement;

(7) For termination of the agreement; and

(8) Such other terms as may be agreed upon and which the city, village, or district determines to be in the best interest of the participating cities, villages, and fire protection districts and the participants in such programs.

Source: Laws 1999, LB 849, § 27; Laws 2001, LB 808, § 19.

35-1328 Repealed. Laws 2001, LB 808, § 23.

35-1329 Service award benefit program; termination; effect.

Whenever a city, village, or rural or suburban fire protection district conducting a service award benefit program ceases to conduct the service award benefit program, each person listed on the certification lists for all years of service completed prior to the date upon which the city, village, or rural or suburban fire protection district ceases to conduct such a program shall be deemed to have a nonforfeitable interest in each annual account for the years of service in which he or she was listed on the certification list, notwithstanding that the person may not have qualified pursuant to sections 35-1312 and 35-1313, and shall be entitled to receive a service award benefit as provided by the provisions of the Volunteer Emergency Responders Recruitment and Reten-

tion Act as if he or she had met the qualification requirements of sections 35-1312 and 35-1313.

Source: Laws 1999, LB 849, § 29.

35-1330 Unallocated contributions forfeited; use.

All unallocated contributions forfeited pursuant to section 35-1314 shall be used by the city, village, or rural or suburban fire protection district to finance the cost of conducting the service award benefit program or, at the discretion of the city, village, or rural or suburban fire protection district, to reduce the current or future deposits to the service award benefit program.

Source: Laws 1999, LB 849, § 30; Laws 2001, LB 808, § 20; Laws 2005, LB 268, § 5.

ARTICLE 14

VOLUNTEER EMERGENCY RESPONDERS JOB PROTECTION ACT

Section
35-1401. Act, how cited.
35-1402. Terms, defined.
35-1403. Employer; prohibited acts.
35-1404. Employer; adjustment to wages authorized.
35-1405. Employee; duty to notify employer.
35-1406. Employee; provide written statement; contents.
35-1407. Employee; provide employer notice of status as volunteer emergency responder.
35-1408. Wrongful termination of employment or disciplinary action; reinstatement; action to enforce act.

35-1401 Act, how cited.

Sections 35-1401 to 35-1408 shall be known and may be cited as the Volunteer Emergency Responders Job Protection Act.

Source: Laws 2008, LB1096, § 5.
Effective date July 18, 2008.

35-1402 Terms, defined.

For purposes of the Volunteer Emergency Responders Job Protection Act:

(1) Employee does not include a career firefighter or law enforcement officer who is acting as a volunteer emergency responder;

(2) Employer means any person employing ten or more employees; and

(3) Volunteer emergency responder means a person who has been approved by a governing body in Nebraska to serve any volunteer fire department or volunteer first-aid, rescue, ambulance, or emergency squad, or volunteer fire company, association, or organization serving any city, village, or rural or suburban fire protection district by providing fire protection or emergency response services for the purpose of protecting life, health, or property.

Source: Laws 2008, LB1096, § 12.
Effective date July 18, 2008.

35-1403 Employer; prohibited acts.

No employer shall terminate or take any other disciplinary action against any employee who is a volunteer emergency responder if such employee, when

acting as a volunteer emergency responder, is absent from or reports late to his or her place of employment in order to respond to an emergency prior to the time such employee is to report to his or her place of employment.

Source: Laws 2008, LB1096, § 6.
Effective date July 18, 2008.

35-1404 Employer; adjustment to wages authorized.

An employer may subtract from an employee's earned wages any time such employee, acting as a volunteer emergency responder, is away from his or her place of employment because of such employee's response to an emergency.

Source: Laws 2008, LB1096, § 7.
Effective date July 18, 2008.

35-1405 Employee; duty to notify employer.

An employee acting as a volunteer emergency responder shall make a reasonable effort to notify his or her employer that he or she may be absent from or report late to his or her place of employment in order to respond to an emergency.

Source: Laws 2008, LB1096, § 8.
Effective date July 18, 2008.

35-1406 Employee; provide written statement; contents.

At an employer's request, an employee, acting as a volunteer emergency responder, who is absent from or reports late to his or her place of employment in order to respond to an emergency shall provide his or her employer, within seven days of such request, a written statement signed by the individual in charge of the volunteer department or another individual authorized to act for such individual that includes the following: The fact that the employee responded to an emergency; the date and time of the emergency; and the date and time such employee completed his or her volunteer emergency activities.

Source: Laws 2008, LB1096, § 9.
Effective date July 18, 2008.

35-1407 Employee; provide employer notice of status as volunteer emergency responder.

Prior to seeking protection pursuant to the Volunteer Emergency Responders Job Protection Act, an employee acting as a volunteer emergency responder shall provide his or her employer with a written statement signed by the individual in charge of the volunteer department or another individual authorized to act for such individual notifying such employer that the employee serves as a volunteer emergency responder. An employee who is or who has served as a volunteer emergency responder shall notify his or her employer when such employee's status as a volunteer emergency responder changes, including termination of such status.

Source: Laws 2008, LB1096, § 10.
Effective date July 18, 2008.

35-1408 Wrongful termination of employment or disciplinary action; reinstatement; action to enforce act.

An employee who is terminated or against whom any disciplinary action is taken in violation of the Volunteer Emergency Responders Job Protection Act shall be immediately reinstated to his or her former position, if wrongfully terminated, without reduction of wages, seniority, or other benefits and shall receive any lost wages or other benefits, if applicable, during any period for which such termination or other disciplinary action was in effect. An action to enforce the act may be brought by the employee to recover any lost wages or other benefits, including court costs and reasonable attorney's fees. An action to enforce the act shall be commenced within one year after the date of violation and shall be brought in the district court of the county in which the place of employment is located.

Source: Laws 2008, LB1096, § 11.
Effective date July 18, 2008.

CHAPTER 36
FRAUD

Article.
1. Conveyances and Contracts Relating to Real Property. 36-101 to 36-107.
2. Conveyances and Contracts Not Relating to Real Property. 36-201 to 36-213.01.
3. Chattel Mortgages. Repealed.
4. General Provisions. 36-401 to 36-409.
5. Bulk Sale of Merchandise. Repealed.
6. Uniform Fraudulent Conveyance Act. Repealed.
7. Uniform Fraudulent Transfer Act. 36-701 to 36-712.

ARTICLE 1
CONVEYANCES AND CONTRACTS RELATING TO REAL PROPERTY

Cross References

Real property conveyances, see Chapter 76, article 2.

Section
36-101. Repealed. Laws 1980, LB 814, § 14.
36-102. Repealed. Laws 1980, LB 814, § 14.
36-103. Interest in land; how created.
36-104. Interest in land; how created; devises; trusts by operation of law.
36-105. Contracts for lease or sale of lands; when void.
36-106. Contracts for lease or sale of lands; specific performance.
36-107. Sale of lands; owner's contract with agent or broker; when void.

36-101 Repealed. Laws 1980, LB 814, § 14.

36-102 Repealed. Laws 1980, LB 814, § 14.

36-103 Interest in land; how created.

No estate or interest in land, other than leases for a term of one year from the making thereof, nor any trust or power over or concerning lands, or in any manner relating thereto, shall hereafter be created, granted, assigned, surrendered, or declared, unless by operation of law, or by deed of conveyance in writing, subscribed by the party creating, granting, assigning, surrendering or declaring the same.

Source: R.S.1866, c. 43, § 62, p. 292; Laws 1903, c. 44, § 1, p. 311; R.S.1913, § 2623; C.S.1922, § 2451; C.S.1929, § 36-103.

1. Oral agreements not within statute
2. Oral agreements within statute
3. Effect of part performance
4. Trusts
5. Leases
6. Specific performance
7. Miscellaneous

1. Oral agreements not within statute

Where one employs an agent to negotiate for purchase of real estate, contract is not within inhibition of this section. Wiskocil v. Kliment, 155 Neb. 103, 50 N.W.2d 786 (1952).

Agreement for partnership to furnish money to buy and sell land is not within statute. Greusel v. Payne, 107 Neb. 84, 185 N.W. 336 (1921).

An oral contract for services, the consideration to be paid when the promisor shall receive his anticipated share out of the estate of his father, not yet deceased, construed as fixing time of payment, and not within statute. Macfarland v. Callahan, 102 Neb. 54, 165 N.W. 889 (1917).

Oral agreement of joint undertaking is not within statute. Kohl v. Munson, 97 Neb. 170, 149 N.W. 314 (1914).

Oral assignment of rents due or to become due, is not interest in land. Yeiser v. Jetter, 86 Neb. 352, 125 N.W. 632 (1910).

Contract whereby one agrees to look up, purchase, improve and resell property, the other to advance money and take title, and both to share profits, is not within statute. Rice v. Parrott, 76 Neb. 501, 107 N.W. 840 (1906), aff'd on rehearing, 76 Neb. 505, 111 N.W. 583 (1906).

Oral agreement of agent to purchase land for principal does not create estate in land. Johnson v. Hayward, 74 Neb. 157, 103 N.W. 1058 (1905), aff'd on rehearing, 74 Neb. 166, 107 N.W. 384 (1905).

Contract to bid in premises at mortgage sale, resell at private sale, and pay over excess, is not within statute. Jones Nat'l Bank v. Price, 37 Neb. 291, 55 N.W. 1045 (1893).

Oral agreement by mortgagee to allow second mortgagees, not parties to action to redeem without suit, is not within statute. Davis v. Greenwood, 2 Neb. Unof. 317, 96 N.W. 526 (1902).

2. Oral agreements within statute

Oral contracts to make a testamentary provision in consideration of services which are to be rendered by another are on their face void as within the statute of frauds because not in writing, and even though proved by clear and satisfactory evidence, they are not enforceable unless there has been such performance as the law requires, and this latter determination as to the sufficiency of part performance is generally a question of fact. In re Estate of Nicholson, 211 Neb. 805, 320 N.W.2d 739 (1982).

An oral agreement purporting to establish an express trust in real estate is within this section. Halsted v. Halsted, 169 Neb. 325, 99 N.W.2d 384 (1959).

Oral agreement to repurchase was void. Winkelmann v. Luebbe, 151 Neb. 543, 38 N.W.2d 334 (1949).

Oral agreement to bid in land at judicial sale for benefit of another was within this section. Smith v. Kinsey, 148 Neb. 786, 28 N.W.2d 588 (1947).

An oral agreement for transfer of title to real estate is void. Hackbarth v. Hackbarth, 146 Neb. 919, 22 N.W.2d 184 (1946).

Oral contract to convey land is unenforceable unless there has been part performance by the promisee which is solely referable to the contract. Taylor v. Clark, 143 Neb. 563, 13 N.W.2d 621 (1943).

An agreement to give a lien on real estate which would have the same effect as a mortgage is invalid if not in writing. Penn Mutual Life Ins. Co. v. Kimble, 132 Neb. 408, 272 N.W. 231 (1937).

An interest in land, with certain exceptions, cannot be assigned except by deed of conveyance. Kramper v. St. John's Church, 131 Neb. 840, 270 N.W. 478 (1936).

Oral pledge of title deed, naming third person as grantee, does not create valid mortgage on real estate. Shafer v. Wilsonville Elevator Co., 121 Neb. 280, 237 N.W. 155 (1931).

Oral agreement to give mortgage is void and not enforceable as equitable mortgage, notwithstanding lender's performance by making loan. Herring v. Whitford, 119 Neb. 725, 232 N.W. 581 (1930).

Exception of estates arising from operation of law was not intended to give effect to contracts imperfectly executed. Bloomfield State Bank v. Miller, 55 Neb. 243, 75 N.W. 569 (1898).

Oral agreement to warrant and defend title is within statute. Kelley v. Palmer, 42 Neb. 423, 60 N.W. 924 (1894).

3. Effect of part performance

Court of equity will give effect to parol grant of easement where it is certain in its terms and there has been such part performance on part of grantee as to take the case out of the statute of frauds. Brown v. Story, 133 Neb. 535, 276 N.W. 155 (1937).

Where past performance of services was not rendered in pursuance of agreement made but prior thereto, such performance was not sufficient to take agreement out of statute. Wehnes v. Marsh, 103 Neb. 120, 170 N.W. 606 (1919).

Statute does not apply to an executed parol contract to transfer title to real estate where the only thing remaining to be performed is payment of the purchase price. Sowards v. Moss, 58 Neb. 119, 78 N.W. 373 (1899).

Where one party completes construction of party wall under oral agreement of each party to pay one-half of the cost thereof, recovery can be had upon the promise to pay. Stuht v. Sweesy, 48 Neb. 767, 67 N.W. 748 (1896).

It is no defense to action for value of land conveyed that contract was oral. Galley v. Galley, 14 Neb. 174, 15 N.W. 318 (1883).

4. Trusts

Where the facts of a case call for the creation of a constructive trust, such trust arises by operation of law and is an exception to the statute of frauds. Fleury v. Chrisman, 200 Neb. 584, 264 N.W.2d 839 (1978).

Statute of frauds does not apply to a constructive trust. Maddox v. Maddox, 151 Neb. 626, 38 N.W.2d 547 (1949).

An attempt to establish an oral trust in real estate is within statute. Anderson v. Anderson, 150 Neb. 879, 36 N.W.2d 287 (1949).

Resulting and constructive trusts are excepted from the operation of the statute of frauds. O'Shea v. O'Shea, 143 Neb. 843, 11 N.W.2d 540 (1943).

Even though contract is unenforceable under statute of frauds, it does not destroy agent's duty not to intermingle principal's property with his own property. Lamb v. Sandall, 135 Neb. 300, 281 N.W. 37 (1938).

The statute of frauds does not affect a resulting trust. Windle v. Kelly, 135 Neb. 143, 280 N.W. 445 (1938).

Resulting trust for benefit of creditors is not within statute. Bodie v. Robertson, 113 Neb. 408, 203 N.W. 590 (1925).

Resulting trust for benefit of grantor who retains possession is not within statute. Doll v. Doll, 96 Neb. 185, 147 N.W. 471 (1914).

When two parties enter into oral contract to purchase land together, and one makes the purchase and payment and the other advances no money, a claimed trust arising therefrom is unenforceable. Norton v. Brink, 75 Neb. 566, 106 N.W. 668 (1906), 75 Neb. 575, 110 N.W. 669 (1906).

Purchase of mortgaged premises at sale for debtor, under oral agreement to hold same as security, is an enforceable trust. Dickson v. Stewart, 71 Neb. 424, 98 N.W. 1085 (1904).

Express trust cannot arise out of parol promise of grantee to convey to another; however, a constructive trust is found due to constructive fraud. Pollard v. McKenney, 69 Neb. 742, 96 N.W. 679 (1903), modified, 69 Neb. 753, 101 N.W. 9 (1903).

Where beneficiary takes possession of land purchased in pursuance of a parol trust agreement, the statute of frauds is satisfied. Oberlender v. Butcher, 67 Neb. 410, 93 N.W. 764 (1903).

Trust in personalty is valid between parties. Wolf v. Haslach, 65 Neb. 303, 91 N.W. 283 (1902).

Where right to recover depends on establishing an interest in land, an oral trust will fail and parol agreement to give one half beneficial interest falls in latter category. Cameron v. Nelson, 57 Neb. 381, 77 N.W. 771 (1899).

Parol declaration of trust must be clear and explicit, and point out subject matter and beneficiary though statute is not pleaded. Kobarg v. Greeder, 51 Neb. 365, 70 N.W. 921 (1897); Roddy v. Roddy, 3 Neb. 96 (1873).

Parol agreement to reconvey is within statute and does not create express trust. Thomas v. Churchill, 48 Neb. 266, 67 N.W. 192 (1896).

Instrument creating a trust need not be a deed. Carter v. Gibson, 29 Neb. 324, 45 N.W. 634 (1890).

A creditor cannot levy on land because held under oral trust. Cresswell v. McCaig, 11 Neb. 222, 9 N.W. 52 (1881).

Express trust must be in writing. Elder v. Webber, 3 Neb. Unof. 534, 92 N.W. 126 (1902).

Constructive trusts are excepted from the operation of the statute of frauds. I.P. Homeowners, Inc. v. Radtke, 5 Neb. App. 271, 558 N.W.2d 582 (1997).

5. Leases

Where a written lease for five years was modified by parol, and is subsequently fully carried out as modified, party cannot thereafter challenge the modification as being void under the statute of frauds. Corcoran v. Leon's, Inc., 126 Neb. 149, 252 N.W. 819 (1934).

Where by agreement between all the partners a new member is admitted to the firm, he acquires an interest in a lease to the partnership by operation of law, and such transfer is not within the statute of frauds. Gorder & Son v. Pankonin, 83 Neb. 204, 119 N.W. 449 (1909).

Where a written lease has been modified by parol, and fully carried out as modified, it is a bar to action for rent on old lease. Bowman v. Wright, 65 Neb. 661, 91 N.W. 580 (1902).

Lease signed in name of agent is valid if it purports to be for the principal. Wheeler v. Walden, 17 Neb. 122, 22 N.W. 346 (1885).

Lease to A for life of B is not within statute. McCormick v. Drummett, 9 Neb. 384, 2 N.W. 729 (1879).

Surrender and assignment of lease is not provable by parol. Kittle v. St. John, 7 Neb. 73 (1878).

Where lessee quits under agreement, and lessor takes possession or accepts rents from another, lease is surrendered by operation of law. Boyd v. George, 2 Neb. Unof. 420, 89 N.W. 271 (1902).

6. Specific performance

One seeking specific performance of an oral contract to leave property to another has the burden of proving not only the contract but also that he has performed the obligations imposed upon him thereunder. The evidence of such agreement must be clear, satisfactory, and unequivocal. Guynan v. Guynan, 208 Neb. 775, 305 N.W.2d 882 (1981).

In an action for specific performance of an oral contract within the statute of frauds, evidence of the existence of the contract and its terms must be clear, satisfactory and unequivocal. Caspers v. Frerichs, 146 Neb. 740, 21 N.W.2d 513 (1946).

Before specific performance of an oral contract to convey real estate will be decreed, the acts claimed to be in part performance themselves must unequivocally indicate the existence of the contract. Crnkovich v. Crnkovich, 144 Neb. 904, 15 N.W.2d 66 (1944).

Specific performance will not be granted of oral contract to convey real estate made by agent without authority. Shelby v. Platte Valley Public Power & Irr. Dist., 134 Neb. 354, 278 N.W. 568 (1938).

An oral contract partly performed, which the statute of frauds requires to be in writing, will be enforced by a court of equity. Campbell v. Kewanee Finance Co., 133 Neb. 887, 277 N.W. 593 (1938).

An oral agreement to devise homestead to son for care during parents' lifetime. Denesia v. Denesia, 116 Neb. 789, 219 N.W. 142 (1928).

Where preliminary agreement required execution of ninety-nine year lease on or before sixty days from date, delay for over five months in tendering signed lease prevented specific performance. Mercer v. Payne & Sons Co., 115 Neb. 420, 213 N.W. 813 (1927).

Oral agreement to adopt, and devise lands, may be specifically enforced where fully performed by one party. Kofka v. Rosicky, 41 Neb. 328, 59 N.W. 788 (1894).

To authorize specific performance, only party to be charged need have signed memorandum. Gartrell v. Stafford, 12 Neb. 545, 11 N.W. 732 (1882).

7. Miscellaneous

District court may decree legal title to real estate in one who furnished the purchase money and deed named another as grantee. Kollbaum v. K & K Chevrolet, Inc., 196 Neb. 555, 244 N.W.2d 173 (1976).

Interest in land may be created by operation of law. Jenkins v. Jenkins, 151 Neb. 113, 36 N.W.2d 637 (1949).

A valid contract in writing for the sale of land may be made by correspondence, and it is not necessary that there shall be a single paper signed by the parties containing all of the conditions of the contract. O'Shea v. Smith, 142 Neb. 231, 5 N.W.2d 348 (1942).

For purposes of taxation a mortgage on real estate is declared by statute to be an interest therein. North Platte Lodge B.P.O.E. v. Board of Equalization, 125 Neb. 841, 252 N.W. 313 (1934).

Oral contracts are not void but voidable at option of either party. Bodie v. Robertson, 113 Neb. 408, 203 N.W. 590 (1925).

It is against conscience that one man shall be enriched to the injury and cost of another, induced by his own act. Smith v. Kober, 108 Neb. 768, 189 N.W. 377 (1922).

It is doubtful if ownership of land can be transferred by parol even if such attempted parol transfer is afterwards acknowledged in writing. Miles v. Lampe, 102 Neb. 619, 168 N.W. 640 (1918).

Petition not alleging agreement to sell, in writing, is sufficient after judgment. Schmid v. Schmid, 37 Neb. 629, 56 N.W. 207 (1893).

Deed executed, witnessed and delivered, passes title though not acknowledged. Harrison v. McWhirter, 12 Neb. 152, 10 N.W. 545 (1881).

Parol testimony is admissible in action for value of property conveyed. Skow v. Locke, 3 Neb. Unof. 176, 91 N.W. 204 (1902).

Where vendor signs agreement to convey, vendee accepting memorandum and taking possession, signature is unnecessary though contemplated. Chambers v. Barker, 2 Neb. Unof. 523, 89 N.W. 388 (1902).

36-104 Interest in land; how created; devises; trusts by operation of law.

Section 36-103 shall not be construed to affect in any manner the power of a testator in the disposition of his real estate by a last will and testament, nor to prevent any trust from arising or being extinguished by implication or operation of law.

Source: R.S.1866, c. 43, § 63, p. 292; R.S.1913, § 2624; C.S.1922, § 2452; C.S.1929, § 36-104.

1. Resulting trusts
2. Constructive trusts

3. Miscellaneous

1. Resulting trusts

Trusts arising by operation of law are excepted from the operation of the statute of frauds. Jenkins v. Jenkins, 151 Neb. 113, 36 N.W.2d 637 (1949).

Both resulting and constructive trusts fall within the exception of this section. Watkins v. Waits, 148 Neb. 543, 28 N.W.2d 206 (1947); O'Shea v. O'Shea, 143 Neb. 843, 11 N.W.2d 540 (1943).

A resulting trust is not within the statute of frauds, and parol testimony is admissible to prove the purchase for, and payment of the consideration by, the beneficiary, even though the deed recites the consideration was paid by the grantee. Bodie v. Robertson, 113 Neb. 408, 203 N.W. 590 (1925).

Payment of purchase price by husband, title taken in wife's name, should be construed as gift, not resulting trust. Van Etten v. Passumpsic Savings Bank, 79 Neb. 632, 113 N.W. 163 (1907).

Where parties make parol contract to purchase land together, and title is taken and payment made by one, the other advancing no money, a resulting trust does not arise. Norton v. Brink, 75 Neb. 575, 110 N.W. 669 (1906).

Evidence to establish resulting trust should be clear, satisfactory and conclusive. Doane v. Dunham, 64 Neb. 135, 89 N.W. 640 (1902); Klamp v. Klamp, 51 Neb. 17, 70 N.W. 525 (1897).

It may be shown by parol that plaintiff paid consideration though deed recites that grantee paid same. Chicago, B. & Q. R. Co. v. First Nat. Bank of Omaha, 58 Neb. 548, 78 N.W. 1064 (1899).

Presumption of resulting trust arising from payment of purchase price does not obtain where the parties are related. Klamp v. Klamp, 51 Neb. 17, 70 N.W. 525 (1897).

Party furnishing share of purchase money, title being taken in name of associates, may enforce parol trust. Leader v. Tierney, 45 Neb. 753, 64 N.W. 226 (1895).

Payment of purchase price raises a presumption of a resulting trust where title is taken in name of stranger, but not where parties are husband and wife. Solomon v. Solomon, 3 Neb. Unof. 540, 92 N.W. 124 (1902).

2. Constructive trusts

Where an agent, in a confidential relationship with his principal, acquires title from the principal in order to sell the land, agent's retention of the land would be unjust enrichment, and a constructive trust is created. Fleury v. Chrisman, 200 Neb. 584, 264 N.W.2d 839 (1978).

Statute of frauds does not apply to a constructive trust. Wiskocil v. Kliment, 155 Neb. 103, 50 N.W.2d 786 (1952); Maddox v. Maddox, 151 Neb. 626, 38 N.W.2d 547 (1949).

Existence of constructive trust arising out of contract for sale of real estate must be proved by clear, satisfactory, and convincing evidence. Smith v. Kinsey, 148 Neb. 786, 28 N.W.2d 588 (1947).

Where the record title to land is obtained from grantor by fraud of grantee, a constructive trust arises that is excepted from the operation of the statute of frauds. Raasch v. Lund Land Co., 103 Neb. 157, 170 N.W. 836 (1919).

A constructive trust arises where agent under oral contract to purchase for principal, purchases in own name. Johnson v. Hayward, 74 Neb. 157, 103 N.W. 1058 (1905), aff'd on rehearing, 74 Neb. 166, 107 N.W. 384 (1905).

Purchase of land by agent with his own funds, when he had orally agreed to attempt to purchase for principal, created a trust by operation of law. Johnson v. Hayward, 74 Neb. 157, 103 N.W. 1058 (1905), aff'd on rehearing, 74 Neb. 166, 107 N.W. 384 (1905).

A constructive trust is created by conveyance of property to one in confidential relation, under oral promise to reconvey. Koefoed v. Thompson, 73 Neb. 128, 102 N.W. 268 (1905).

Where a conveyance is induced by fraudulent promise of grantee to convey as grantor directs, a constructive trust arises. Pollard v. McKenney, 69 Neb. 742, 96 N.W. 679 (1903), modified 69 Neb. 753, 101 N.W. 9 (1903).

3. Miscellaneous

A high degree of proof is required to establish a trust by parol evidence. Parrott v. Hofmann, 151 Neb. 249, 37 N.W.2d 199 (1949).

Contract to devise land must be written, but is aided by part performance. Cobb v. Macfarland, 87 Neb. 408, 127 N.W. 377 (1910).

Where a person, knowing that a testator, in giving him a devise or bequest, intends it to be applied for the benefit of another, either expressly promises or by his action at the time implies he will carry the testator's intention into effect, he will be held as a trustee and the statute of frauds cannot be successfully urged as a defense. Smullin v. Wharton, 73 Neb. 667, 106 N.W. 577 (1905), aff'd on rehearing, 73 Neb. 705, 112 N.W. 622 (1905).

Express trust cannot be raised by parol. Hansen v. Berthelson, 19 Neb. 433, 27 N.W. 423 (1886); Courvoirsier v. Bouvier, 3 Neb. 55 (1873).

36-105 Contracts for lease or sale of lands; when void.

Every contract for the leasing for a longer period than one year, or for the sale of any lands, shall be void unless the contract or some note or memorandum thereof be in writing and signed by the party by whom the lease or sale is to be made.

Source: R.S.1866, c. 43, § 64, p. 293; R.S.1913, § 2625; C.S.1922, § 2453; C.S.1929, § 36-105.

1. Signing
2. Description of parties
3. Authority of agent to sign
4. Sufficiency of writing or description
5. Parol lease
6. Memorandum
7. Performance of contract
8. Miscellaneous

1. Signing

A typed or printed name on a document is a signing sufficient to satisfy the statute of frauds, provided the name is recognized as his signature by the party sought to be charged. Department of Banking, Receiver v. Wilken, 217 Neb. 796, 352 N.W.2d 145 (1984).

A telegram to which a seller's name has been affixed may be considered as having been signed by him within the meaning of the statute of frauds. Hansen v. Hill, 215 Neb. 573, 340 N.W.2d 8 (1983).

To be enforceable, a contract for the sale of real estate or some memorandum thereof must be in writing and signed by the seller, and minds of parties must meet. Horn v. Stuckey, 146 Neb. 625, 20 N.W.2d 692 (1945).

In an agreement for sale in a separate instrument, not only must vendor sign, but the name or description of the vendee must appear. Barkhurst v. Nevins, 106 Neb. 33, 182 N.W. 563 (1921).

Vendor only is required to sign contract or memorandum. Iske v. Iske, 95 Neb. 603, 146 N.W. 918 (1914); Ballou v. Sherwood, 32 Neb. 666, 49 N.W. 790 (1891); Robinson v. Cheney, 17 Neb. 673, 24 N.W. 378 (1885).

A contract for sale of real estate is not binding upon vendor until it is signed and delivered to vendee. Smith v. Severn, 93 Neb. 148, 139 N.W. 858 (1913).

2. Description of parties

Memorandum, neither naming nor describing parties so they can be identified, is not sufficient. Frahm v. Metcalf, 75 Neb. 241, 106 N.W. 227 (1905).

Memorandum containing names of parties, description, price and reference to ten year terms of seller is sufficient. McWilliams v. Lawless, 15 Neb. 131, 17 N.W. 349 (1883).

3. Authority of agent to sign

Employment contract and if the parties intend that the agent shall have authority to sign a sales contract it should be expressly and clearly stated in writing. Brezina v. Hill, 195 Neb. 481, 238 N.W.2d 903 (1976).

Agent need not sign writing authorizing him to sign contract as signature of principal is all that is necessary. Seberger v. Wood, 106 Neb. 272, 183 N.W. 363 (1921).

Letter merely stating terms is no authority. Ross v. Craven, 84 Neb. 520, 121 N.W. 451 (1909).

Authority may be given by letter written by owner. Harrison v. Rice, 78 Neb. 654, 111 N.W. 594 (1907).

Agent must be authorized in writing. O'Shea v. Rice, 49 Neb. 893, 69 N.W. 308 (1896).

4. Sufficiency of writing or description

The memorandum required by this section must contain the essential terms of the contract, lacking which specific performance will not be decreed. Reifenrath v. Hansen, 190 Neb. 58, 206 N.W.2d 42 (1973).

This section and applicable case law do not require terms of sale be set forth in listing contract with broker. Wisnieski v. Coufal, 188 Neb. 200, 195 N.W.2d 750 (1972).

This section clearly contemplates that the contract, note, or memorandum thereof in writing shall contain within itself all of the essential elements which go to make up a contract and when essential elements of the contract are lacking the contract must fail because essential elements cannot be supplied by parol testimony. Kubicek v. Kubicek, 186 Neb. 802, 186 N.W.2d 923 (1971).

Correspondence between the parties can satisfy requirements of statute. Griggs v. Oak, 164 Neb. 296, 82 N.W.2d 410 (1957).

Memorandum must be signed by the vendor, and the name or description of the vendee must also appear. Campbell v. Kewanee Finance Co., 133 Neb. 887, 277 N.W. 593 (1938).

Vendee's petition for specific performance of contract to sell realty was sufficient to disclose a sufficient note or memorandum, signed by vendor, to satisfy statute of frauds. Long v. Osborn, 119 Neb. 758, 230 N.W. 686 (1930).

Written memorandum did not sufficiently describe land to take case out of operation of statute. Tate v. Barb, 112 Neb. 756, 200 N.W. 1002 (1924).

Letter to agent describing land and terms, you may . . . close deal, is sufficient authority. Furse v. Lambert, 85 Neb. 739, 124 N.W. 146 (1910).

Description must be sufficiently definite to identify land. North . . . feet of Lot 8, where vendor owned whole lot, is insufficient. McCarn v. London, 83 Neb. 201, 119 N.W. 251 (1909).

Letter stating I still have northwest quarter section 20, township 22-5, and would sell for three thousand dollars cash, is sufficient authority. Weaver v. Snively, 73 Neb. 35, 102 N.W. 77 (1905).

Description is not sufficient, which does not specify which quarter of a named section is being sold, and where vendor owned but one out of the four quarters. Ruzicka v. Hotovy, 72 Neb. 589, 101 N.W. 328 (1904).

Authority to agent to sell need not state price. Rank v. Garvey, 66 Neb. 767, 92 N.W. 1025 (1902).

Parol evidence is admissible to explain latent ambiguity in description, as where there are two additions of same name. Ballou v. Sherwood, 32 Neb. 666, 49 N.W. 790, 50 N.W. 1131 (1891).

Description must be definite and not ambiguous. Barton v. Patrick, 20 Neb. 654, 31 N.W. 370 (1886).

5. Parol lease

An oral lease for only one year is void if entered into prior to the beginning of the term. Prigge v. Olson, 154 Neb. 131, 47 N.W.2d 344 (1951); Kofoid v. Lincoln Implement & Transfer Co., 80 Neb. 634, 114 N.W. 937 (1908); Thostesen v. Doxsee, 77 Neb. 536, 110 N.W. 319 (1906).

A parol lease for three years is valid for one year. Osgood v. Shea, 86 Neb. 729, 126 N.W. 310 (1910).

Where possession is taken under oral lease for two years, lessee becomes tenant for one year. Dewey & Stone v. Payne & Co., 19 Neb. 540, 26 N.W. 248 (1886).

Lease signed but not witnessed or acknowledged is valid between parties. Weaver v. Coumbe, 15 Neb. 167, 17 N.W. 357 (1883).

Lease for term exceeding one year is void; but if lessee enters, is valid for one year. Friedhoff & Co. v. Smith, 13 Neb. 5, 12 N.W. 820 (1882).

Lease which may terminate within one year, as lease for life of another, is valid. McCormick v. Drummett, 9 Neb. 384, 2 N.W. 729 (1879).

6. Memorandum

In order to satisfy the provisions of this section, a memorandum, in addition to being signed by the party to be charged or by his or her agent actually or apparently authorized to do so, must state with reasonable certainty (1) each party to the contract either by his or her own name, or by such a description as will serve to identify him or her, or by the name or description of his or her agent, (2) the land, goods or other subject matter to which the contract relates, and (3) the terms and conditions of all the promises constituting the contract and by whom and to whom the promises are made. Pallas v. Black, 226 Neb. 728, 414 N.W.2d 805 (1987).

A telegram may constitute a sufficient memorandum under the statute of frauds. Hansen v. Hill, 215 Neb. 573, 340 N.W.2d 8 (1983).

The memorandum is not the contract but only written evidence of an oral contract, and if it contains the essential terms thereof parol evidence is admissible to show what land it refers to. David v. Tucker, 196 Neb. 575, 244 N.W.2d 197 (1976).

Agreement for sale of land is void in absence of written memorandum signed by vendor. Krueger v. Callies, 190 Neb. 376, 208 N.W.2d 685 (1973).

Where there was no contract, note or memorandum signed, and no part performance, oral contract for sale of land was unenforceable. Taylor v. Clark, 143 Neb. 563, 13 N.W.2d 621 (1944).

Not only must vendor sign, but name or description of the vendee must appear. Barkhurst v. Nevins, 106 Neb. 33, 182 N.W. 563 (1921).

Entire correspondence, including abstract accompanying and referred to in letter, were sufficient to constitute memorandum. Heenan & Finlen v. Parmele, 80 Neb. 514, 118 N.W. 324 (1908).

Memorandum may consist of several letters, referring to same subject. Undelivered deed is insufficient, but may supply defects in description in another memorandum. Collyer v. Davis, 72 Neb. 887, 101 N.W. 1001 (1904).

Memorandum need not state consideration or terms and conditions of payment. Ruzicka v. Hotovy, 72 Neb. 589, 101 N.W. 328 (1904).

Memorandum showing names of parties, description of land, price, general terms, and signed by vendor is sufficient. Gardels v. Kloke, 36 Neb. 493, 54 N.W. 834 (1893).

Memorandum may be proved by letters. Vindquest v. Perky, 16 Neb. 284, 20 N.W. 301 (1884).

7. Performance of contract

Where right to recover depends upon the establishment of an interest in land, oral contract is unenforceable in absence of part performance. Anderson v. Anderson, 150 Neb. 879, 36 N.W.2d 287 (1949).

Oral contract for sale of real estate, unaccompanied by any acts of part performance except payment of consideration, cannot be enforced. Baker v. Heavrin, 148 Neb. 766, 29 N.W.2d 375 (1947).

Oral agreement for sale of lands is void and will not be enforced unless there has been part performance by the promisee which is solely referable to the contract. Herbstreith v. Walls, 147 Neb. 805, 25 N.W.2d 409 (1946).

Where contract of sale is oral, and there has been no part performance on part of owner of land, no right accrues to purported purchaser. Williams v. Beckmark, 146 Neb. 814, 21 N.W.2d 745 (1946).

Before specific performance of an oral contract to convey real estate will be decreed, the acts claimed to be in part performance themselves must unequivocally indicate the existence of the contract. Crnkovich v. Crnkovich, 144 Neb. 904, 15 N.W.2d 66 (1944).

A subsequent oral contract, superseding or modifying one which the statute of frauds requires to be in writing, will be upheld, if executed. Lucas v. County Recorder of Cass County, 75 Neb. 351, 106 N.W. 217 (1905).

Delivery of deed to appointed agent of vendee is sufficient compliance by vendor. Soward v. Moss, 59 Neb. 71, 80 N.W. 268 (1899).

In action for money due for land conveyed, statute is no defense. Griffith v. Thompson, 50 Neb. 424, 69 N.W. 946 (1897).

8. Miscellaneous

An alleged agreement to settle a quiet title action is subject to the statute of frauds. Omaha Nat. Bank v. Mullenax, 211 Neb. 830, 320 N.W.2d 755 (1982).

An auction of real estate without reserve is within the statute of frauds. Benson v. Ruggles & Burtch v. Benson, 208 Neb. 330, 303 N.W.2d 496 (1981).

An oral agreement to make a will is unenforceable under this section but there is nothing contained in sections 36-101 to 36-106, R.R.S.1943, which should be construed to bridge the power of a court of equity to compel specific performance of agreements in cases of part performance. Rudolph v. Hartung, 202 Neb. 678, 277 N.W.2d 60 (1979).

A mere oral promise to bid in property at a tax foreclosure sale, and convey it to the owner upon being reimbursed, is a contract for the sale of land within this section. Smith v. Kinsey, 148 Neb. 786, 28 N.W.2d 588 (1947).

A resulting trust arising from taking of title to school land lease in name of one person for benefit of another who paid the purchase price is not affected by the statute of frauds. Reetz v. Olson, 146 Neb. 621, 20 N.W.2d 687 (1945).

A parol modification of an annuity agreement constituting a charge on real estate is valid, and complete performance of the agreement as modified will discharge the lien. Hylton v. Krueger, 138 Neb. 691, 294 N.W. 485 (1940).

Agent for purchase of real estate, who purchases for himself will be considered in equity as holding property in trust for his principal, subject to reimbursement for his proper expenditures. Lamb v. Sandall, 135 Neb. 300, 281 N.W. 37 (1938).

The defense of the statute is personal to the parties. Happ v. Ducey, 110 Neb. 429, 193 N.W. 918 (1923).

Oral agreement of persons to furnish money and buy and sell land is not within statute. Greusel v. Payne, 107 Neb. 84, 185 N.W. 336 (1921).

Sale and delivery of corporate stock, with oral agreement to repurchase, is not within statute. Griffin v. Bankers Realty Investment Co., 105 Neb. 419, 181 N.W. 169 (1920).

Oral agreement granting defendants the right to occupy and use the lands during lifetime of their father at a certain annual rental, under the circumstances was not within the statute. Luther v. Luther, 103 Neb. 46, 170 N.W. 364 (1918).

Parol agreement between mortgagor and mortgagee to give deed in satisfaction of mortgage is within statute. Montpelier Savings Bank & Trust Co. v. Follett, 68 Neb. 416, 94 N.W. 635 (1903).

Defense of statute of frauds is personal to party to be charged, and privies. Dailey v. Kinsler, 35 Neb. 835, 53 N.W. 973 (1892).

Assignments of contracts for sale of real estate in blank are void. Folsom v. McCague, 29 Neb. 124, 45 N.W. 269 (1890).

Where an option to purchase is contained in a lease signed by the vendor, an oral acceptance signed by the vendee is sufficient. Smith v. Gibson, 25 Neb. 511, 41 N.W. 360 (1889).

Parol agreement to reconvey to grantor is within statute. O'Brien v. Gaslin, 20 Neb. 347, 30 N.W. 274 (1886).

36-106 Contracts for lease or sale of lands; specific performance.

Nothing contained in sections 36-103 to 36-106 shall be construed to abridge the powers of a court of equity to compel the specific performance of agreements in cases of part performance.

Source: R.S.1866, c. 43, § 65, p. 293; R.S.1913, § 2626; C.S.1922, § 2454; C.S.1929, § 36-106.

1. Proof of contract
2. Part performance
3. Payment of consideration
4. Change of possession and improvements

5. Miscellaneous

1. Proof of contract

A party seeking specific performance of an oral contract for the sale of real estate upon the basis of past performance must prove, among other things, an oral contract, the terms of which are clear, satisfactory, and unequivocal. Sayer v. Bowley, 243 Neb. 801, 503 N.W.2d 166 (1993).

In order to establish that an oral contract falls within an exception to section 36-103, the statute of frauds for interest in land, the proponent of the contract must establish by clear, satisfactory, and unequivocal evidence the terms of the contract, that acts done in the performance thereof are referable solely to that contract, and that the acts performed are of such a nature that nonperformance of the contract by the other party would amount to a fraud upon the proponent. Johnson v. NM Farms Bartlett, 226 Neb. 680, 414 N.W.2d 256 (1987).

In order to satisfy the requirements of this section, the burden is upon the proponent to prove an oral contract, the terms of which are clear, satisfactory, and unequivocal, and that the acts done in performance are referable solely to the contract sought to be enforced, so that nonperformance by the other party would amount to a fraud upon him. Darsaklis v. Schildt, 218 Neb. 605, 358 N.W.2d 186 (1984).

Specific performance of an oral contract to transfer specific property in consideration of personal care of owner may be decreed by court. Peters v. Wilks, 151 Neb. 861, 39 N.W.2d 793 (1949).

Where party is claiming estate of deceased person under oral contract, evidence of contract and the terms thereof must be clear, satisfactory, and unequivocal. Lunkwitz v. Guffey, 150 Neb. 247, 34 N.W.2d 256 (1948).

Equity will grant specific performance of parol contract to convey real estate where contract is established by clear, convincing, and satisfactory evidence, and where it has been fully performed by one party and its nonfulfillment would amount to a fraud on the other party. Garner v. McCrea, 147 Neb. 541, 23 N.W.2d 731 (1946).

Oral contract with deceased person for devise of land must be clear, definite and unequivocal. Young v. Gillen, 108 Neb. 311, 187 N.W. 900 (1922); Poland v. O'Connor, 1 Neb. 50 (1871).

Where contract to devise to adopted child is clearly established and entirely performed on child's part, specific performance should be decreed. Evans v. Kelly, 104 Neb. 712, 178 N.W. 630 (1920); Kofka v. Rosicky, 41 Neb. 328, 59 N.W. 788 (1894).

If contract is definite and clearly proved and substantial performance is proved by clear and unequivocal evidence, it has the same force as if written. Parks v. Burney, 103 Neb. 572, 173 N.W. 478 (1919).

Proof must admit of no explanation without supposing contract to exist. Mancuso v. Rosso, 81 Neb. 786, 116 N.W. 679 (1908).

Evidence must be clear and satisfactory. Harrison v. Harrison, 80 Neb. 103, 113 N.W. 1042 (1907).

Acts must have been done with reference to contract. Lewis v. North, 62 Neb. 552, 87 N.W. 312 (1901).

Proof must be unaccountable except as done under existing contract, and terms must be clearly established. Using lot for storage is insufficient. Hunt v. Lipp, 30 Neb. 469, 46 N.W. 632 (1890).

Acts must unequivocally appear to relate to identical contract pleaded. Morgan v. Bergen, 3 Neb. 209 (1874).

2. Part performance

An oral agreement to make a will is unenforceable under this section but there is nothing contained in sections 36-101 to 36-106, R.R.S.1943, which should be construed to bridge the power of a court of equity to compel specific performance of agreements in cases of part performance. Rudolph v. Hartung, 202 Neb. 678, 277 N.W.2d 60 (1979).

Acts of part performance must relate solely to the oral contract to be enforced. Meyer v. Meyer, 180 Neb. 379, 142 N.W.2d 922 (1966).

Requirements of part performance restated. Anderson v. Anderson, 150 Neb. 879, 36 N.W.2d 287 (1949).

Part performance must be such as is referable solely to the contract sought to be enforced. Smith v. Kinsey, 148 Neb. 786, 28 N.W.2d 588 (1947).

Part payment of consideration, unaccompanied by other acts of part performance, is insufficient as the basis for a decree of specific performance. Baker v. Heavrin, 148 Neb. 766, 29 N.W.2d 375 (1947).

Where purchaser takes and retains possession and also pays a portion or all of the purchase price, such acts together may constitute part performance. Herbstreith v. Walls, 147 Neb. 805, 25 N.W.2d 409 (1946).

Acts constituting part performance must be such as are referable solely to the contract sought to be enforced. Caspers v. Frerichs, 146 Neb. 740, 21 N.W.2d 513 (1946).

Before specific performance of an oral contract to convey real estate will be decreed, the acts claimed to be in part performance themselves must unequivocally indicate the existence of the contract. Crnkovich v. Crnkovich, 144 Neb. 904, 15 N.W.2d 66 (1944).

An oral contract, partly performed, which the statute of frauds requires to be in writing, will be enforced by a court of equity. Campbell v. Kewanee Finance Co., 133 Neb. 887, 277 N.W. 593 (1938).

Where oral contract for reciprocal wills is followed by the execution thereof, reliance thereon by plaintiff is full performance and entitles him to specific performance against heirs. Brown v. Webster, 90 Neb. 591, 134 N.W. 185 (1912).

Parol license to construct irrigation ditch and dam on others' land, when acted upon and used for years, is irrevocable. Arterburn v. Beard, 86 Neb. 733, 126 N.W. 379 (1910).

Contract to devise to stepson on condition he remain at home and work until he becomes of age, clearly and satisfactorily proved and fully performed by him, can be specifically enforced. Hespin v. Wendeln, 85 Neb. 172, 122 N.W. 852 (1909).

Where plaintiff has fully performed, and contract is clearly proved, contract to devise, in consideration of son returning to live with father, is enforced. Harrison v. Harrison, 80 Neb. 103, 113 N.W. 1042 (1907).

Where there is full performance by vendee and part performance by vendor, including surrender of possession, contract can be enforced in action to quiet title. Morrison v. Gosnell, 76 Neb. 539, 107 N.W. 753 (1906).

Oral agreement to purchase land at sale, and hold same for mortgagor, was enforced. Dickson v. Stewart, 71 Neb. 424, 98 N.W. 1085 (1904).

Want of mutuality is no defense where party not bound has fully performed. Dickson v. Stewart, 71 Neb. 424, 98 N.W. 1085 (1904); Bigler v. Baker, 40 Neb. 325, 58 N.W. 1026 (1894).

Oral contract should be enforced where party cannot be restored to former situation. Teske v. Dittberner, 70 Neb. 544, 98 N.W. 57 (1903).

Oral agreement to devise, should be specifically enforced, where one party has fully performed and damages would be inadequate. Best v. Gralapp, 69 Neb. 811, 96 N.W. 641 (1903), aff'd on rehearing, 69 Neb. 815, 99 N.W. 837 (1903).

Continued possession of tenant or vendee is insufficient. Lewis v. North, 62 Neb. 552, 87 N.W. 312 (1901); Bradt v. Hartson, 4 Neb. Unof. 889, 96 N.W. 1008 (1903).

Acts of vendee in taking possession though probably insufficient as part performance, may be sufficient to sustain action for purchase price. Stephens v. Harding, 48 Neb. 659, 67 N.W. 746 (1896).

3. Payment of consideration

Payment of full purchase price is insufficient. Retention of lands under oral agreement to relinquish share in estate is not part performance. Riddell v. Riddell, 70 Neb. 472, 97 N.W. 609 (1903).

Where considerable portion of purchase money is paid, and vendee takes possession, oral agreement is not within statute. Lipp v. Hunt, 25 Neb. 91, 41 N.W. 143 (1888).

Partial payment of purchase price will not take case out of statute. Baker v. Wiswell, 17 Neb. 52, 22 N.W. 111 (1885); Poland v. O'Connor, 1 Neb. 50 (1871).

4. Change of possession and improvements

Continued possession by tenant is not part performance as possession is presumed to be held under tenancy and not under contract. Steger v. Kosch, 77 Neb. 147, 108 N.W. 165 (1906); Lewis v. North, 62 Neb. 552, 87 N.W. 312 (1901); Schields v. Horbach, 49 Neb. 262, 68 N.W. 524 (1896); Bigler v. Baker, 40 Neb. 325, 58 N.W. 1026 (1894).

Parol gift of land, where donee takes possession and makes valuable improvements, is valid. Merriman v. Merriman, 75 Neb. 222, 106 N.W. 174 (1905).

Possession and valuable improvements by vendee are sufficient as part performance. Coleridge Creamery Co. v. Jenkins, 66 Neb. 129, 92 N.W. 123 (1902).

Parol gift followed by possession and erection of valuable improvements by donee, should be upheld. Preponderance of evidence sufficient. Wylie v. Charlton, 43 Neb. 840, 62 N.W. 220 (1895).

Possession taken of lots, but used for storage, is insufficient. Hunt v. Lipp, 30 Neb. 469, 46 N.W. 632 (1890).

Where two parties enter into oral agreement to convey lots to a railroad to induce location of a depot, and one party conveys his lots, statute of frauds would be defense to action for specific performance. Harris v. Roberts, 12 Neb. 631, 12 N.W. 89 (1882).

Delivery of possession and full performance by vendee are sufficient. Hanlon v. Wilson, 10 Neb. 138, 4 N.W. 1031 (1880).

Possession must be open, visible and unequivocal, and improvements must have been induced by positive action or permission of vendor. Poland v. O'Connor, 1 Neb. 50 (1871).

Oral contract should not be enforced where there is no change in possession, as prior possession as tenant, is presumed to continue as such. Bradt v. Hartson, 4 Neb. Unof. 889, 96 N.W. 1008 (1903).

5. Miscellaneous

Specific performance may be had of an oral contract for the conveyance of a homestead. Riley v. Riley, 150 Neb. 176, 33 N.W.2d 525 (1948).

An action in equity to enforce an oral agreement to convey real estate is protected by statute. Hackbarth v. Hackbarth, 146 Neb. 919, 22 N.W.2d 184 (1946).

Section recognizes and continues practice of equity decreeing specific performance when contract partly is performed to prevent fraud and injustice. Includes contracts to devise. Cobb v. Macfarland, 87 Neb. 408, 127 N.W. 377 (1910).

36-107 Sale of lands; owner's contract with agent or broker; when void.

Every contract for the sale of lands between the owner thereof and any broker or agent employed to sell the same, shall be void, unless the contract is in writing and subscribed by the owner of the land and the broker or agent. Such contract shall describe the land to be sold, and set forth the compensation to be allowed by the owner in case of sale by the broker or agent.

Source: Laws 1897, c. 57, § 1, p. 304; R.S.1913, § 2628; C.S.1922, § 2456; C.S.1929, § 36-108.

1. Contracts within statute
2. Contracts not within statute
3. Signature to contracts
4. Form of contract
5. Essentials of contract
6. Oral modification
7. Actions on contract
8. Miscellaneous

1. Contracts within statute

Oral contract with broker to sell land or obtain purchaser for owner is void. Nelson v. Woodhouse, 112 Neb. 359, 199 N.W. 811 (1924).

Authority to sell is not extended by implication to include land not described. Spanogle v. Maple Grove Land & Live Stock Co., 104 Neb. 342, 177 N.W. 164 (1920).

An oral contract cannot be enforced by the broker or agent. In re of Brockway's Estate, 100 Neb. 281, 159 N.W. 421 (1916).

Oral promise is unenforceable but is sufficient consideration for note. Mohr v. Rickgauer, 82 Neb. 398, 117 N.W. 950 (1908).

Voluntary act of both parties thereto is required to completely execute valid contract. Allen v. Hall, 64 Neb. 256, 89 N.W. 803 (1902).

2. Contracts not within statute

Real estate broker's contract of employment to make exchange of land is not governed by statute. Dunn v. Snell, 124 Neb. 560, 247 N.W. 428 (1933).

Sale should be distinguished from exchange of property. Gill v. Eagleton, 108 Neb. 179, 187 N.W. 871 (1922).

Parol contract for commissions for exchange of land is not required to be in writing. Sallack v. Freeman, 106 Neb. 299, 183 N.W. 297 (1921).

In an oral contract by a broker to assist in finding and purchasing personalty, a provision that certain realty shall be used in part payment at specified price will not make contract one for sale of land. In re of Brockway's Estate, 100 Neb. 281, 159 N.W. 421 (1916).

Where an oral contract is made with agent for sale of real estate upon commission, and afterwards in order to satisfy the requirements of this section, the contract is reduced to writing before suit is brought, the contract may be enforced. Pierce v. Domon, 98 Neb. 120, 152 N.W. 299 (1915).

Contract by which one employs agent to assist him in making exchange of properties is not within statute. Nelson v. Nelson, 95 Neb. 523, 145 N.W. 1004 (1914).

Agreement between partners that one shall sell the real estate and have proceeds above certain amount is not within statute. Majors v. Majors, 92 Neb. 473, 138 N.W. 574 (1912).

Oral contracts for sale between sub-agent and agent of owner are valid. Reasoner v. Yates, 90 Neb. 757, 134 N.W. 651 (1912).

Section was not intended to apply to a sale made by the owner directly to a real estate agent. Waters v. Phelps, 81 Neb. 674, 116 N.W. 783 (1908).

Validity of oral contract by agent to purchase land for principal raised but not decided. Bolton v. Coburn, 78 Neb. 731, 111 N.W. 780 (1907).

Subsequent parol agreement, substituted for writing, will be upheld if executed. Lucas v. County Recorder of Cass County, 75 Neb. 351, 106 N.W. 217 (1905).

Middlemen employed to secure from a former proposed purchaser the renewal of a former offer made for the land are not agents. Johnson v. Hayward, 74 Neb. 157, 103 N.W. 1058 (1905), aff'd on rehearing, 74 Neb. 166, 107 N.W. 384 (1905).

An oral agreement between parties to obtain refinancing for an existing loan which is to be secured by real estate mortgages does not constitute a sale of land within the statute of frauds. Wright & Souza, Inc. v. DM Properties, 1 Neb. App. 822, 510 N.W.2d 413 (1993).

3. Signature to contracts

Writing held sufficient both as to signature and description. Svoboda v. De Wald, 159 Neb. 594, 68 N.W.2d 178 (1955).

Signature at top of instrument meets requirement. Dollarhide v. James, 107 Neb. 624, 186 N.W. 989 (1922).

Agent need not sign contract authorizing him to subscribe contract for sale of real estate for his principal. Principal's signature is sufficient. Seberger v. Wood, 106 Neb. 272, 183 N.W. 363 (1921).

Signature of broker printed under direction of brokers is sufficient. Berryman v. Childs, 98 Neb. 450, 153 N.W. 486 (1915).

Where contract is signed by one claiming to be owner, it is no defense that he was not owner. Valerius v. Luhring, 87 Neb. 425, 127 N.W. 112 (1910).

Subscribed means signed. Signature may be at top, bottom or middle. Myers v. Moore, 78 Neb. 448, 110 N.W. 989 (1907).

4. Form of contract

Letters between parties are sufficient and may create contract between principal and agent, though same papers are not signed by both parties. Shoff v. Ash, 95 Neb. 255, 145 N.W. 271 (1914); Pottratz v. Piper, 95 Neb. 145, 145 N.W. 265 (1914).

Contract need not necessarily be on a single paper, but may be evidenced by letters containing required terms and signed by respective parties. Bradley & Co. v. Bower, 5 Neb. Unof. 542, 99 N.W. 490 (1904).

5. Essentials of contract

Every contract for the sale of land between the landowner and a broker or agent employed to sell the land shall be in writing, signed by both parties, and shall describe the land and the compensation to be paid by the owner if the land is sold. Abboud v. Michals, 241 Neb. 747, 491 N.W.2d 34 (1992).

In the absence of a specific dollar amount or percentage of the sale price, or some other formula whereby the amount of commission may be calculated with reasonable certainty, the specified compensation requirement of this section is unsatisfied. Weiner v. Hazer, 230 Neb. 53, 430 N.W.2d 269 (1988).

Signature of a third party beneficiary under a contract for sale of real estate not an essential requirement of statute of frauds. Mid-Continent Properties, Inc. v. Pflug, 197 Neb. 429, 249 N.W.2d 476 (1977).

A sale of real estate made through a broker must be made in writing between the broker and the landowner. Donahoo v. Home of the Good Shepherd of Omaha, Inc., 193 Neb. 586, 228 N.W.2d 287 (1975).

The fact that separate documents are part of a total writing which will satisfy the statute of frauds must be disclosed by their contents or express references therein. Abboud v. Cir Cal Stables, 190 Neb. 396, 208 N.W.2d 682 (1973).

The terms under which the owner is willing to sell land need not be included in contract between broker and owner; and description of land in broker's contract was sufficient. Wisnieski v. Coufal, 188 Neb. 200, 195 N.W.2d 750 (1972).

In order to extend a contract for the sale of land by parol there must be a contract in existence. Property Sales, Inc. v. Irvington Ice Cream & Frozen Arts, Inc., 184 Neb. 17, 165 N.W.2d 78 (1969).

Terms of contract set out on carbon copy of purchase agreement were sufficient. Svoboda v. De Wald, 165 Neb. 50, 84 N.W.2d 211 (1957).

Agreement must be in writing subscribed by agent and owner and set forth compensation. VerMaas v. Culbertson, Roe & Bell, Inc., 154 Neb. 528, 48 N.W.2d 674 (1951).

Contract must be written, subscribed by the owner of land and broker, and set forth compensation to be allowed by owner. O'Shea & Son v. Leavitt, 125 Neb. 12, 248 N.W. 654 (1933).

Contract is void unless amount of commission is stated. Howell v. North, 93 Neb. 505, 140 N.W. 779 (1913); Danielson v. Goebel, 71 Neb. 300, 98 N.W. 819 (1904).

Memorandum setting forth total number of acres, accompanied by plat of land, sale price, and amount of commission to be paid, was sufficient. Clark v. Davies, 88 Neb. 67, 129 N.W. 165 (1910).

Description need not be specific if it contains sufficient data to identify land with certainty. Powers v. Bohuslav, 84 Neb. 179, 120 N.W. 942 (1909).

Description need not be specific if it can be made certain by parol without contradicting writing. Holliday v. McWilliams, 76 Neb. 324, 107 N.W. 578 (1906).

Price at which sale is to be made is not required to be shown and may be changed by parol. Rank v. Garvey, 66 Neb. 767, 92 N.W. 1025 (1902), aff'd on rehearing, 66 Neb. 784, 99 N.W. 666 (1902).

Terms not required to be in writing may be changed by parol agreement. Bradley & Co. v. Bower, 5 Neb. Unof. 542, 99 N.W. 490 (1904).

Parol acceptance by agent of written offer by owner is insufficient to comply with statute. Spence v. Apley, 4 Neb. Unof. 358, 94 N.W. 109 (1903).

Letters signed by owner and broker describing property and fixing commission in case of sale are sufficient to comply with statute. Massachusetts Mut. Life Ins. Co. v. George & Co., 148 F.2d 42 (8th Cir. 1945).

6. Oral modification

Party inducing reliance on oral modification of contract within statute of frauds will be estopped to claim invalidity of such oral modification. Hecht v. Marsh, 105 Neb. 502, 181 N.W. 135 (1920).

Agent cannot defend, in action for damages caused by his fraud, on ground that contract of agency was void because not in writing. Maul v. Cole, 94 Neb. 714, 144 N.W. 247 (1913).

There must be consideration for an oral modification of contract by waiving some of its requirements. Lincoln Realty Co. v. Garden City Land & Immigration Co., 94 Neb. 346, 143 N.W. 230 (1913).

If oral contract is fully executed by parties, and either party is damaged by fraud of the other, injured party may recover. Latson v. Buck, 87 Neb. 16, 126 N.W. 760 (1910).

7. Actions on contract

A contract for payment of a real estate commission is analogous to a contract for the sale of real estate, inasmuch as the same equitable principles govern both types of contracts in relation to the statute of frauds. Weiner v. Hazer, 230 Neb. 53, 430 N.W.2d 269 (1988).

Equitable enforcement of a brokerage contract, otherwise unenforceable due to this section, is available when the contract has been fully performed by one party and nonfulfillment of the contract would amount to a fraud on that party. Weiner v. Hazer, 230 Neb. 53, 430 N.W.2d 269 (1988).

While certain contracts are declared ''void'' under this section, such contracts are not void but are merely unenforceable for want of evidence which the statute requires. Weiner v. Hazer, 230 Neb. 53, 430 N.W.2d 269 (1988).

Broker withholding from principal material facts cannot recover commission. Pearlman v. Snitzer, 112 Neb. 135, 198 N.W. 879 (1924).

Petition disclosing on its face that contract was not in writing, is demurrable. Gill v. Eagleton, 108 Neb. 179, 187 N.W. 871 (1922); Smith v. Aultz, 78 Neb. 453, 110 N.W. 1015 (1907).

Petition not alleging that agreement was in writing is sufficient after judgment. Thackaberry v. Wilson, 90 Neb. 448, 133 N.W. 841 (1911).

A broker, relying on special contract, cannot recover on quantum meruit. Clark v. Davies, 88 Neb. 67, 129 N.W. 165 (1910); Rodenbrock v. Gress, 74 Neb. 409, 104 N.W. 758 (1905); Blair v. Austin, 71 Neb. 401, 98 N.W. 1040 (1904).

Agent may recover for breach of contract where agency is exclusive though commission was not earned. Hallstead v. Perrigo, 87 Neb. 128, 126 N.W. 1078 (1910).

Where agency contract to sell land is oral, recovery cannot be had under quantum meruit on basis of time expended or reasonable value of services. Nelson v. Webster, 83 Neb. 169, 119 N.W. 256 (1909); Barney v. Lasbury, 76 Neb. 701, 107 N.W. 989 (1906).

Agent, to recover, must show written contract, subscribed by parties, and setting forth his compensation. Tracy v. Dean, 77 Neb. 382, 109 N.W. 505 (1906).

Agency must be proved by writing and oral promise after sale is insufficient. Covey v. Henry, 71 Neb. 118, 98 N.W. 434 (1904).

Question of effect of failure to plead statute and to object to parol evidence as waiving defense was raised but not decided. Dillon v. Watson, 3 Neb. Unof. 530, 92 N.W. 156 (1902).

This section does not preclude recovery under an oral agreement for sales commission where broker has fully performed under the oral agreement. Kaus v. Bideaux, 709 F.2d 1221 (8th Cir. 1983).

8. Miscellaneous

A joint owner of land is an ''owner'' under this section, so that a joint owner of land who falsely represents sole ownership may not avoid full payment of a broker's commission. Marathon Realty Corp. v. Gavin, 224 Neb. 458, 398 N.W.2d 689 (1987).

A promissory note given by a vendor to a real estate broker and accepted by the broker in payment for a commission is enforceable even if there was no written sales contract between the vendor and the broker. Peterson & Vogt v. Livingston, 206 Neb. 753, 295 N.W.2d 106 (1980).

A real estate broker becomes the agent of the property owner, and owes the fiduciary duties incident thereto, from the moment the parties orally agree to the listing of the property. Vogt v. Town & Country Realty of Lincoln, Inc., 194 Neb. 308, 231 N.W.2d 496 (1975).

Where party enters into contract as vendor to sell land, he cannot be heard to say that he had no interest in the lands when sued for broker's commission. Sohler v. Christensen, 151 Neb. 843, 39 N.W.2d 837 (1949).

Statute is inapplicable to act authorizing agent by writing to subscribe contract for sale of land. Seberger v. Wood, 106 Neb. 272, 183 N.W. 363 (1921).

Section is constitutional. Baker v. Gillan, 68 Neb. 368, 94 N.W. 615 (1903).

ARTICLE 2

CONVEYANCES AND CONTRACTS NOT RELATING TO REAL PROPERTY

Section
36-201. Repealed. Laws 1980, LB 814, § 14.
36-202. Agreements; writing required, when.
36-203. Auctioneer's memorandum, how construed.
36-204. Repealed. Laws 1980, LB 814, § 14.
36-205. Repealed. Laws 1980, LB 814, § 14.
36-206. Repealed. Laws 1980, LB 814, § 14.
36-207. Repealed. Laws 1963, c. 544, art. 10, § 1.
36-208. Repealed. Laws 1963, c. 544, art. 10, § 1.
36-209. Repealed. Laws 1963, c. 544, art. 10, § 1.
36-210. Repealed. Laws 1963, c. 544, art. 10, § 1.
36-211. Motion picture films; contracts for rental; deposits a trust fund; safekeeping.
36-212. Motion picture films; contracts for rentals; deposits; waiver of rights void.
36-213. Assignment of wages by head of family; similar transactions; limitations; when void.
36-213.01. Assignment of wages by head of family; violation; penalty.

36-201 Repealed. Laws 1980, LB 814, § 14.

36-202 Agreements; writing required, when.

In the following cases every agreement shall be void, unless such agreement, or some note or memorandum thereof, be in writing, and subscribed by the party to be charged therewith: (1) Every agreement that, by its terms, is not to

be performed within one year from the making thereof; (2) every special promise to answer for the debt, default, or misdoings of another person; (3) every agreement, promise or undertaking made upon consideration of marriage, except mutual promises to marry; (4) every special promise by an executor or administrator to answer damages out of his own estate; and (5) every agreement for the repurchase of corporate stocks, bonds or other securities.

Source: R.S.1866, c. 43, § 67, p. 293; R.S.1913, § 2630; C.S.1922, § 2458; C.S.1929, § 36-202; Laws 1937, c. 88, § 1, p. 289; C.S.Supp.,1941, § 36-202.

1. Agreements not to be performed within one year
2. Contracts of guaranty
3. Contracts of marriage
4. Miscellaneous

1. Agreements not to be performed within one year

To state the rule in positive terms, an oral agreement is valid under subsection (1) of this section if it is capable of being performed within 1 year of the making of the contract. Rath v. Selection Research, Inc., 246 Neb. 340, 519 N.W.2d 503 (1994).

There was no support in the evidence for defense that contract was void for the reason that performance was not required within one year. Maseberg v. Mercer, 176 Neb. 668, 127 N.W.2d 208 (1964).

A contract is not within the statute of frauds merely because it might not be performed within a year. Empson v. Deuel County State Bank, 134 Neb. 597, 279 N.W. 293 (1938).

Cashier and managing officer of bank who endorsed note to it was estopped to set up defense of statute of frauds based upon claim that he had not signed extension agreement and payment was not to be made within one year. Atlas Corporation v. Magdanz, 130 Neb. 519, 265 N.W. 743 (1936).

Seller's oral agreement to repurchase bonds is not void unless terms indicate that it is not to be performed within one year from the making thereof. Johnson v. First Trust Co., 130 Neb. 77, 264 N.W. 152 (1936).

Oral agreements wholly performed on one side within a year are not void under statute of frauds. In re of Black's Estate, Robinson v. Wittera, 125 Neb. 75, 249 N.W. 84 (1933).

Oral agreement is not void unless its terms indicate that it is not to be performed within one year from the making thereof. Johnson v. First Trust Co., 125 Neb. 26, 248 N.W. 815 (1933).

A cash sale of stock upon an agreement whereby the seller undertakes to repurchase at the buyer's option constitutes an entire and indivisible transaction sufficiently performed to take it out of the provisions of this section even though the repurchase agreement is oral. Grotte v. Rachman, 114 Neb. 284, 207 N.W. 204 (1926); Stratbucker v. Bankers Realty Inv. Co., 107 Neb. 194, 185 N.W. 271 (1921).

Section does not refer to such contracts as may possibly or probably not be performed within one year. Simmons v. Simmons, 95 Neb. 607, 146 N.W. 951 (1914); Carter White Lead Co. v. Kinlin, 47 Neb. 409, 66 N.W. 536 (1896).

Where fully performed by both parties, contract is enforceable, though incidental matters extend several years. Platte Independent Tel. Co. v. Leigh Independent Tel. Co., 80 Neb. 41, 116 N.W. 511 (1907).

Agreement for services for one year, to commence day after contract is made, is void. Riiff v. Riibe, 68 Neb. 543, 94 N.W. 517 (1903).

Oral promise made to marry a girl, then fifteen, when she became eighteen, is unenforceable. Barge v. Haslan, 63 Neb. 296, 88 N.W. 516 (1901).

Contract made April 10 to continue one year from April 12 is void. Reynolds v. 1st Nat. Bank of Wymore, 62 Neb. 747, 87 N.W. 912 (1901).

Oral contract is valid when, by fair and reasonable construction, it is capable of being performed within year. Reynolds v. 1st Nat. Bank of Wymore, 62 Neb. 747, 87 N.W. 912 (1901); Powder River Live Stock Co. v. Lamb, 38 Neb. 339, 56 N.W. 1019 (1893).

Full performance on one side within the year takes contract out of statute. Kendall v. Garneau, 55 Neb. 403, 75 N.W. 852 (1898).

Contract of employment as long as works were kept or until plaintiff saw fit to quit, is valid. Carter White Lead Co. v. Kinlin, 47 Neb. 409, 66 N.W. 536 (1896).

Contract of hiring made December 19 for one year commencing January 1 following, is void, and is not taken out of statute because of monthly payments. K. C. W. & N. W. R. Co. v. Conlee, 43 Neb. 121, 61 N.W. 111 (1894).

Contract that party shall pay market price on any day selected by other, between and within two years, is not within statute. Powder River Live Stock Co. v. Lamb, 38 Neb. 339, 56 N.W. 1019 (1893).

Contract is not void unless its very terms show it is not to be completed in a year. Kiene v. Shaeffing, 33 Neb. 21, 49 N.W. 773 (1891).

Contract of landlord to purchase building erected by tenant, at any time tenant might give up possession, may be performed in one year. Connolly v. Giddings, 24 Neb. 131, 37 N.W. 939 (1888).

Contract enforceable when only signed by defendant where court found both parties had ratified it by acting under its provisions over a long period of time. Heaton Distributing Co., Inc. v. Union Tank Car Co., 387 F.2d 477 (8th Cir. 1967).

Oral contract of employment for a term of less than one year is not required to be in writing. Wilkins v. Kendle, 287 F.2d 201 (8th Cir. 1961).

2. Contracts of guaranty

A guarantor's promise, entered into independently of the original transaction, must be in writing and supported by a consideration distinct from that of the original debt. Spittler v. Nicola, 239 Neb. 972, 479 N.W.2d 803 (1992).

Where the leading object or main purpose of a party promising to pay the debts of another is to promote his own interest, and not to become a guarantor, and the promise is made on sufficient consideration the statute of frauds is not applicable and the promise will be valid although not in writing. Branham v. McGinnis, 203 Neb. 664, 280 N.W.2d 47 (1979).

Oral agreement to pay primary debt of another antecedently contracted is within statute of frauds. Otto Gas, Inc. v. Stewart, 160 Neb. 200, 69 N.W.2d 545 (1955).

Where owner promised to pay subcontractor if contractor did not, promise was collateral and within statute. King v. Schmall, 156 Neb. 635, 57 N.W.2d 287 (1953).

Promise by father to pay divorced wife of son part of amount adjudged due from son for child support was collateral and within statute. In re Estate of Allen, 147 Neb. 909, 25 N.W.2d 757 (1947).

Oral agreement to pay a primary debt of another antecedently contracted, without new consideration moving to the promisor, is within the statute of frauds. Johnson v. Anderson, 140 Neb. 78, 299 N.W. 343 (1941).

Where goods, money or services are furnished to a third person at the request and on the credit of the promisor, the undertaking is original and the promisor will be liable although the promise is not in writing. Elson v. Nelson, 132 Neb. 532, 272 N.W. 551 (1937).

Where evidence is conflicting on whether promise to pay for merchandise furnished another was an original promise or collateral undertaking, question should be left to jury. Farmers Grain, Lumber & Coal Co. v. Taylor, 119 Neb. 216, 228 N.W. 253 (1929).

Where another remains liable for debt, promise is within statute, though it was inducement for services rendered debtor. Union Loan & Savings Assn. v. Johnson, 118 Neb. 17, 223 N.W. 467 (1929); Williams v. Auten, 68 Neb. 26, 93 N.W. 943 (1903); Swigart v. Gentert, 63 Neb. 157, 88 N.W. 159 (1901).

Oral promise of payee, based on new consideration, to pay purchase-money notes transferred by him, is valid. Stanton Nat. Bank v. Swallow, 113 Neb. 336, 203 N.W. 561 (1925).

Oral promise of officer of corporation to purchaser of stock that he would repay purchase price at any time is valid. Griffin v. Bankers' Realty Inv. Co., 105 Neb. 419, 181 N.W. 169 (1920); Trenholm v. Kloepper, 88 Neb. 236, 129 N.W. 436 (1911).

Promise by president that bank would accept notes held by purchaser of stock and indemnify purchaser against action on endorsement is valid. Patrick v. Barker, 78 Neb. 823, 112 N.W. 358 (1907).

Promise to pay debt of partner if levy on partnership property is released is valid. Swayne v. Hill, 59 Neb. 652, 81 N.W. 855 (1900).

Where leading purpose of promisor is to promote some interest of his own, if promise is on sufficient consideration, it is enforceable. Swayne v. Hill, 59 Neb. 652, 81 N.W. 855 (1900); Fitzgerald v. Morrissey, 14 Neb. 198, 15 N.W. 233 (1883).

Promise by beneficiary in fraternal insurance policy to pay debt of insured creates no trust and is unenforceable. Fisher v. Donovan, 57 Neb. 361, 77 N.W. 778 (1899).

Verbal guaranty of payment, by agents, where principal has no legal existence is valid. Learn v. Upstill, 52 Neb. 271, 72 N.W. 213 (1897).

A promise to indemnify a person if he will become security for debt due to a third person is an original promise and not within the statute. Minick v. Huff, 41 Neb. 516, 59 N.W. 795 (1894).

Promise by mortgagee to pay debt due one in possession of property of mortgagor under verbal lien, if property is surrendered, is enforceable where surrender is benefit to promisor. Joseph v. Smith, 39 Neb. 259, 57 N.W. 1012 (1894).

A promise that he would protect company for goods to be furnished another is valid. Sheehy v. Fulton, 38 Neb. 691, 57 N.W. 395 (1894).

Oral promise of contractor to pay for material to be furnished subcontractor is valid. Barras v. Pomeroy Coal Co., 38 Neb. 311, 56 N.W. 890 (1893).

An oral promise of buyer of livery stable to pay wages which seller owed employee is valid. Barnett v. Pratt, 37 Neb. 349, 55 N.W. 1050 (1893).

Where goods or services are furnished to third person on request and credit of promisor, contract is valid. Peyson v. Conniff, 32 Neb. 269, 49 N.W. 340 (1891).

Where credit is given contemporaneously with, or after, and upon faith of oral promise to pay for goods delivered to another, promisor is liable. Lindsey v. Heaton, 27 Neb. 662, 43 N.W. 420 (1889).

Promise by creditor, to whom insolvent debtor conveyed property, that he would pay debt due another if not disturbed in possession of goods is valid. Rogers v. Empkie Hardware Co., 24 Neb. 653, 39 N.W. 844 (1888).

A promise of son to pay physician for attending his mother is valid. Clay v. Tyson, 19 Neb. 530, 26 N.W. 240 (1886).

Oral promise to pay debt in consideration that property be transferred by debtor to promisor is valid. Clay v. Tyson, 19 Neb. 530, 26 N.W. 240 (1886).

Where owner of property, on which building was being erected, orally promised employee of contractor that he would see that the debt the contractor owed him was paid, it was a collateral undertaking and void. Morrissey v. Kinsey, 16 Neb. 17, 19 N.W. 454 (1884).

Promise of husband to pay for stove purchased by wife, after she had requested seller to take it back, was an original undertaking and valid. Palmer v. Witcherly, 15 Neb. 98, 17 N.W. 364 (1883).

Oral promise to pay another's debt, as part consideration for property sold promisor, is valid. Clopper v. Poland, 12 Neb. 69, 10 N.W. 538 (1881).

I will see that you are paid is promise to answer for another's debt for past and future services. Rose v. O'Linn, 10 Neb. 364, 6 N.W. 430 (1880).

Promise by defendant to pay attorney fees of plaintiff on dismissal of action is valid. Weilage v. Abbott, 3 Neb. Unof. 157, 90 N.W. 1128 (1902).

Promise by grantee to pay part of consideration to creditor of grantor is enforceable by creditor. Dodd v. Skelton, 2 Neb. Unof. 475, 89 N.W. 297 (1902).

3. Contracts of marriage

Oral contract in consideration of marriage is void. Mallett v. Grunke, 107 Neb. 173, 185 N.W. 310 (1921); Fischer v. Fischer, 106 Neb. 477, 184 N.W. 116 (1921).

Oral agreement by man that in consideration of marriage he will make child of woman equal heir with others is void. Fischer v. Fischer, 106 Neb. 477, 184 N.W. 116 (1921).

If marriage is not to be performed within year, promise is unenforceable. Barge v. Haslam, 63 Neb. 296, 88 N.W. 516 (1901).

4. Miscellaneous

''Memorandum'' consisting of classified advertisement of job in newspaper, which did not contain essential terms of contract, such as salary, held insufficient to take contract out of provision of this section. McBride v. City of McCook, 212 Neb. 112, 321 N.W.2d 905 (1982).

It is error to instruct on a theory not raised by the pleadings, over objection, not having afforded opponent opportunity to plead to that theory or present evidence thereon. Montgomery v. Quantum Labs, Inc., 198 Neb. 160, 251 N.W.2d 892 (1977).

An agreement without consideration is nudum pactum and unenforceable whether within or without statute of frauds. Grimes v. Baker, 133 Neb. 517, 275 N.W. 860 (1937).

Written promise for another's debt default or misdoings is void as to person whose name is subscribed thereto by one not authorized in writing. Massachusetts Bonding & Ins. Co. v. Nichols, 117 Neb. 93, 219 N.W. 837 (1928).

Note and mortgage are sufficient memorandum of promise to secure debt of another. McLanahan v. Chamberlain, 85 Neb. 850, 124 N.W. 684 (1910).

Subscribed means signed and signature may be any place on instrument. Myers v. Moore, 78 Neb. 448, 110 N.W. 989 (1907).

Oral acknowledgment of verbal contract, made within the year for performance, does not validate. Haslam v. Barge, 69 Neb. 644, 96 N.W. 245 (1903).

Defense may be raised under general denial. Riiff v. Riibe, 68 Neb. 543, 94 N.W. 517 (1903).

Memorandum executed subsequent to oral promise needs no new consideration. Sheehy v. Fulton, 38 Neb. 691, 57 N.W. 395 (1894).

Letter to judgment creditor, by one holding debtor's property, is sufficient memorandum. Kenney v. Hews, 26 Neb. 213, 41 N.W. 1006 (1889).

Contracts performed are not within statute. Milner v. Harris, 1 Neb. Unof. 584, 95 N.W. 682 (1901).

Memorandum of an agreement was insufficient to take the contract out of the statute of frauds because it did not contain the essential elements of the contract. Ancom, Inc. v. E. R. Squibb & Sons, Inc., 658 F.2d 650 (8th Cir. 1981).

36-203 Auctioneer's memorandum, how construed.

Whenever goods shall be sold at public auction, and the auctioneer shall, at the time of the sale, enter in a sale book a memorandum specifying the nature and price of the property sold, the terms of sale, the name of the purchaser, and the name of the person on whose account the sale is made, such memorandum shall be deemed a note of the contract of sale within the meaning of section 2-201, Uniform Commercial Code.

Source: R.S.1866, c. 43, § 69, p. 294; R.S.1913, § 2632; C.S.1922, § 2460; C.S.1929, § 36-204; R.S.1943, § 36-203; Laws 1972, LB 1056, § 1.

36-204 Repealed. Laws 1980, LB 814, § 14.

36-205 Repealed. Laws 1980, LB 814, § 14.

36-206 Repealed. Laws 1980, LB 814, § 14.

36-207 Repealed. Laws 1963, c. 544, art. 10, § 1.

36-208 Repealed. Laws 1963, c. 544, art. 10, § 1.

36-209 Repealed. Laws 1963, c. 544, art. 10, § 1.

36-210 Repealed. Laws 1963, c. 544, art. 10, § 1.

36-211 Motion picture films; contracts for rental; deposits a trust fund; safekeeping.

Whenever money shall be deposited or advanced as security on a contract for the use or rental of motion picture films, reels or views, and to secure the performance of the contract or to be applied to payments upon such contract when due, such money, with interest accruing thereon, if any, until repaid or so applied, shall continue to be the money of the person, association or corporation making such deposit or advance and shall be a trust fund in the possession of the person, association or corporation with whom such deposit or advance shall be made, and shall be deposited in a bank or trust company within the State of Nebraska, and shall not be mingled with other funds or become an asset of such trustee.

Source: Laws 1921, c. 196, § 1, p. 716; C.S.1922, § 2468; C.S.1929, § 36-212.

36-212 Motion picture films; contracts for rentals; deposits; waiver of rights void.

Any provision of a contract whereby a person, association or corporation, who has deposited or advanced money on a contract for the use or rental of

motion picture films, reels, or views as personal property, waives any provision of section 36-211, is void.

Source: Laws 1921, c. 196, § 2, p. 716; C.S.1922, § 2469; C.S.1929, § 36-213.

36-213 Assignment of wages by head of family; similar transactions; limitations; when void.

Except as provided in the Income Withholding for Child Support Act, every assignment of the wages or earnings of the head of a family and every contract or agreement intending or purporting to have the effect of such assignment shall be void unless such contract, agreement, assignment, or transfer is executed and acknowledged by both husband and wife in the same manner that conveyances of real estate are required to be signed and acknowledged by the laws of this state and shall be limited to a percentage of the wages of the head of household not greater than that subject to the operation of attachment, execution, and garnishee process as provided in section 25-1558. Nothing contained in this section shall be construed to void payroll deductions by the employer if such wages or earnings so deducted are for (1) purchase of government bonds, (2) contributions to charity, or (3) payment of employee organization dues, of group or individual insurance premiums, of pension assessments, to credit unions, or for a savings plan, in accordance with a written order of the employee which has been accepted by the employer. Every such assignment shall specify the employer who will pay the wages that are the subject of the assignment, and the assignment shall be valid only as to wages due from the employer or employers so specified. It shall be unlawful for any person, firm, corporation, company, partnership, limited liability company, or business institution to cause any employer by any such void assignment or by notice of any such void assignment to withhold the payment of any wages due the head of a family.

Source: Laws 1939, c. 39, § 1, p. 195; C.S.Supp.,1941, § 36-214; R.S. 1943, § 36-213; Laws 1949, c. 99, § 1(1), p. 273; Laws 1969, c. 287, § 1, p. 1056; Laws 1972, LB 781, § 1; Laws 1993, LB 121, § 198; Laws 1994, LB 1224, § 41.

Cross References

Income Withholding for Child Support Act, see section 43-1701.
Wage assignments to secure loans, requirements, see sections 45-1028 and 45-1030.

36-213.01 Assignment of wages by head of family; violation; penalty.

Any person, firm, corporation, company, partnership, limited liability company, or business institution that violates section 36-213 shall (1) be liable to the party injured through such violation thereof for the amount of the wages withheld by any employer under such void assignment or notice of such void assignment, with all costs and expenses and a reasonable attorney's fee to be recovered in any court of competent jurisdiction in this state, and (2) be guilty of a Class IV misdemeanor.

Source: Laws 1939, c. 39, § 1, p. 195; C.S.Supp.,1941, § 36-214; R.S. 1943, § 36-213; Laws 1949, c. 99, § 1(2), p. 274; Laws 1977, LB 40, § 171; Laws 1993, LB 121, § 199.

ARTICLE 3
CHATTEL MORTGAGES

Section
36-301. Repealed. Laws 1963, c. 544, art. 10, § 1.
36-302. Repealed. Laws 1963, c. 544, art. 10, § 1.
36-303. Repealed. Laws 1963, c. 544, art. 10, § 1.

36-301 Repealed. Laws 1963, c. 544, art. 10, § 1.

36-302 Repealed. Laws 1963, c. 544, art. 10, § 1.

36-303 Repealed. Laws 1963, c. 544, art. 10, § 1.

ARTICLE 4
GENERAL PROVISIONS

Section
36-401. Repealed. Laws 1980, LB 814, § 14.
36-402. Lands; estate and interest in lands, defined.
36-403. Repealed. Laws 1980, LB 814, § 14.
36-404. Grant or assignment of existing trust; when void.
36-405. Repealed. Laws 1980, LB 814, § 14.
36-406. Repealed. Laws 1980, LB 814, § 14.
36-407. Repealed. Laws 1980, LB 814, § 14.
36-408. Consideration; how proved.
36-409. Agent; authority to subscribe.

36-401 Repealed. Laws 1980, LB 814, § 14.

36-402 Lands; estate and interest in lands, defined.

The term lands, as used in sections 36-402 to 36-409, shall be construed as coextensive in meaning with lands, tenements, and hereditaments, and the term estate and interest in lands, shall be construed to embrace every estate and interest, freehold and chattel, legal and equitable, present and future, vested and contingent, in lands, as above described.

Source: R.S.1866, c. 43, § 81, p. 296; R.S.1913, § 2627; C.S.1922, § 2455; C.S.1929, § 36-107.

36-403 Repealed. Laws 1980, LB 814, § 14.

36-404 Grant or assignment of existing trust; when void.

Every grant or assignment of any existing trust in lands, goods or things in action, unless the same shall be in writing, subscribed by the party making the same, shall be void.

Source: R.S.1866, c. 43, § 77, p. 296; R.S.1913, § 2645; C.S.1922, § 2555; C.S.1929, § 36-403.

36-405 Repealed. Laws 1980, LB 814, § 14.

36-406 Repealed. Laws 1980, LB 814, § 14.

36-407 Repealed. Laws 1980, LB 814, § 14.

36-408 Consideration; how proved.

The consideration of any contract or agreement, required by the provisions of sections 36-103 to 36-106 and 36-202 to be in writing, need not be set forth in the contract or agreement or in the note or memorandum thereof, but may be proved by any other legal evidence.

Source: R.S.1866, c. 43, § 83, p. 296; R.S.1913, § 2649; C.S.1922, § 2559; C.S.1929, § 36-407; R.S.1943, § 36-408; Laws 1971, LB 15, § 1.

Burden resting upon grantee of proving consideration applies only to contracts and agreements. Sampson v. Sissel, 151 Neb. 521, 38 N.W.2d 341 (1949).

Where no consideration is shown in written contract, parol evidence is admissible to prove consideration. Rhodes v. Lewis, 136 Neb. 870, 287 N.W. 662 (1939).

Consideration is not presumed, and must be proved even in contracts required to be in writing. Miller v. Crosson, 131 Neb. 88, 267 N.W. 145 (1936).

In absence of fraudulent intent, a person, whether solvent or insolvent, may make disposition of his property based on valid consideration as his judgment dictates. State Bank of Beaver Crossing v. Mackley, 121 Neb. 28, 236 N.W. 165 (1931).

Memorandum need not state consideration or terms and conditions of payment. Ruzicka v. Hotovy, 72 Neb. 589, 101 N.W. 328 (1904).

Consideration may be proved by parol. Barton v. Patrick, 20 Neb. 654, 31 N.W. 370 (1886).

36-409 Agent; authority to subscribe.

Every instrument required by any of the provisions of sections 36-103 to 36-106, 36-202, and 36-402 to 36-409 to be subscribed by any party, may be subscribed by his agent thereunto authorized by writing.

Source: R.S.1866, c. 43, § 84, p. 297; R.S.1913, § 2650; C.S.1922, § 2560; C.S.1929, § 36-408; R.S.1943, § 36-409; Laws 1971, LB 15, § 2.

1. Authority of agent to sign
2. Sufficiency of writing
3. Miscellaneous

1. Authority of agent to sign

A listing of property for sale is merely an employment contract and if the parties intend that the agent shall have authority to sign a sales contract it should be expressly and clearly stated in writing. Brezina v. Hill, 195 Neb. 481, 238 N.W.2d 903 (1976).

Telegram stating terms at which principal will sell is insufficient as written authority to sell land. Shelby v. Platte Valley Public Power and Irr. Dist., 134 Neb. 354, 278 N.W. 568 (1938).

A sale of real property is binding upon the owner when subscribed by his agent who has been authorized in writing by the owner to enter into the contract. Seberger v. Wood, 106 Neb. 272, 183 N.W. 363 (1921).

Letter stating terms at which principal will sell is insufficient. Ross v. Craven, 84 Neb. 520, 121 N.W. 451 (1909).

Contract for sale of lands signed by agent for principal is void unless agent is authorized in writing. Miller v. Wehrman, 81 Neb. 388, 115 N.W. 1078 (1908); Frahm v. Metcalf, 75 Neb. 241, 106 N.W. 227 (1905); O'Shea v. Rice, 49 Neb. 893, 69 N.W. 308 (1896); Morgan v. Bergen, 3 Neb. 209 (1874).

Purchaser is charged with notice of contents of writing authorizing agent to sell. Miller v. Wehrman, 81 Neb. 388, 115 N.W. 1078 (1908).

Contract signed by agent for principal, not authorized, may be ratified in writing. Lutjeharms v. Smith, 76 Neb. 260, 107 N.W. 256 (1906).

Where contract is executed in presence of principal, agent's authority need not be written. Bigler v. Baker, 40 Neb. 325, 58 N.W. 1026 (1894).

2. Sufficiency of writing

Letter, You may go ahead and close deal, is sufficient. Furse v. Lambert, 85 Neb. 739, 124 N.W. 146 (1910).

Letter to agent I still have and would sell for $3,000 cash, etc., is sufficient. Weaver v. Snively, 73 Neb. 35, 102 N.W. 77 (1905).

3. Miscellaneous

Written promise to answer for debt of another is void as to person whose name is subscribed thereto by one not authorized by writing. Massachusetts Bonding & Ins. Co. v. Nichols, 117 Neb. 93, 219 N.W. 837 (1928).

Contract in agent's name does not bind principal though described as agent of principal. Fowler v. McKay, 88 Neb. 387, 129 N.W. 551 (1911).

Agent may contract for purchase of land for principal without written authority. Johnson v. Hayward, 74 Neb. 157, 103 N.W. 1058 (1905), aff'd on rehearing, 74 Neb. 166, 107 N.W. 384 (1905); Morrow v. Jones, 41 Neb. 867, 60 N.W. 369 (1894).

A married woman may mortgage her real estate through an attorney in fact. Linton v. National Life Ins. Co., 104 F. 584 (8th Cir. 1900).

ARTICLE 5
BULK SALE OF MERCHANDISE

Section
36-501. Repealed. Laws 1963, c. 544, art. 10, § 1.
36-502. Repealed. Laws 1963, c. 544, art. 10, § 1.

36-501 Repealed. Laws 1963, c. 544, art. 10, § 1.

36-502 Repealed. Laws 1963, c. 544, art. 10, § 1.

ARTICLE 6

UNIFORM FRAUDULENT CONVEYANCE ACT

Section

36-601. Repealed. Laws 1989, LB 423, § 13.
36-602. Repealed. Laws 1989, LB 423, § 13.
36-603. Repealed. Laws 1989, LB 423, § 13.
36-604. Repealed. Laws 1989, LB 423, § 13.
36-605. Repealed. Laws 1989, LB 423, § 13.
36-606. Repealed. Laws 1989, LB 423, § 13.
36-607. Repealed. Laws 1989, LB 423, § 13.
36-608. Repealed. Laws 1989, LB 423, § 13.
36-609. Repealed. Laws 1989, LB 423, § 13.
36-610. Repealed. Laws 1989, LB 423, § 13.
36-610.01. Repealed. Laws 1989, LB 423, § 13.
36-611. Repealed. Laws 1989, LB 423, § 13.
36-612. Repealed. Laws 1989, LB 423, § 13.
36-613. Repealed. Laws 1989, LB 423, § 13.

36-601 Repealed. Laws 1989, LB 423, § 13.

36-602 Repealed. Laws 1989, LB 423, § 13.

36-603 Repealed. Laws 1989, LB 423, § 13.

36-604 Repealed. Laws 1989, LB 423, § 13.

36-605 Repealed. Laws 1989, LB 423, § 13.

36-606 Repealed. Laws 1989, LB 423, § 13.

36-607 Repealed. Laws 1989, LB 423, § 13.

36-608 Repealed. Laws 1989, LB 423, § 13.

36-609 Repealed. Laws 1989, LB 423, § 13.

36-610 Repealed. Laws 1989, LB 423, § 13.

36-610.01 Repealed. Laws 1989, LB 423, § 13.

36-611 Repealed. Laws 1989, LB 423, § 13.

36-612 Repealed. Laws 1989, LB 423, § 13.

36-613 Repealed. Laws 1989, LB 423, § 13.

ARTICLE 7

UNIFORM FRAUDULENT TRANSFER ACT

Cross References

Attachment action, grounds for, see section 25-1001.
Patient care costs, fraudulent transfers, see section 83-379.
Petroleum, storage and tank transfers, see sections 66-1509 and 81-15,119.
Receiver, appointment authorized, see section 25-1081.

Section
36-701. Act, how cited.
36-702. Terms, defined.
36-703. Insolvency.
36-704. Value.
36-705. Transfers fraudulent as to present and future creditors.
36-706. Transfers fraudulent as to present creditors.
36-707. When transfer is made or obligation is incurred.
36-708. Remedies of creditors.
36-709. Defenses, liability, and protection of transferee.
36-710. Extinguishment of cause of action.
36-711. Supplementary provisions.
36-712. Uniformity of application and construction.

36-701 Act, how cited.

Sections 36-701 to 36-712 shall be known and may be cited as the Uniform Fraudulent Transfer Act.

Source: Laws 1989, LB 423, § 1.

An appeal of a district court's determination that a transfer of an asset was not in violation of the Uniform Fraudulent Transfer Act is equitable in nature. Parker v. Parker, 268 Neb. 187, 681 N.W.2d 735 (2004).

A renunciation properly effected pursuant to section 30-2352 and prior to distribution is not a transfer and therefore not a fraudulent transfer under the Uniform Fraudulent Transfer Act. Essen v. Gilmore, 259 Neb. 55, 607 N.W.2d 829 (2000).

An appeal of a district court's determination that transfers of assets were in violation of the Uniform Fraudulent Transfer Act is equitable in nature. In an action seeking to set aside a fraudulent transfer, the burden of proof is on a creditor to prove, by clear and convincing evidence, that fraud existed in a questioned transaction. Eli's, Inc. v. Lemen, 256 Neb. 515, 591 N.W.2d 543 (1999).

An action seeking to declare a transfer fraudulent as to a creditor invokes equity jurisdiction of a court. In an action seeking to set aside a fraudulent transfer, the burden of proof is on a creditor to prove, by clear and convincing evidence, that fraud existed in a questioned transaction. Dillon Tire, Inc. v. Fifer, 256 Neb. 147, 589 N.W.2d 137 (1999).

An action which arose prior to the August 25, 1989, effective date of the Uniform Fraudulent Transfer Act is governed by the previous act, the Uniform Fraudulent Conveyance Act. Holthaus v. Parsons, 238 Neb. 223, 469 N.W.2d 536 (1991).

36-702 Terms, defined.

As used in the Uniform Fraudulent Transfer Act:

(1) Affiliate means:

(i) a person who directly or indirectly owns, controls, or holds with power to vote, twenty percent or more of the outstanding voting securities of the debtor, other than a person who holds the securities,

(A) as a fiduciary or agent without sole discretionary power to vote the securities; or

(B) solely to secure a debt, if the person has not exercised the power to vote;

(ii) a corporation twenty percent or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by the debtor or a person who directly or indirectly owns, controls, or holds, with power to vote, twenty percent or more of the outstanding voting securities of the debtor, other than a person who holds the securities,

(A) as a fiduciary or agent without sole power to vote the securities; or

(B) solely to secure a debt, if the person has not in fact exercised the power to vote;

(iii) a person whose business is operated by the debtor under a lease or other agreement, or a person substantially all of whose assets are controlled by the debtor; or

(iv) a person who operates the debtor's business under a lease or other agreement or controls substantially all of the debtor's assets.

(2) Asset means property of a debtor, but the term does not include:

(i) property to the extent it is encumbered by a valid lien;

(ii) property to the extent it is generally exempt under nonbankruptcy law; or

(iii) an interest in property held in tenancy by the entireties to the extent it is not subject to process by a creditor holding a claim against only one tenant.

(3) Claim means a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.

(4) Creditor means a person who has a claim.

(5) Debt means liability on a claim.

(6) Debtor means a person who is liable on a claim.

(7) Insider includes:

(i) if the debtor is an individual,

(A) a relative of the debtor or of a general partner of the debtor;

(B) a partnership in which the debtor is a general partner;

(C) a general partner in a partnership described in subdivision (B) of this subdivision;

(D) a limited liability company of which the debtor is a member; or

(E) a corporation of which the debtor is a director, officer, or person in control;

(ii) if the debtor is a corporation,

(A) a director of the debtor;

(B) an officer of the debtor;

(C) a person in control of the debtor;

(D) a partnership in which the debtor is a general partner;

(E) a general partner in a partnership described in subdivision (D) of this subdivision;

(F) a limited liability company of which the debtor is a member; or

(G) a relative of a general partner, director, officer, or person in control of the debtor;

(iii) if the debtor is a partnership,

(A) a general partner in the debtor;

(B) a relative of a general partner in, a general partner of, or a person in control of the debtor;

(C) another partnership in which the debtor is a general partner;

(D) a general partner in a partnership described in subdivision (C) of this subdivision;

(E) a limited liability company of which the debtor is a member; or

(F) a person in control of the debtor;

(iv) if the debtor is a limited liability company,

(A) a member of the debtor;

(B) a relative of a member of the debtor;

(C) a person in control of the debtor;

(D) another limited liability company of which the debtor is a member;

(E) a partnership in which the debtor is a general partner;

(F) a general partner in a partnership described in subdivision (E) of this subdivision; or

(G) a corporation of which the debtor is a director, officer, or person in control;

(v) an affiliate, or an insider of an affiliate as if the affiliate were the debtor; and

(vi) a managing agent of the debtor.

(8) Lien means a charge against or an interest in property to secure payment of a debt or performance of an obligation, and includes a security interest created by agreement, a judicial lien obtained by legal or equitable process or proceedings, a common-law lien, or a statutory lien.

(9) Person means an individual, partnership, limited liability company, corporation, association, organization, government or governmental subdivision or agency, business trust, estate, trust, or any other legal or commercial entity.

(10) Property means anything that may be the subject of ownership.

(11) Relative means an individual related by consanguinity within the third degree as determined by the common law, a spouse, or an individual related to a spouse within the third degree as so determined, and includes an individual in an adoptive relationship within the third degree.

(12) Transfer means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with an asset or an interest in an asset, and includes payment of money, release, lease, and creation of a lien or other encumbrance.

(13) Valid lien means a lien that is effective against the holder of a judicial lien subsequently obtained by legal or equitable process or proceedings.

Source: Laws 1989, LB 423, § 2; Laws 1993, LB 121, § 200.

An appeal of a district court's determination that a transfer of an asset was not in violation of the Uniform Fraudulent Transfer Act is equitable in nature. Parker v. Parker, 268 Neb. 187, 681 N.W.2d 735 (2004).

Under subsection (7)(i)(A) of this section, an ex-wife does not count as an ''insider.'' Parker v. Parker, 268 Neb. 187, 681 N.W.2d 735 (2004).

When original conveyances of property held in joint tenancy take place long before plaintiff's claim arises, the operation of common-law joint tenancy does not qualify as a transfer as defined in subsection (12) of this section. Mahlin v. Goc, 249 Neb. 951, 547 N.W.2d 129 (1996).

36-703 Insolvency.

(a) A debtor is insolvent if the sum of the debtor's debts is greater than all of the debtor's assets at a fair valuation.

(b) A debtor who is generally not paying his or her debts as they become due is presumed to be insolvent.

(c) A partnership is insolvent under subsection (a) of this section if the sum of the partnership's debts is greater than the aggregate, at a fair valuation, of all of the partnership's assets and the sum of the excess of the value of each general partner's nonpartnership assets over the partner's nonpartnership debts.

(d) Assets under this section do not include property that has been transferred, concealed, or removed with intent to hinder, delay, or defraud creditors or that has been transferred in a manner making the transfer voidable under the Uniform Fraudulent Transfer Act.

(e) Debts under this section do not include an obligation to the extent it is secured by a valid lien on property of the debtor not included as an asset.

Source: Laws 1989, LB 423, § 3.

An appeal of a district court's determination that a transfer of an asset was not in violation of the Uniform Fraudulent Transfer Act is equitable in nature. Parker v. Parker, 268 Neb. 187, 681 N.W.2d 735 (2004).

36-704 Value.

(a) Value is given for a transfer or an obligation if, in exchange for the transfer or obligation, property is transferred or an antecedent debt is secured or satisfied, but value does not include an unperformed promise made otherwise than in the ordinary course of the promisor's business to furnish support to the debtor or another person.

(b) For the purposes of subdivision (a)(2) of section 36-705 and section 36-706, a person gives a reasonably equivalent value if the person acquires an interest of the debtor in an asset pursuant to a regularly conducted, noncollusive foreclosure sale or execution of a power of sale for the acquisition or disposition of the interest of the debtor upon default under a mortgage, deed of trust, or security agreement.

(c) A transfer is made for present value if the exchange between the debtor and the transferee is intended by them to be contemporaneous and is in fact substantially contemporaneous.

Source: Laws 1989, LB 423, § 4.

An appeal of a district court's determination that a transfer of an asset was not in violation of the Uniform Fraudulent Transfer Act is equitable in nature. Parker v. Parker, 268 Neb. 187, 681 N.W.2d 735 (2004).

36-705 Transfers fraudulent as to present and future creditors.

(a) A transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:

(1) with actual intent to hinder, delay, or defraud any creditor of the debtor; or

(2) without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor:

(i) was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or

(ii) intended to incur, or believed or reasonably should have believed that he or she would incur, debts beyond his or her ability to pay as they became due.

(b) In determining actual intent under subdivision (a)(1) of this section, consideration may be given, among other factors, to whether:

(1) the transfer or obligation was to an insider;

(2) the debtor retained possession or control of the property transferred after the transfer;

(3) the transfer or obligation was disclosed or concealed;

(4) before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit;

(5) the transfer was of substantially all the debtor's assets;

(6) the debtor absconded;

(7) the debtor removed or concealed assets;

(8) the value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred;

(9) the debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred;

(10) the transfer occurred shortly before or shortly after a substantial debt was incurred; and

(11) the debtor transferred the essential assets of the business to a lienor who transferred the assets to an insider of the debtor.

Source: Laws 1989, LB 423, § 5.

An appeal of a district court's determination that a transfer of an asset was not in violation of the Uniform Fraudulent Transfer Act is equitable in nature. Parker v. Parker, 268 Neb. 187, 681 N.W.2d 735 (2004).

36-706 Transfers fraudulent as to present creditors.

(a) A transfer made or obligation incurred by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made or the obligation was incurred if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation.

(b) A transfer made by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made if the transfer was made to an insider for an antecedent debt, the debtor was insolvent at that time, and the insider knew or reasonably should have known that the debtor was insolvent.

Source: Laws 1989, LB 423, § 6.

An appeal of a district court's determination that a transfer of an asset was not in violation of the Uniform Fraudulent Transfer Act is equitable in nature. Parker v. Parker, 268 Neb. 187, 681 N.W.2d 735 (2004).

36-707 When transfer is made or obligation is incurred.

For the purposes of the Uniform Fraudulent Transfer Act:

(1) a transfer is made:

(i) with respect to an asset that is real property other than a fixture, but including the interest of a seller or purchaser under a contract for the sale of the asset, when the transfer is so far perfected that a good faith purchaser of the asset from the debtor against whom applicable law permits the transfer to be perfected cannot acquire an interest in the asset that is superior to the interest of the transferee; and

(ii) with respect to an asset that is not real property or that is a fixture, when the transfer is so far perfected that a creditor on a simple contract cannot acquire a judicial lien otherwise than under the act that is superior to the interest of the transferee;

(2) if applicable law permits the transfer to be perfected as provided in subdivision (1) of this section and the transfer is not so perfected before the commencement of an action for relief under the act, the transfer is deemed made immediately before the commencement of the action;

(3) if applicable law does not permit the transfer to be perfected as provided in subdivision (1) of this section, the transfer is made when it becomes effective between the debtor and the transferee;

(4) a transfer is not made until the debtor has acquired rights in the asset transferred;

(5) an obligation is incurred:

(i) if oral, when it becomes effective between the parties; or

(ii) if evidenced by a writing, when the writing executed by the obligor is delivered to or for the benefit of the obligee.

Source: Laws 1989, LB 423, § 7.

An appeal of a district court's determination that a transfer of an asset was not in violation of the Uniform Fraudulent Transfer Act is equitable in nature. Parker v. Parker, 268 Neb. 187, 681 N.W.2d 735 (2004).

36-708 Remedies of creditors.

(a) In an action for relief against a transfer or obligation under the Uniform Fraudulent Transfer Act, a creditor, subject to the limitations in section 36-709, may obtain:

(1) avoidance of the transfer or obligation to the extent necessary to satisfy the creditor's claim;

(2) an attachment or other provisional remedy against the asset transferred or other property of the transferee in accordance with the procedure prescribed by Chapter 25, article 10;

(3) subject to applicable principles of equity and in accordance with applicable rules of civil procedure:

(i) an injunction against further disposition by the debtor or a transferee, or both, of the asset transferred or of other property;

(ii) appointment of a receiver to take charge of the asset transferred or of other property of the transferee; or

(iii) any other relief the circumstances may require.

(b) If a creditor has obtained a judgment on a claim against the debtor, the creditor, if the court so orders, may levy execution on the asset transferred or its proceeds.

Source: Laws 1989, LB 423, § 8.

An appeal of a district court's determination that a transfer of an asset was not in violation of the Uniform Fraudulent Transfer Act is equitable in nature. Parker v. Parker, 268 Neb. 187, 681 N.W.2d 735 (2004).

36-709 Defenses, liability, and protection of transferee.

(a) A transfer or obligation is not voidable under subdivision (a)(1) of section 36-705 against a person who took in good faith and for a reasonably equivalent value or against any subsequent transferee or obligee.

(b) Except as otherwise provided in this section, to the extent a transfer is voidable in an action by a creditor under subdivision (a)(1) of section 36-708, the creditor may recover judgment for the value of the asset transferred, as adjusted under subsection (c) of this section, or the amount necessary to satisfy the creditor's claim, whichever is less. The judgment may be entered against:

(1) the first transferee of the asset or the person for whose benefit the transfer was made; or

(2) any subsequent transferee other than a good faith transferee who took for value or from any subsequent transferee.

(c) If the judgment under subsection (b) of this section is based upon the value of the asset transferred, the judgment must be for an amount equal to the value of the asset at the time of the transfer, subject to adjustment as the equities may require.

(d) Notwithstanding voidability of a transfer or an obligation under the Uniform Fraudulent Transfer Act, a good faith transferee or obligee is entitled, to the extent of the value given the debtor for the transfer or obligation, to:

(1) a lien on or a right to retain any interest in the asset transferred;

(2) enforcement of any obligation incurred; or

(3) a reduction in the amount of the liability on the judgment.

(e) A transfer is not voidable under subdivision (a)(2) of section 36-705 or section 36-706 if the transfer results from:

(1) termination of a lease upon default by the debtor when the termination is pursuant to the lease and applicable law; or

(2) enforcement of a security interest in compliance with article 9, Uniform Commercial Code.

(f) A transfer is not voidable under subsection (b) of section 36-706:

(1) to the extent the insider gave new value to or for the benefit of the debtor after the transfer was made unless the new value was secured by a valid lien;

(2) if made in the ordinary course of business or financial affairs of the debtor and the insider; or

(3) if made pursuant to a good faith effort to rehabilitate the debtor and the transfer secured present value given for that purpose as well as an antecedent debt of the debtor.

Source: Laws 1989, LB 423, § 9; Laws 1999, LB 550, § 6.

An appeal of a district court's determination that a transfer of an asset was not in violation of the Uniform Fraudulent Transfer Act is equitable in nature. Parker v. Parker, 268 Neb. 187, 681 N.W.2d 735 (2004).

Good faith encompasses an absence of or freedom from intent to defraud. Gifford-Hill & Co. v. Stoller, 221 Neb. 757, 380 N.W.2d 625 (1986).

36-710 Extinguishment of cause of action.

A cause of action with respect to a fraudulent transfer or obligation under the Uniform Fraudulent Transfer Act is extinguished unless action is brought:

(a) under subdivision (a)(1) of section 36-705, within four years after the transfer was made or the obligation was incurred or, if later, within one year after the transfer or obligation was or could reasonably have been discovered by the claimant; or

(b) under subdivision (a)(2) of section 36-705 or section 36-706, within four years after the transfer was made or the obligation was incurred.

Source: Laws 1989, LB 423, § 10.

An appeal of a district court's determination that a transfer of an asset was not in violation of the Uniform Fraudulent Transfer Act is equitable in nature. Parker v. Parker, 268 Neb. 187, 681 N.W.2d 735 (2004).

36-711 Supplementary provisions.

Unless displaced by the provisions of the Uniform Fraudulent Transfer Act, the principles of law and equity, including the law merchant and the law

relating to principal and agent, estoppel, laches, fraud, misrepresentation, duress, coercion, mistake, insolvency, or other validating or invalidating cause, supplement its provisions.

Source: Laws 1989, LB 423, § 11.

An appeal of a district court's determination that a transfer of an asset was not in violation of the Uniform Fraudulent Transfer Act is equitable in nature. Parker v. Parker, 268 Neb. 187, 681 N.W.2d 735 (2004).

36-712 Uniformity of application and construction.

The Uniform Fraudulent Transfer Act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of the act among states enacting it.

Source: Laws 1989, LB 423, § 12.

An appeal of a district court's determination that a transfer of an asset was not in violation of the Uniform Fraudulent Transfer Act is equitable in nature. Parker v. Parker, 268 Neb. 187, 681 N.W.2d 735 (2004).

APPENDIX

SPECIAL ACTS AND RESOLUTIONS OF NEBRASKA LEGISLATURE

1-101. State Flower.
1-102. Lands Ceded to Iowa.
1-103. Resolution for Jefferson Day.
1-104. Iowa-Nebraska Boundary Compact.
1-105. South Platte River Compact.
1-106. Republican River Compact.
1-107. Acts ceding to the United States jurisdiction over certain lands in Nebraska.
1-108. Interstate Compact to Conserve Oil and Gas.
1-109. Civil Defense and Disaster Compact.
1-110. Nebraska-South Dakota-Wyoming Water Compact.
1-111. Nebraska-Kansas Water Compact Commission.
1-112. Wyoming-Nebraska Compact on Upper Niobrara River.
1-113. Driver License Compact.
1-114. Missouri-Nebraska Boundary Compact.
1-115. Blue River Basin Compact.
1-116. Midwest Nuclear Compact.
1-117. Midwestern Education Compact.
1-118. Missouri River Barge Traffic Compact.
1-119. Nonresident Violator Compact of 1977.
1-120. Nebraska Boundary Commission.
1-121. Missouri River Barge Traffic Compact (1984).
1-122. Interstate Compact on Agricultural Grain Marketing. Repealed.
1-123. South Dakota-Nebraska Boundary Compact.
1-124. Emergency Management Assistance Compact.

1-101 STATE FLOWER

A CONCURRENT RESOLUTION to designate a floral emblem for the State of Nebraska.

Whereas, the adoption of a state floral emblem by the authority of the legislature would foster a feeling of pride in our state, and stimulate an interest in the history and traditions of the commonwealth, therefore be it

Resolved, that, the senate concurring, we, the Legislature of Nebraska hereby declare the flower commonly known as the ''Golden Rod'' (*Solidago Serotina*) to be the floral emblem of the state.

Source: Laws 1895, c. 120, p. 441.

1-102 LANDS CEDED TO IOWA

No claim of title or ownership shall be made by the State of Nebraska to any land or lands now lying within the boundaries of the State of Iowa, which shall hereafter be or become within the boundaries of the State of Nebraska by virtue of the action of any commissions appointed by the said states, and the ratification thereof by the said states, or otherwise, but that the said State of Nebraska hereby disclaims and relinquishes all claim of title or ownership to any and all such land or lands: *Provided, however,* said land or lands have been for ten years or more last past in the possession or occupation of any person or persons, co-partnership or corporation claiming ownership or title thereto, and those so in possession or occupation have, for said period of ten years or

longer, paid taxes claimed by state or county authorities or officers to have been levied upon such land or lands.

Source: Laws 1905, c. 154, p. 601.

1-103 RESOLUTION FOR JEFFERSON DAY

WHEREAS, Thomas Jefferson was born on the thirteenth day of April 1743, and was a signer of the Declaration of Independence, and

WHEREAS, he is known as the great believer of democracy and maintained that ''Those who labor in the earth are the chosen people of God, if ever he had a chosen people, whose breasts he has made his peculiar deposit for substantial and genuine virtue,'' and

WHEREAS, he was a great statesman and scholar holding the various positions, among others, of Governor of Virginia, Minister to France, Secretary of State, Vice President, and President, and

WHEREAS, it is fitting that the recurring anniversary of this day be commemorated with appropriate patriotic and public exercises in observing and commemorating the birth of this great American statesman, NOW THEREFORE *Be it Resolved by the House of Representatives of the State of Nebraska, the Senate Concurring:*

Section 1. That the Governor of the State of Nebraska is authorized and directed to issue a proclamation calling upon the officials of the state government and the various subdivisions thereof in local communities to display the flag of the United States on all public buildings on April thirteenth of each year and inviting the people of the state of Nebraska to observe the day in schools and other suitable places, with appropriate ceremonies in commemoration of the birth of Thomas Jefferson.

Source: Laws 1935, c. 124, p. 445.

1-104 IOWA-NEBRASKA BOUNDARY COMPACT

(1) *Ratification by Nebraska Legislature*

AN ACT to establish the boundary line between Iowa and Nebraska by agreement; to cede to Iowa and to relinquish jurisdiction over lands now in Nebraska but lying easterly of said boundary line and contiguous to lands in Iowa; to provide that the provisions of this act shall become effective upon the approval of and consent of the Congress of the United States of America to the compact effected by this act and House File 437 of the 1943 Session of the Iowa Legislature; to repeal Chapter 121, Session Laws of Nebraska, 1941; and to declare an emergency.

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

Section 1. That on and after the approval and consent of the Congress of the United States of America to this act and a similar and reciprocal act enacted by the Legislature of the State of Iowa, as hereinafter provided, the boundary line between the States of Iowa and Nebraska shall be described as follows:

Commencing at a point on the south line of section 20, in township 75 N., range 44 W. of the fifth principal meridian, produced 861½ feet west of the S.E. corner of said section, and running thence northwesterly to a point on the south line of lot 4 of section 10, in township 15 N., of range 13 E. of the sixth principal meridian, 2,275 feet east of the S.W. corner of the N.W. ¼ of the S.E. ¼ of said section 10; thence northerly, to a point on the north line of lot 4 aforesaid, 2,068 feet east of the center line of said section 10; thence north, to a

point on the north line of section 10, 2,068 feet east of the quarter section corner on the north line of said section 10; thence northerly, to a point 312 feet west of the S.E. corner of lot 1, in section 3, township 15 N., range 13 E., aforesaid; thence northerly, to a point on the section line between sections 2 and 3, 358 feet south of the quarter section corner on said line; thence northeasterly, to the center of the S.E. ¼ of the N.W. ¼ of section 2 aforesaid; thence east, to the center of the W. ½ of lot 5, otherwise described as the S.W. ¼ of the N.W. ¼ of section 1, in township 15, range 13, aforesaid; thence southeasterly, to a point on the south line of lot 5 aforesaid, 1,540 feet west of the center of section 1, last aforesaid; thence south 2,050 feet, to a point 1,540 feet west of the north and south open line through said section 1; thence southwesterly, to the S.W. corner of the N.E. ¼ of the S.W. ¼ of section 21, in township 75 N., range 44 W. of the fifth principal meridian; thence southeasterly, to a point 660 feet south of the N.E. corner of the N.W. ¼ of the N.E. ¼ of section 28, in township 75 N., range 44 W., aforesaid; and said line produced to the center of the channel of the Missouri river; thence up the middle of the main channel of the Missouri river to a point opposite the middle of the main channel of the Big Sioux river.

Commencing again at the point of beginning first named, namely, a point on the south line of section 20, in township 75 N., range 44 W. of the fifth principal meridian, produced 861½ feet west of S.E. corner of said section, and running thence southeasterly to a point 660 feet east of the S.W. corner of the N.W. ¼ of the N.W. ¼ of section 28, in township 75 N., range 44 W. of the fifth principal meridian, and said line produced to the center of the channel of the Missouri river; thence down the middle of the main channel of the Missouri river to the northern boundary of the State of Missouri.

The said middle of the main channel of the Missouri river referred to in this act shall be the center line of the proposed stabilized channel of the Missouri river as established by the United States engineers' office, Omaha, Nebraska, and shown on the alluvial plain maps of the Missouri river from Sioux City, Iowa, to Rulo, Nebraska, and identified by file numbers AP-1 to 4 inclusive, dated January 30, 1940, and file numbers AP-5 to 10 inclusive, dated March 29, 1940, which maps are now on file in the United States engineers' office at Omaha, Nebraska, and copies of which maps are now on file with the Secretary of State of the State of Iowa and with the Secretary of State of the State of Nebraska.

Sec. 2. The State of Nebraska hereby cedes to the State of Iowa and relinquishes jurisdiction over all lands now in Nebraska but lying easterly of said boundary line and contiguous to lands in Iowa.

Sec. 3. Titles, mortgages, and other liens good in Iowa shall be good in Nebraska as to any lands Iowa may cede to Nebraska, and any pending suits or actions concerning said lands may be prosecuted to final judgment in Iowa and such judgment shall be accorded full force and effect in Nebraska.

Sec. 4. Taxes for the current year may be levied and collected by Iowa, or its authorized governmental subdivisions and agencies, on lands ceded to Nebraska and any liens or other rights accrued or accruing, including the right of collection, shall be fully recognized and the county treasurers of the counties affected shall act as agents in carrying out the provisions of this section; *Provided*, that all liens or other rights accrued or accruing, as aforesaid, shall be

claimed or asserted within five years after this act becomes effective, and if not so claimed or asserted, shall be forever barred.

Sec. 5. The provisions of this act shall become effective only upon the approval and consent of the Congress of the United States of America to the compact effected by this act and the similar and reciprocal act enacted by the 1943 Session of the Legislature of Iowa as House File 437 of that body.

Sec. 6. That Chapter 121, Session Laws of Nebraska, 1941, is repealed.

Sec. 7. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.

ApprovedMay 7, 1943.

(2) *Ratification by Iowa Legislature*

AN ACT

TO ESTABLISH THE BOUNDARY LINE BETWEEN IOWA AND NEBRASKA BY AGREEMENT; TO CEDE TO NEBRASKA AND TO RELINQUISH JURISDICTION OVER LANDS NOW IN IOWA BUT LYING WESTERLY OF SAID BOUNDARY LINE AND CONTIGUOUS TO LANDS IN NEBRASKA; TO PROVIDE THAT THE PROVISIONS OF THE ACT BECOME EFFECTIVE UPON THE ENACTMENT OF A SIMILAR AND RECIPROCAL LAW BY NEBRASKA AND THE APPROVAL OF AND CONSENT TO THE COMPACT THEREBY EFFECTED BY THE CONGRESS OF THE UNITED STATES OF AMERICA AND TO DECLARE AN EMERGENCY.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. That on and after the enactment of a similar and reciprocal law by the State of Nebraska, and the approval and consent of the Congress of the United States of America, as hereinafter provided, the boundary line between the States of Iowa and Nebraska shall be described as follows:

Commencing at a point on the south line of section 20, in township 75 N., range 44 W. of the fifth principal meridian, produced 861½ feet west of the S.E. corner of said section, and running thence northwesterly to a point on the south line of lot 4 of section 10, in township 15 N., of range 13 E. of the sixth principal meridian, 2,275 feet east of the S.W. corner of the N.W. ¼ of the S.E. ¼ of said section 10; thence northerly, to a point on the north line of lot 4 aforesaid, 2,068 feet east of the center line of said section 10; thence north, to a point on the north line of section 10, 2,068 feet east of the quarter section corner on the north line of said section 10; thence northerly, to a point 312 feet west of the S.E. corner of lot 1, in section 3, township 15 N., range 13 E., aforesaid; thence, northerly, to a point on the section line between sections 2 and 3, 358 feet south of the quarter section corner on said line; thence northeasterly, to the center of the S.E. ¼ of the N.W. ¼ of section 2 aforesaid; thence east, to the center of the W. ½ of lot 5, otherwise described as the S.W. ¼ of the N.W. ¼ of section 1, in township 15, range 13, aforesaid; thence southeasterly, to a point on the south line of lot 5 aforesaid, 1,540 feet west of the center of section 1, last aforesaid; thence south 2,050 feet, to a point 1,540 feet west of the north and south open line through said section 1; thence southwesterly, to the S.W. corner of the N.E. ¼ of the S.W. ¼ of section 21, in township 75 N., range 44 W. of the fifth principal meridian; thence southeasterly, to a point 660 feet south of the N.E. corner of the N.W. ¼ of the N.E. ¼ of section 28, in township 75 N., range 44 W., aforesaid; and said line produced to the center of the channel of the Missouri river; thence up the middle of the

main channel of the Missouri river to a point opposite the middle of the main channel of the Big Sioux river.

Commencing again at the point of beginning first named, namely, a point on the south line of section 20, in township 75 N., range 44 W. of the fifth principal meridian, produced 861½ feet west of S.E. corner of said section, and running thence southeasterly to a point 660 feet east of the S.W. corner of the N.W. ¼ of the N.W. ¼ of section 28, in township 75 N., range 44 W. of the fifth principal meridian, and said line produced to the center of the channel of the Missouri river; thence down the middle of the main channel of the Missouri river to the northern boundary of the State of Missouri.

The said middle of the main channel of the Missouri river referred to in this act shall be the center line of the proposed stabilized channel of the Missouri river as established by the United States engineers' office, Omaha, Nebraska, and shown on the alluvial plain maps of the Missouri river from Sioux City, Iowa, to Rulo, Nebraska, and identified by file numbers AP-1 to 4 inclusive, dated January 30, 1940, and file numbers AP-5 to 10 inclusive, dated March 29, 1940, which maps are now on file in the United States engineers' office at Omaha, Nebraska, and copies of which maps are now on file with the secretary of state of the State of Iowa and with the secretary of state of the State of Nebraska.

Sec. 2. The State of Iowa hereby cedes to the State of Nebraska and relinquishes jurisdiction over all lands now in Iowa but lying westerly of said boundary line and contiguous to lands in Nebraska.

Sec. 3. Titles, mortgages, and other liens good in Nebraska shall be good in Iowa as to any lands Nebraska may cede to Iowa and any pending suits or actions concerning said lands may be prosecuted to final judgment in Nebraska and such judgments shall be accorded full force and effect in Iowa.

Sec. 4. Taxes for the current year may be levied and collected by Nebraska or its authorized governmental subdivisions and agencies on lands ceded to Iowa and any liens or other rights accrued or accruing, including the right of collection, shall be fully recognized and the county treasurers of the counties affected shall act as agents in carrying out the provisions of this section: *Provided*, that all liens or other rights accrued or accruing, as aforesaid, shall be claimed or asserted within five years after this act becomes effective, and if not so claimed or asserted, shall be forever barred.

Sec. 5. The provisions of this act shall become effective only upon the enactment of a similar and reciprocal law by the State of Nebraska and the approval of and consent to the compact thereby effected by the Congress of the United States of America. Said similar and reciprocal law shall contain provisions identical with those contained herein for the cession to Iowa of all lands now in Nebraska but lying easterly of said boundary line described in section 1 of this act and contiguous to lands in Iowa and also contain provisions identical with those contained in sections 3 and 4 of this act but applying to lands ceded to Nebraska.

Sec. 6. Whereas an emergency exists, this act shall be in full force and effect, subject to conditions as hereinabove expressed from and after its publication in the Sioux City Journal, a newspaper published at Sioux City, Iowa, and in the Nonpareil, a newspaper published at Council Bluffs, Iowa.

(Signed) Henry W. Burma
Speaker of the House
(Signed) Robert D. Blue
President of the Senate

I hereby certify that this Bill originated in the House and is known as House File 437, Fiftieth General Assembly.

(Signed) A.C. Gustafson
Chief Clerk of the House.

Approved April 15th, 1943.

(Signed) Bourke B. Hickenlooper

Governor.

Source: Nebraska: Laws 1943, c. 130, p. 434; Iowa: Laws 1943, p. 797.

Where a river changes its main channel by flowing around intervening land as by deepening a smaller channel until it becomes the main channel, the boundary which was fixed as the main channel remains there, and title to riparian lands runs to the thread of the contiguous stream. Valder v. Wallis, 196 Neb. 222, 242 N.W.2d 112 (1976).

The word cedes as used herein covers all area formed before Compact date, whose titles, mortgages, and liens were at date of Compact good in the ceding state, and private titles to riparian lands good in Nebraska shall be good in Iowa. State of Nebraska v. State of Iowa, 406 U.S. 117 (1972).

1-105 SOUTH PLATTE RIVER COMPACT

(1) *Ratification by Nebraska Legislature*

COMPACT WITH COLORADO, SOUTH PLATTE RIVER

AN ACT to ratify and approve the Compact between the States of Colorado and Nebraska, respecting the South Platte River, and to declare an emergency.

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

Section 1. *Compact Between States of Colorado and Nebraska.* The compact concluded and signed on the 27th day of April A. D. 1923, by Commissioners for the States of Colorado and Nebraska, acting under appointment by the Governors of said States respectively, providing for the use and disposition of the waters of the South Platte River, is hereby ratified and approved by the Legislature of the State of Nebraska, which said Compact is in words and figures as follows:

SOUTH PLATTE RIVER COMPACT BETWEEN THE
STATES OF COLORADO AND NEBRASKA

The State of Colorado and the State of Nebraska, desiring to remove all causes of present and future controversy between said States, and between citizens of one against citizens of the other, with respect to waters of the South Platte River, and being moved by considerations of interstate comity, have resolved to conclude a compact for these purposes, and, through their respective Governors, have named as their Commissioners:

Delph E. Carpenter, for the State of Colorado; and Robert H. Willis, for the State of Nebraska; who have agreed upon the following articles:

Article I

In this compact: (1) The State of Colorado and the State of Nebraska are designated, respectively, as ''Colorado'' and ''Nebraska.'' (2) The provisions hereof respecting each signatory State, shall include and bind its citizens and corporations and all others engaged or interested in the diversion and use of the waters of the South Platte River in that State. (3) The term ''Upper Section''

means that part of the South Platte River in the State of Colorado above and westerly from the west boundary of Washington County, Colorado. (4) The term ''Lower Section'' means that part of the South Platte River in the State of Colorado between the west boundary of Washington County and the intersection of said river with the boundary line common to the signatory States. (5) The term ''Interstate Station'' means that stream gaging station described in Article II. (6) The term ''flow of the river'' at the Interstate Station means the measured flow of the river at said station plus all increment of said flow entering the river between the Interstate Station and the diversion works of the Western Irrigation District in Nebraska.

Article II

(1) Colorado and Nebraska, at their joint expense, shall maintain a stream gaging station upon the South Platte River at the river bridge near the town of Julesburg, Colorado, or at a convenient point between said bridge and the diversion works of the canal of The Western Irrigation District in Nebraska, for the purpose of ascertaining and recording the amount of water flowing in said river from Colorado into Nebraska and to said diversion works at all times between the first day of April and the fifteenth day of October of each year. The location of said station may be changed from year to year as the river channels and water flow conditions of the river may require. (2) The State Engineer of Colorado and the Secretary of the Department of Public Works of Nebraska shall make provisions for the cooperative gaging at and the details of operation of said station and for the exchange and publication of records and data. Said state officials shall ascertain the rate of flow of the South Platte River through the Lower Section in Colorado and the time required for increases or decreases of flow, at points within said Lower Section, to reach the Interstate Station. In carrying out the provisions of Article IV of this compact, Colorado shall always be allowed sufficient time for any increase in flow (less permissible diversions) to pass down the river and be recorded at the Interstate Station.

Article III

The waters of Lodgepole Creek, a tributary of the South Platte River flowing through Nebraska and entering said river within Colorado, hereafter shall be divided and apportioned between the signatory States as follows: (1) The point of division of the waters of Lodgepole Creek shall be located on said creek two miles north of the boundary line common to the signatory States. (2) Nebraska shall have the full and unmolested use and benefit of all waters flowing in Lodgepole Creek above the point of division and Colorado waives all present and future claims to the use of said waters. Colorado shall have the exclusive use and benefit of all waters flowing at or below the point of division. (3) Nebraska may use the channel of Lodgepole Creek below the point of division and the channel of the South Platte River between the mouth of Lodgepole Creek and the Interstate Station, for the carriage of any waters of Lodgepole Creek which may be stored in Nebraska above the point of division and which Nebraska may desire to deliver to ditches from the South Platte River in Nebraska, and any such waters so carried shall be free from interference by diversions in Colorado and shall not be included as a part of the flow of the South Platte River to be delivered by Colorado at the Interstate Station in compliance with Article IV of this compact; *Provided, however*, that such runs of stored water shall be made in amounts of not less than ten cubic feet per second of time and for periods of not less than twenty four hours.

Article IV

The waters of the South Platte River hereafter shall be divided and apportioned between the signatory States as follows: (1) At all times between the fifteenth day of October of any year and the first day of April of the next succeeding year, Colorado shall have the full and uninterrupted use and benefit of the waters of the river flowing within the boundaries of the State, except as otherwise provided by Article VI. (2) Between the first day of April and the fifteenth day of October of each year, Colorado shall not permit diversions from the Lower Section of the river, to supply Colorado appropriations having adjudicated dates of priority subsequent to the fourteenth day of June, 1897, to an extent that will diminish the flow of the river at the Interstate Station, on any day, below a meanflow of 120 cubic feet of water per second of time, except as limited in paragraph three (3) of this Article. (3) Nebraska shall not be entitled to receive and Colorado shall not be required to deliver, on any day, any part of the flow of the river to pass the Interstate Station, as provided by paragraph two (2) of this Article, not then necessary for beneficial use by those entitled to divert water from said river within Nebraska. (4) The flow of the river at the Interstate Station shall be used by Nebraska to supply the needs of present perfected rights to the use of water from the river within said State before permitting diversions from the river by other claimants. (5) It is recognized that variable climatic conditions, the regulation and administration of the stream in Colorado, and other causes, will produce diurnal and other unavoidable variations and fluctuations in the flow of the river at the Interstate Station, and it is agreed that, in the performance of the provisions of said paragraph two (2), minor or compensating irregularities and fluctuations in the flow at the Interstate Station shall be permitted; but where any deficiency of the mean daily flow at the Interstate Station may have been occasioned by neglect, error or failure in the performance of duty by the Colorado water officials having charge of the administration or diversions from the Lower Section of the river in that state, each such deficiency shall be made up, within the next succeeding period of seventy two hours, by delivery of additional flow at the Interstate Station, over and above the amount specified in paragraph two (2) of this article, sufficient to compensate for such deficiency. (6) Reductions in diversions from the Lower Section of the river, necessary to the performance of paragraph two (2) of this Article by Colorado, shall not impair the rights of appropriators in Colorado (not to include the proposed Nebraska canal described in Article VI), whose supply has been so reduced, to demand and receive equivalent amounts of water from other parts of the stream in that State according to its Constitution, laws, and the decisions of its courts. (7) Subject to compliance with the provisions of this Article, Colorado shall have and enjoy the otherwise full and uninterrupted use and benefit of the waters of the river which hereafter may flow within the boundaries of that State from the first day of April to the fifteenth day of October in each year, but Nebraska shall be permitted to divert, under the subject to the provisions and conditions of Article VI, any surplus waters which otherwise would flow past the Interstate Station.

Article V

(1) Colorado shall have the right to maintain, operate, and extend, within Nebraska, the Peterson Canal and other canals of The Julesburg Irrigation District which now are or may hereafter be used for the carriage of water from the South Platte River for the irrigation of lands in both States, and Colorado shall continue to exercise control and jurisdiction of said canals and the

carriage and delivery of water thereby. This Article shall not excuse Nebraska water users from making reports to Nebraska officials in compliance with the Nebraska laws. (2) Colorado waives any objection to the delivery of water for irrigation of lands in Nebraska by the canals mentioned in paragraph one (1) of this Article, and agrees that all interests in said canals and the use of waters carried thereby, now or hereafter acquired by owners of lands in Nebraska, shall be afforded the same recognition and protection as are the interests of similar land owners served by said canals within Colorado; *Provided, however*, that Colorado reserves to those in control of said canals the right to enforce the collection of charges or assessments, hereafter levied or made against such interests of owners of the lands in Nebraska, by withholding the delivery of water until the payment of such charges or assessments; *Provided, however*, such charges or assessments shall be the same as those levied against similar interests of owners of lands in Colorado. (3) Nebraska grants to Colorado the right to acquire by purchase, prescription, or the exercise of eminent domain, such rights of way, easements or lands as may be necessary for the construction, maintenance, operation, and protection of those parts of the above mentioned canals which now or hereafter may extend into Nebraska.

Article VI

It is the desire of Nebraska to permit its citizens to cause a canal to be constructed and operated for the diversion of water from the South Platte River within Colorado, for irrigation of lands in Nebraska; that said canal may commence on the South bank of said river at a point southwesterly from the town of Ovid, Colorado, and may run thence easterly through Colorado along or near the line of survey of the formerly proposed ''Perkins County Canal'' (sometimes known as the ''South Divide Canal'') and into Nebraska, and that said project shall be permitted to divert waters of the river as hereinafter provided. With respect to such proposed canal it is agreed: (1) Colorado consents that Nebraska and its citizens may hereafter construct, maintain, and operate such a canal and thereby may divert water from the South Platte River within Colorado for use in Nebraska, in the manner and at the time in this article provided, and grants to Nebraska and its citizens the right to acquire by purchase, prescription, or the exercise of eminent domain such rights of way, easements or lands as may be necessary for the construction, maintenance, and operation of said canal; subject, however, to the reservations and limitations and upon the conditions expressed in this Article which are and shall be limitations upon and reservations and conditions running with the rights and privileges hereby granted, and which shall be expressed in all permits issued by Nebraska with respect to said canal. (2) The net future flow of the Lower Section of the South Platte River, which may remain after supplying all present and future appropriations from the Upper Section, and after supplying all appropriations from the Lower Section perfected prior to the seventeenth day of December, 1921, and after supplying the additional future appropriations in the Lower Section for the benefit of which a prior and preferred use of Thirty-five thousand acre feet of water is reserved by subparagraph (a) of this article, may be diverted by said canal between the fifteenth day of October of any year and the first day of April of the next succeeding year subject to the following reservations, limitations and conditions: (a) In addition to the water now diverted from the Lower Section of the river by present perfected appropriations, Colorado hereby reserves the prior, preferred and superior right to store, use and to have in storage in readiness for use on and after the first day of April

in each year, an aggregate of thirty-five thousand acre feet of water to be diverted from the flow of the river in the Lower Section between the fifteenth day of October of each year and the first day of April of the next succeeding year, without regard to the manner or time of making such future uses, and diversions of water by said Nebraska canal shall in no manner impair or interfere with the exercise by Colorado of the right of future use of the water hereby reserved. (b) Subject at all times to the reservation made by subparagraph (a) and to the other provisions of this Article, said proposed canal shall be entitled to direct five hundred cubic feet of water per second time from the flow of the river in the Lower Section, as of priority of appropriation of date December 17th, 1921, only between the fifteenth day of October of any year and the first day of April of the next succeeding year upon the express condition that the right to so divert water is and shall be limited exclusively to said annual period and shall not constitute the basis for any claim to water necessary to supply all present and future appropriations in the Upper Section or present appropriations in the Lower Section and those hereafter to be made therein as provided in subparagraph (a). (3) Neither this compact nor the construction and operation of such a canal nor the diversion, carriage and application of water thereby shall vest in Nebraska, or in those in charge or control of said canal or in the users of water therefrom, any prior, preferred or superior servitude upon or claim or right to the use of any water of the South Platte River in Colorado from the first day of April to the fifteenth day of October of any year or against any present or future appropriator or user of water from said river in Colorado during said period of every year, and Nebraska specifically waives any such claims and agrees that the same shall never be made or asserted. Any surplus waters of the river, which otherwise would flow past the Interstate Station during such period of any year after supplying all present and future diversions by Colorado, may be diverted by such a canal, subject to the other provisions and conditions of this Article. (4) Diversions of water by said canal shall not diminish the flow necessary to pass the Interstate Station to satisfy superior claims of users of water from the river in Nebraska. (5) No appropriations of water from the South Platte River by any other canal within Colorado shall be transferred to said canal or be claimed or asserted for diversion and carriage for use on lands in Nebraska. (6) Nebraska shall have the right to regulate diversions of water by said canal for the purposes of protecting other diversions from the South Platte River within Nebraska and of avoiding violations of the provisions of Article IV; but Colorado reserves the right at all times to regulate and control the diversions by said canal to the extent necessary for the protection of all appropriations and diversions within Colorado or necessary to maintain the flow at the Interstate Station as provided by Article IV of this Compact.

Article VII

Nebraska agrees that compliance by Colorado with the provisions of this compact and the delivery of water in accordance with its terms shall relieve Colorado from any further or additional demand or claim by Nebraska upon the waters of the South Platte River within Colorado.

Article VIII

Whenever any official of either State is designated herein to perform any duty under this compact, such designation shall be interpreted to include the State official or officials upon whom the duties now performed by such official may

hereafter devolve, and it shall be the duty of the officials of the State of Colorado charged with the duty of the distribution of the waters of the South Platte River for irrigation purposes, to make deliveries of water at the Interstate Station in compliance with this compact without necessity of enactment of special statutes for such purposes by the General Assembly of the State of Colorado.

Article IX

The physical and other conditions peculiar to the South Platte River and to the territory drained and served thereby constitute the basis for this compact and neither of the signatory States hereby concedes the establishment of any general principle or precedent with respect to other interstate streams.

Article X

This compact may be modified or terminated at any time by mutual consent of the signatory States, but, if so terminated and Nebraska or its citizens shall seek to enforce any claims of vested rights in the waters of the South Platte River, the statutes of limitation shall not run in favor of Colorado or its citizens with reference to claims of the Western Irrigation District to the water of the South Platte River from the sixteenth day of April, 1916, and as to all other present claims from the date of the approval of this compact to the date of such termination and the State of Colorado and its citizens may be made defendants in any action brought for such purpose shall not be permitted to plead the Statutes of Limitation for such periods of time.

Article XI

This compact shall become operative when approved by the Legislature of each of the signatory States and by the Congress of the United States. Notice of approval by the Legislature shall be given by the Governor of each State to the Governor of the other State and to the President of the United States, and the President of the United States is requested to give notice to the Governors of the signatory States of the approval by Congress of the United States.

IN WITNESS WHEREOF, the Commissioners have signed this compact in duplicate originals, one of which shall be deposited with the Secretary of State of each of the signatory States.

DONE at Lincoln, in the State of Nebraska, this 27th day of April, in the year of our Lord, One Thousand Nine Hundred Twenty-Three.

(Signed) Delph E. Carpenter.
Robert H. Willis.

Sec. 2. *Not to Bind State Until Approved by Other State*. That said Compact shall not bind either of the signatory States unless and until the same shall have been approved by the Legislature of each of the signatory States and the Congress of the United States shall have given its consent thereto and approval thereof.

Sec. 3. *The Governor to Notify Governor of Colorado*. The Governor of the State of Nebraska shall notify the Governor of the State of Colorado and the President of the United States of the passage of this Act, and the President is requested to notify the Governors of said States of the consent to and approval of said Compact by the Congress and to make proclamation thereof.

Sec. 4. *Emergency*. WHEREAS, an emergency exists, this Act shall take effect and be in force from and after its passage and approval.

(2) *Appointment of the Commission of 1939*

AN ACT providing for the appointment of a commissioner to act on behalf of the State of Nebraska to negotiate a compact between the States of Colorado and Nebraska respecting the use of and distribution of the waters of the South Platte River and the rights of said states thereto.

Section 1. The Governor of Nebraska shall appoint a commissioner who shall represent the State of Nebraska upon a joint commission to be composed of commissioners representing the States of Colorado and Nebraska, to be constituted by said states for the purpose of negotiating and entering into a compact or agreement between said states, with the consent of Congress, relative to the utilization and disposition of the waters of the South Platte River and all streams tributary thereto, and fixing and determining the rights of each of said states to the use, benefit and disposition of the waters of said streams; *Provided*, that any compact or agreement made on behalf of said states shall not be binding or obligatory upon either of said states or the citizens thereof, unless and until the same shall have been ratified and approved by the Legislatures of both states. Said commissioner shall have complete authority to consider and include in any compact between the said states, provisions for the construction of such works as may be necessary to conserve the waters in the aforesaid river and to store said waters in the State of Colorado for use in the State of Nebraska.

Sec. 2. Upon appointment of said commissioner by the Governor, the said commissioner shall proceed as soon as possible to meet with the commissioner for the State of Colorado for the purpose of negotiating the compact referred to in Section 1 hereof.

Source: (1) Laws 1923, c. 125, p. 299; (2) Laws 1939, c. 53, p. 223.

1-106 REPUBLICAN RIVER COMPACT

AN ACT to ratify the compact entered into by the states of Colorado, Kansas and Nebraska on December 31, 1942, relating to the Republican River; to repeal Chapter 92, Session Laws of Nebraska, 1941; and to declare an emergency.

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

Section 1. The compact entered into on December 31, 1942, between the states of Colorado, Kansas and Nebraska, and in the formulation of which compact a representative of the President of the United States participated, respecting the waters of the Republican River, is ratified and approved in all respects and is as follows:

REPUBLICAN RIVER COMPACT

The States of Colorado, Kansas, and Nebraska, parties signatory to this compact (hereinafter referred to as Colorado, Kansas, and Nebraska, respectively, or individually as a State, or collectively as the States), having resolved to conclude a compact with respect to the waters of the Republican River Basin, and being duly authorized therefor by the Act of the Congress of the United States of America, approved August 4, 1942, (Public No. 696, 77th Congress, Chapter 545, 2nd Session) and pursuant to Acts of their respective Legislatures have, through their respective Governors, appointed as their Commissioners:

M.C. Hinderlider, for Colorado

George S. Knapp, for Kansas

Wardner G. Scott, for Nebraska

who, after negotiations participated in by Glenn L. Parker, appointed by the President as the Representative of the United States of America, have agreed upon the following articles:

ARTICLE I

The major purposes of this compact are to provide for the most efficient use of the waters of the Republican River Basin (hereinafter referred to as the ''Basin'') for multiple purposes; to provide for an equitable division of such waters; to remove all causes, present and future, which might lead to controversies; to promote interstate comity; to recognize that the most efficient utilization of the waters within the Basin is for beneficial consumptive use; and to promote joint action by the States and the United States in the efficient use of water and the control of destructive floods.

The physical and other conditions peculiar to the Basin constitute the basis for this compact, and none of the States hereby, nor the Congress of the United States by its consent, concedes that this compact establishes any general principle or precedent with respect to any other interstate stream.

ARTICLE II

The Basin is all the area in Colorado, Kansas, and Nebraska, which is naturally drained by the Republican River, and its tributaries, to its junction with the Smoky Hill River in Kansas. The main stem of the Republican River extends from the junction near Haigler, Nebraska, of its North Fork and the Arikaree River, to its junction with Smoky Hill River near Junction City, Kansas. Frenchman Creek (River) in Nebraska is a continuation of Frenchman Creek (River) in Colorado. Red Willow Creek in Colorado is not identical with the stream having the same name in Nebraska. A map of the Basin approved by the Commissioners is attached and made a part hereof.

The term ''Acre-foot,'' as herein used, is the quantity of water required to cover an acre to the depth of one foot and is equivalent to forty-three thousand, five hundred sixty (43,560) cubic feet.

The term ''Virgin Water Supply,'' as herein used, is defined to be the water supply within the Basin undepleted by the activities of man.

The term ''BeneficialConsumptive Use'' is herein defined to be that use by which the water supply of the Basin is consumed through the activities of man, and shall include water consumed by evaporation from any reservoir, canal, ditch, or irrigated area.

Beneficial consumptive use is the basis and principle upon which the allocations of water hereinafter made are predicated.

ARTICLE III

The specific allocations in acre-feet hereinafter made to each State are derived from the computed average annual virgin water supply originating in the following designated drainage basins, or parts thereof, in the amounts shown:

North Fork of the Republican River drainage basin in Colorado, 44,700 acre-feet;

Arikaree River drainage basin, 19,610 acre-feet;

Buffalo Creek drainage basin, 7,890 acre-feet;

Rock Creek drainage basin, 11,000 acre-feet;

South Fork of the Republican River drainage basin, 57,200 acre-feet;

Frenchman Creek (River) drainage basin in Nebraska, 98,500 acre-feet;

Blackwood Creek drainage basin, 6,800 acre-feet;

Driftwood Creek drainage basin, 7,300 acre-feet;

Red Willow Creek drainage basin in Nebraska, 21,900 acre-feet;

Medicine Creek drainage basin, 50,800 acre-feet;

Beaver Creek drainage basin, 16,500 acre-feet;

Sappa Creek drainage basin, 21,400 acre-feet;

Prairie Dog Creek drainage basin, 27,600 acre-feet;

The North Fork of the Republican River in Nebraska and the main stem of the Republican River between the junction of the North Fork and the Arikaree River and the lowest crossing of the river at the Nebraska-Kansas state line and the small tributaries thereof, 87,700 acre-feet.

Should the future computed virgin water supply of any source vary more than ten (10) per cent from the virgin water supply as hereinabove set forth, the allocations hereinafter made from such source shall be increased or decreased in the relative proportions that the future computed virgin water supply of such source bears to the computed virgin water supply used herein.

ARTICLE IV

There is hereby allocated for beneficial consumptive use in Colorado, annually, a total of fifty-four thousand, one hundred (54,100) acre-feet of water. This total is to be derived from the sources and in the amounts hereinafter specified and is subject to such quantities being physically available from those sources:

North Fork of the Republican River drainage basin, 10,000 acre-feet;

Arikaree River drainage basin, 15,400 acre-feet;

South Fork of the Republican River drainage basin, 25,400 acre-feet;

Beaver Creek drainage basin, 3,300 acre-feet; and

In addition, for beneficial consumptive use in Colorado, annually, the entire water supply of the Frenchman Creek (River) drainage basin in Colorado and of the Red Willow Creek drainage basin in Colorado.

There is hereby allocated for beneficial consumptive use in Kansas, annually, a total of one hundred ninety thousand, three hundred (190,300) acre-feet of water. This total is to be derived from the sources and in the amounts hereinafter specified and is subject to such quantities being physically available from those sources:

Arikaree River Drainage Basin, 1,000 acre-feet;

South Fork of the Republican River drainage basin, 23,000 acre-feet;

Driftwood Creek drainage basin, 500 acre-feet;

Beaver Creek drainage basin, 6,400 acre-feet;

Sappa Creek drainage basin, 8,800 acre-feet;

Prairie Dog Creek drainage basin, 12,600 acre-feet;

From the main stem of the Republican River upstream from the lowest crossing of the river at the Nebraska-Kansas state line and from water supplies of upstream basins otherwise unallocated herein, 138,000 acre-feet; provided, that Kansas shall have the right to divert all or any portion thereof at or near Guide Rock, Nebraska; and

In addition there is hereby allocated for beneficial consumptive use in Kansas, annually, the entire water supply originating in the Basin downstream from the lowest crossing of the river at the Nebraska-Kansas state line.

There is hereby allocated for beneficial consumptive use in Nebraska, annually, a total of two hundred thirty-four thousand, five hundred (234,500) acre-feet of water. This total is to be derived from the sources and in the amounts hereinafter specified and is subject to such quantities being physically available from those sources:

North Fork of the Republican River drainage basin in Colorado, 11,000 acre-feet;

Frenchman Creek (River) drainage basin in Nebraska, 52,800 acre-feet;

Rock Creek drainage basin, 4,400 acre-feet;

Arikaree River drainage basin, 3,300 acre-feet;

Buffalo Creek drainage basin, 2,600 acre-feet;

South Fork of the Republican River drainage basin, 800 acre-feet;

Driftwood Creek drainage basin, 1,200 acre-feet;

Red Willow Creek drainage basin in Nebraska, 4,200 acre-feet;

Medicine Creek drainage basin, 4,600 acre-feet;

Beaver Creek drainage basin, 6,700 acre-feet;

Sappa Creek drainage basin, 8,800 acre-feet;

Prairie Dog Creek drainage basin, 2,100 acre-feet;

From the North Fork of the Republican River in Nebraska, the main stem of the Republican River between the junction of the North Fork and Arikaree River and the lowest crossing of the river at the Nebraska-Kansas state line, from the small tributaries thereof, and from water supplies of upstream basins otherwise unallocated herein, 132,000 acre-feet.

The use of the waters hereinabove allocated shall be subject to the laws of the State, for use in which the allocations are made.

ARTICLE V

The judgment and all provisions thereof in the case of Adelbert A. Weiland, as State Engineer of Colorado, et al. v. The Pioneer Irrigation Company, decided June 5, 1922, and reported in 259 U.S. 498, affecting the Pioneer Irrigation ditch or canal, are hereby recognized as binding upon the States; and Colorado, through its duly authorized officials, shall have the perpetual and exclusive right to control and regulate diversions of water at all times by said canal in conformity with said judgment.

The water heretofore adjudicated to said Pioneer Canal by the District Court of Colorado, in the amount of fifty (50) cubic feet per second of time is included in and is a part of the total amounts of water hereinbefore allocated for beneficial consumptive use in Colorado and Nebraska.

ARTICLE VI

The right of any person, entity, or lower State to construct, or participate in the future construction and use of any storage reservoir or diversion works in

an upper State for the purpose of regulating water herein allocated for beneficial consumptive use in such lower State, shall never be denied by an upper State; provided, that such right is subject to the rights of the upper State.

ARTICLE VII

Any person, entity, or lower State shall have the right to acquire necessary property rights in an upper State by purchase, or through the exercise of the power of eminent domain, for the construction, operation and maintenance of storage reservoirs, and of appurtenant works, canals and conduits, required for the enjoyment of the privileges granted by Article VI; Provided, however, that the grantees of such rights shall pay to the political subdivisions of the State in which such works are located, each and every year during which such rights are enjoyed for such purposes, a sum of money equivalent to the average annual amount of taxes assessed against the lands and improvements during the ten years preceding the use of such lands, in reimbursement for the loss of taxes to said political subdivisions of the State.

ARTICLE VIII

Should any facility be constructed in an upper State under the provisions of Article VI, such construction and the operation of such facility shall be subject to the laws of such upper State.

Any repairs to or replacements of such facility shall also be made in accordance with the laws of such upper State.

ARTICLE IX

It shall be the duty of the three States to administer this compact through the official in each State who is now or may hereafter be charged with the duty of administering the public water supplies, and to collect and correlate through such officials the data necessary for the proper administration of the provisions of this compact. Such officials may, by unanimous action, adopt rules and regulations consistent with the provisions of this compact.

The United States Geological Survey, or whatever federal agency may succeed to the functions and duties of that agency, insofar as this compact is concerned, shall collaborate with the officials of the States charged with the administration of this compact in the execution of the duty of such officials in the collection, correlation, and publication of water facts necessary for the proper administration of this compact.

ARTICLE X

Nothing in this compact shall be deemed:

(a) To impair or affect any rights, powers or jurisdiction of the United States, or those acting by or under its authority, in, over, and to the waters of the Basin; nor to impair or affect the capacity of the United States, or those acting by or under its authority, to acquire rights in and to the use of waters of the Basin;

(b) To subject any property of the United States, its agencies or instrumentalities, to taxation by any State, or subdivision thereof, nor to create an obligation on the part of the United States, its agencies or instrumentalities, by reason of the acquisition, construction, or operation of any property or works of whatsoever kind, to make any payments to any State or political subdivision thereof, state agency, municipality, or entity whatsoever in reimbursement for the loss of taxes;

(c) To subject any property of the United States, its agencies or instrumentalities, to the laws of any State to any extent other than the extent these laws would apply without regard to this compact.

ARTICLE XI

This compact shall become operative when ratified by the Legislature of each of the States, and when consented to by the Congress of the United States by legislation providing, among other things, that:

(a) Any beneficial consumptive uses by the United States, or those acting by or under its authority, within a State, of the waters allocated by this compact, shall be made within the allocations hereinabove made for use in that State and shall be taken into account in determining the extent of use within that State.

(b) The United States, or those acting by or under its authority, in the exercise of rights or powers arising from whatever jurisdiction the United States has in, over, and to the waters of the Basin shall recognize, to the extent consistent with the best utilization of the waters for multiple purposes, that beneficial consumptive use of the waters within the Basin is of paramount importance to the development of the Basin; and no exercise of such power or right thereby that would interfere with the full beneficial consumptive use of the waters within the Basin shall be made except upon a determination, giving due consideration to the objectives of this compact and after consultation with all interested federal agencies and the state officials charged with the administration of this compact, that such exercise is in the interest of the best utilization of such waters for multiple purposes.

(c) The United States, or those acting by or under its authority, will recognize any established use, for domestic and irrigation purposes, of the waters allocated by this compact which may be impaired by the exercise of federal jurisdiction in, over, and to such waters; provided, that such use is being exercised beneficially, is valid under the laws of the appropriate State and in conformity with this compact at the time of the impairment thereof, and was validly initiated under state law prior to the initiation or authorization of the federal program or project which causes such impairment.

IN WITNESS WHEREOF, the Commissioners have signed this compact in quadruplicate original, one of which shall be deposited in the archives of the Department of State of the United States of America and shall be deemed the authoritative original, and of which a duly certified copy shall be forwarded to the Governor of each of the States.

Done in the City of Lincoln, in the State of Nebraska, on the 31st day of December, in the year of our Lord, one thousand nine hundred forty-two.

M. C. Hinderlider
Commissioner for Colorado
George S. Knapp
Commissioner for Kansas
Wardner G. Scott
Commissioner for Nebraska

I have participated in the negotiations leading to this proposed compact and proposed to report to the Congress of the United States favorably thereon.

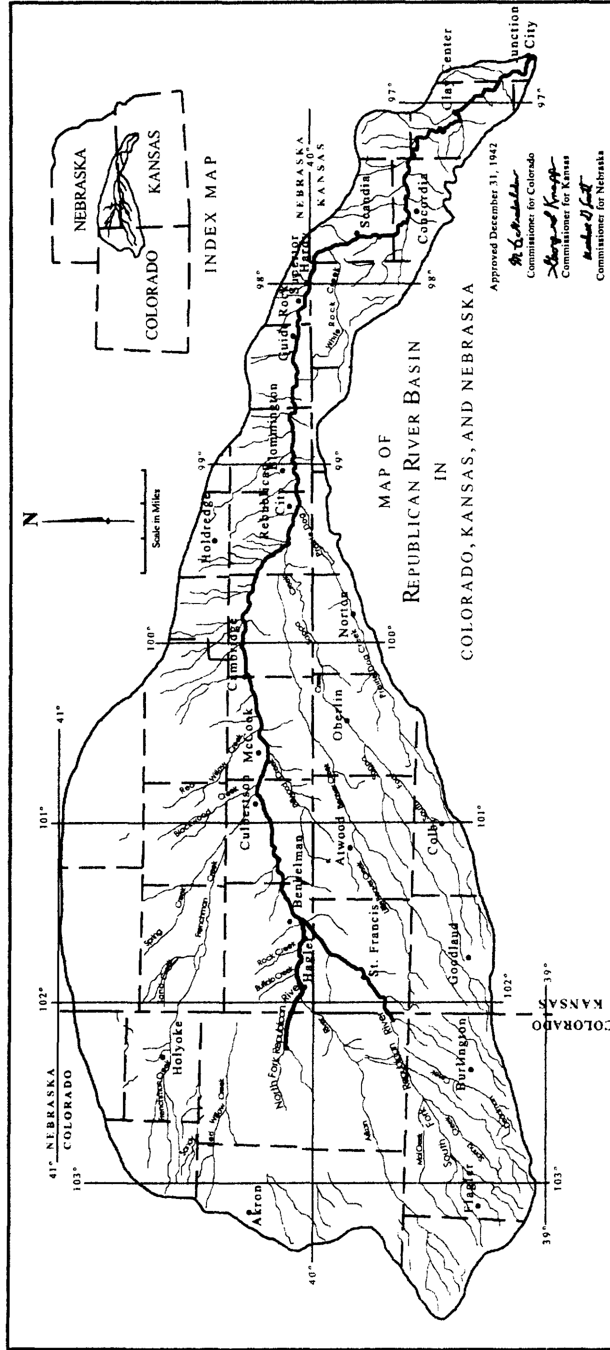
Glenn L. Parker

Representative of the United States.

Sec. 2. That Chapter 92, Session Laws of Nebraska, 1941, is repealed.

Sec. 3. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.

Source: Laws 1943, c. 109, p. 377.



MAP OF
REPUBLICAN RIVER BASIN
IN
COLORADO, KANSAS, AND NEBRASKA
INDEX MAP
NEBRASKA
KANSAS
COLORADO
Scale in Miles
N
Approved December 31, 1942
Commissioner for Colorado
Commissioner for Kansas
Commissioner for Nebraska
Junction City
Clay Center
Concordia
Scandia
Hardy
Superior
Guide Rock
Bloomington
Republican City
Holdrege
Cambridge
McCook
Culbertson
Benkelman
Haigler
Holyoke
Akron
Norton
Oberlin
Atwood
Colby
St. Francis
Goodland
Burlington
Flagler

1-107 ACTS CEDING TO THE UNITED STATES JURISDICTION OVER CERTAIN LANDS IN NEBRASKA

Fort MacPherson National Cemetery. Laws 1939, Chapter 93, p. 406.

North Platte Weather Observation Station. Laws 1907, Chapter 145, p. 456.

Fort Sidney. Laws 1889, Chapter 67, p. 501.

Postoffice in Omaha. Laws 1889, Chapter 63, p. 494.

Postoffice in any city of the State. Laws 1889, Chapter 65, p. 498.

Fort Crook. Laws 1889, Chapter 64, p. 496.

Fort Robinson and Fort Niobrara. Laws 1887, Chapter 83, p. 628.

Nebraska City Federal Buildings. Laws 1883, Chapter 90, p. 335.

1-108 INTERSTATE COMPACT TO CONSERVE OIL AND GAS

AN ACT to authorize and direct the Governor of Nebraska, for and in the name of the State of Nebraska, to join with other states in an Interstate Compact to Conserve Oil and Gas; to provide the Governor with authority to execute agreements for extension thereof and to withdraw therefrom; to provide for an official representative on the Interstate Oil Compact Commission; to permit the Governor to appoint an assistant representative; to provide his powers; and to limit the power of the Governor or the assistant representative to put into effect any rules, regulations, or decisions affecting the oil industry in Nebraska.

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

Section 1. The Governor of the State of Nebraska is hereby authorized and directed for and in the name of the State of Nebraska to join with other states in the Interstate Compact to Conserve Oil and Gas, which was executed in the city of Dallas, Texas, on February 16, 1935, and has been extended to September 1, 1955, with the consent of Congress. Such compact and all extensions are now on deposit with the Department of State of the United States, and is set forth as a part of this act marked ''Exhibit A.''

Sec. 2. The Governor is authorized and empowered, for and in the name of the State of Nebraska to execute agreements for the extension of the expiration date of the Interstate Compact to Conserve Oil and Gas, and to determine if and when it shall be for the best interest of the State of Nebraska to withdraw from the compact upon sixty days' notice as provided by its terms. In the event he shall determine that the state shall withdraw from the compact, he shall have the power and authority to give necessary notice and to take any and all steps necessary and proper to effect withdrawal of the State of Nebraska from the compact.

Sec. 3. The Governor shall be the official representative of the State of Nebraska on the Interstate Oil Compact Commission provided for in the Interstate Compact to Conserve Oil and Gas, and shall exercise and perform for the state all of the powers and duties as members of the Interstate Oil Compact Commission; *Provided*, that he shall have the authority to appoint an assistant representative who shall act in his stead as the official representative of the State of Nebraska as a member of the commission; *and provided further*, that neither the Governor nor his assistant representative shall have any power to put into effect any rules, regulations, or decisions affecting the oil industry in Nebraska without the approval of the Legislature.

''EXHIBIT A

THE INTERSTATE COMPACT TO CONSERVE OIL AND GAS

ARTICLE I

This agreement may become effective within any compacting state at any time as prescribed by that state, and shall become effective within those states ratifying it whenever any three of the states of Texas, Oklahoma, California, Kansas and New Mexico have ratified and Congress has given its consent. Any oil producing state may become a party hereto as hereinafter provided.

ARTICLE II

The purpose of this Compact is to conserve oil and gas by the prevention of physical waste thereof from any cause.

ARTICLE III

Each state bound hereby agrees that within a reasonable time it will enact laws, or if laws have been enacted, then it agrees to continue the same in force, to accomplish within reasonable limits the prevention of:

(a) The operation of any oil well with an inefficient gas-oil ratio.

(b) The drowning with water of any stratum capable of producing oil or gas, or both oil and gas in paying quantities.

(c) The avoidable escape into the open air or the wasteful burning of gas from a natural gas well.

(d) The creation of unnecessary fire hazards.

(e) The drilling, equipping, locating, spacing or operating of a well or wells so as to bring about physical waste of oil or gas or loss in the ultimate recovery thereof.

(f) The inefficient, excessive or improper use of the reservoir energy in producing any well.

The enumeration of the foregoing subjects shall not limit the scope of the authority of any state.

ARTICLE IV

Each state bound hereby agrees that it will, within a reasonable time, enact statutes, or if such statutes have been enacted, then it will continue the same in force, providing in effect that oil produced in violation of its valid oil and/or gas conservation statutes or any valid rule, order or regulation promulgated thereunder, shall be denied access to commerce; and providing for stringent penalties for the waste of either oil or gas.

ARTICLE V

It is not the purpose of this Compact to authorize the states joining herein to limit the production of oil or gas for the purpose of stabilizing or fixing the price thereof, or create or perpetuate monopoly, or to promote regimentation, but is limited to the purpose of conserving oil and gas and preventing the avoidable waste thereof within reasonable limitations.

ARTICLE VI

Each state joining herein shall appoint one representative to a commission hereby constituted and designated as the Interstate Oil Compact Commission, the duty of which said Commission shall be to make inquiry and ascertain from time to time such methods, practices, circumstances and conditions as may be

disclosed for bringing about conservation and the prevention of physical waste of oil and gas, and at such intervals as said Commission deems beneficial it shall report its finding and recommendations to the several states for adoption or rejection.

The Commission shall have power to recommend the coordination of the exercise of the police powers of the several states within their several jurisdictions to promote the maximum ultimate recovery from the petroleum reserve of said states, and to recommend measures for the maximum ultimate recovery of oil and gas. Said Commission shall organize and adopt suitable rules and regulations for the conduct of its business.

No action shall be taken by the Commission except: (1) By the affirmative votes of the majority of the whole number of the compacting states, represented at any meeting, and (2) by a concurring vote of a majority in interest of the compacting states at said meeting, such interest to be determined as follows: Such vote of each state shall be in the decimal proportion fixed by the ratio of its daily average production during the preceding calendar half-year to the daily average production of the compacting states during said period.

ARTICLE VII

No state by joining herein shall become financially obligated to any other state, nor shall the breach of the terms hereof by any state subject such state to financial responsibility to the other states joining herein.

ARTICLE VIII

This Compact shall expire September 1, 1937. But any state joining herein may, upon sixty (60) days' notice, withdraw herefrom.

The representatives of the signatory states have signed this agreement in a single original which shall be deposited in the archives of the Department of State of the United States, and a duly certified copy shall be forwarded to the Governor of each of the signatory states.

This Compact shall become effective when ratified and approved as provided in Article I. Any oil producing state may become a party hereto by affixing its signature to a counterpart to be similarly deposited, certified and ratified.

Done in the City of Dallas, Texas, this sixteenth day of February, 1935.''

Source: Laws 1953, c. 201, p. 704.

1-109 CIVIL DEFENSE AND DISASTER COMPACT

AN ACT to ratify a civil defense and disaster compact on behalf of the State of Nebraska with any other state legally joining thereon; to provide for the prescribed duties of the Secretary of State as prescribed; and to provide the effect of the compact.

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

Section 1. The Legislature of this state hereby ratifies a Civil Defense and Disaster Compact, on behalf of the State of Nebraska, with any other state legally joining therein in the form substantially as follows:

''INTERSTATE CIVIL DEFENSE AND DISASTER COMPACT

The contracting states solemnly agree:

Article 1. The purpose of this compact is to provide mutual aid among the states in meeting any emergency or disaster from enemy attack or other cause (natural or otherwise) including sabotage and subversive acts and direct attacks

by bombs, shellfire, and atomic, radiological, chemical, bacteriological means, and other weapons. The prompt, full and effective utilization of the resources of the respective states, including such resources as may be available from the United States government or any other source, are essential to the safety, care and welfare of the people thereof in the event of enemy action or other emergency, and any other resources, including personnel, equipment or supplies, shall be incorporated into a plan or plans of mutual aid to be developed among the Civil Defense agencies or similar bodies of the states that are parties hereto. The Directors of Civil Defense of all party states shall constitute a committee to formulate plans and take all necessary steps for the implementation of this compact.

Article 2. It shall be the duty of each party state to formulate civil defense plans and programs for application within such state. There shall be frequent consultation between the representatives of the states and with the United States government and the free exchange of information and plans, including inventories of any materials and equipment available for civil defense. In carrying out such defense plans and programs the party states shall so far as possible provide and follow uniform standards, practices and rules and regulations including:

(1) Insignia, arm bands and any other distinctive articles to designate and distinguish the different civil defense services;

(2) Black-outs and practice black-outs, air-raid drills, mobilization of civil defense forces and other tests and exercises;

(3) Warnings and signals for drills or attacks and the mechanical devices to be used in connection therewith;

(4) The effective screening or extinguishing of all lights and lighting devices and appliances;

(5) Shutting off water mains, gas mains, electric power connections and the suspension of all other utility services;

(6) All materials or equipment used or to be used for civil defense purposes in order to assure that such materials and equipment will be easily and freely interchangeable when used in or by any other party state;

(7) The conduct of civilians and the movement and cessation of movement of pedestrians and vehicular traffic, prior, during and subsequent to drills or attacks;

(8) The safety of public meetings or gatherings; and

(9) Mobile support units.

Article 3. Any party state requested to render mutual aid shall take such action as is necessary to provide and make available the resources covered by this compact in accordance with the terms hereof; *Provided*, that it is understood that the state rendering aid may withhold resources to the extent necessary to provide reasonable protection for such state. Each party state shall extend to the civil defense forces of any other party state, while operating within its state limits under the terms and conditions of this compact, the same powers (except that of arrest unless specifically authorized by the receiving state), duties, rights, privileges and immunities as if they were performing their duties in the state in which normally employed or rendering services. Civil defense forces will continue under the command and control of their regular

leaders but the organizational units will come under the operational control of the civil defense authorities of the state receiving assistance.

Article 4. Whenever any person holds a license, certificate or other permit issued by any state evidencing the meeting of qualifications for professional, mechanical or other skills, such person may render aid involving such skill in any party state to meet an emergency or disaster and such state shall give due recognition to such license, certificate or other permit as if issued in the state in which aid is rendered.

Article 5. No party state or its officers or employees rendering aid in another state pursuant to this compact shall be liable on account of any act or omission in good faith on the part of such forces while so engaged, or on account of the maintenance or use of any equipment or supplies in connection therewith.

Article 6. Inasmuch as it is probable that the pattern and detail of the machinery for mutual aid among two or more states may differ from that appropriate among other states party hereto, this instrument contains elements of a broad base common to all states, and nothing herein contained shall preclude any state from entering into supplementary agreements with another state or states. Such supplementary agreements may comprehend, but shall not be limited to, provisions for evacuation and reception of injured and other persons, and the exchange of medical, fire, police, public utility, reconnaissance, welfare, transportation and communications personnel, equipment and supplies.

Article 7. Each party state shall provide for the payment of compensation and death benefits to injured members of the civil defense forces of that state and the representatives of deceased members of such forces in case such members sustain injuries or are killed while rendering aid pursuant to this compact, in the same manner and on the same terms as if the injury or death were sustained within such state.

Article 8. Any party state rendering aid in another state pursuant to this compact shall be reimbursed by the party state receiving such aid for any loss or damage to, or expense incurred in the operation of any equipment answering a request for aid, and for the cost incurred in connection with such requests; *Provided*, that any aiding party state may assume in whole or in part such loss, damage, expense, or other cost, or may loan such equipment or donate such services to the receiving party state without charge or cost; *and provided further*, that any two or more party states may enter into supplementary agreements establishing a different allocation of costs as among those states. The United States government may relieve the party state receiving aid from any liability and reimburse the party state supplying civil defense forces for the compensation paid to and the transportation, subsistence and maintenance expenses of such forces during the time of the rendition of such aid or assistance outside the state and may also pay fair and reasonable compensation for the use or utilization of the supplies, materials, equipment or facilities so utilized or consumed.

Article 9. Plans for the orderly evacuation and reception of the civilian population as the result of an emergency or disaster shall be worked out from time to time between representatives of the party states and the various local civil defense areas thereof. Such plans shall include the manner of transporting such evacuees, the number of evacuees to be received in different areas, the manner in which food, clothing, housing, and medical care will be provided,

the registration of the evacuees, the providing of facilities for the notification of relatives or friends and the forwarding of such evacuees to other areas or the bringing in of additional materials, supplies, and all other relevant factors. Such plans shall provide that the party state receiving evacuees shall be reimbursed generally for the out-of-pocket expenses incurred in receiving and caring for such evacuees, for expenditures for transportation, food, clothing, medicines and medical care and like items. Such expenditures shall be reimbursed by the party state of which the evacuees are residents, or by the United States government under plans approved by it. After the termination of the emergency or disaster the party state of which the evacuees are resident shall assume the responsibility for the ultimate support or repatriation of such evacuees.

Article 10. This compact shall be available to any state, territory or possession of the United States, and the District of Columbia. The term ''state'' may also include any neighboring foreign country or province or state thereof.

Article 11. The committee established pursuant to Article 1 of this compact may request the Civil Defense Agency of the United States government to act as an informational and coordinating body under this compact, and representatives of such agency of the United States government may attend meetings of such committee.

Article 12. This compact shall become operative immediately upon its ratification by any state as between it and any other state or states so ratifying and shall be subject to approval by Congress unless prior Congressional approval has been given. Duly authenticated copies of this compact and of such supplementary agreements as may be entered into shall, at the time of their approval, be deposited with each of the party states and with the Civil Defense Agency and other appropriate agencies of the United States government.

Article 13. This compact shall continue in force and remain binding on each party state until the Legislature or the Governor of such party state takes action to withdraw therefrom. Such action shall be effective until thirty days after notice thereof has been sent by the Governor of the party state desiring to withdraw to the Governors of all other party states.

Article 14. This compact shall be construed to effectuate the purposes stated in Article 1 hereof. If any provision of this compact is declared unconstitutional, or the applicability thereof to any person or circumstance is held invalid, the constitutionality of the remainder of this compact and the applicability thereof to other persons and circumstances shall not be affected thereby.''

Sec. 2. Duly authenticated copies of this act, upon its passage and approval, shall be transmitted by the Secretary of State to the Governor of each state, to the President of the Senate of the United States, to the Speaker of the United States House of Representatives, to the Federal Civil Defense Administration, or any successor agency, to the Secretary of State of the United States, and to the Council of State Governments.

Sec. 3. Nothing in this act shall be construed as a limitation of powers granted in any other act to enter into interstate compacts or other agreements relating to civil defense, or impairing in any respect the force and effect thereof.

Source: Laws 1953, c. 202, p. 709.

1-110 NEBRASKA-SOUTH DAKOTA-WYOMING WATER COMPACT

AN ACT relating to water compacts; to provide for the appointment of a commissioner or commissioners to act on behalf of the State of Nebraska to negotiate a compact among the States of Wyoming, South Dakota, and Nebraska as prescribed; to provide for an equitable division and apportionment among the states of the waters of the Niobrara River and its tributaries; to negotiate a compact between the States of South Dakota and Nebraska; to provide for the equitable division and apportionment between the states of the waters of Ponca Creek and its tributaries; to negotiate a compact by the State of Nebraska with the States of South Dakota and Wyoming, or either of them, relating to the extraction and use of ground waters from sources common to the compacting states; to provide certain powers for such commissioner or commissioners; to provide when such compacts shall become binding upon the states involved or the citizens thereof; and to declare an emergency.

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

Section 1. The Governor of Nebraska shall appoint a commissioner or commissioners who shall (1) represent the State of Nebraska upon a joint commission to be composed of commissioners representing the States of Wyoming, South Dakota, and Nebraska, to be constituted by the states for the purpose of negotiating and entering into a compact or agreement between the states of the waters of the Niobrara River and its tributaries; (2) represent the State of Nebraska upon a joint commission to be composed of commissioners representing the States of South Dakota and Nebraska to be constituted by the states for the purpose of negotiating and entering into a compact or agreement between the states for an equitable division and apportionment between the states of the waters of the Ponca Creek and its tributaries; and (3) represent the State of Nebraska upon a joint commission of the States of (a) Wyoming, South Dakota, and Nebraska, (b) Wyoming and Nebraska, or (c) South Dakota and Nebraska, to be constituted by the states for the purpose of negotiating a compact or compacts relating to the extraction and use of ground water from sources common to the compacting states; *Provided*, that any compact made on behalf of the states herein referred to shall not be binding or obligatory upon any of the states, or the citizens thereof, unless and until the same shall have been ratified by the Legislatures of the compacting states and approved by the Congress of the United States. The commissioner or commissioners shall have complete authority to consider and include in any compact provisions for the conservation of the waters and of the aforesaid streams and may provide for the construction of works in one of the states to control water for use in another of the states.

Sec. 2. Upon appointment of a commissioner or commissioners by the Governor, the commissioner or commissioners shall proceed immediately to meet with the commissioners for the States of Wyoming and South Dakota for the purpose of negotiating the compacts referred to in section 1 of this act.

Source: Laws 1955, c. 230, p. 715.

1-111 NEBRASKA-KANSAS WATER COMPACT COMMISSION

A BILL FOR AN ACT relating to water compacts; to provide for the appointment of a commissioner or commissioners to act on behalf of the State of Nebraska to negotiate a compact between the States of Kansas and Nebraska; to provide for an equitable division and apportionment between the states of the water of the Big Blue River and Little Blue River and their

tributaries; to provide certain powers for such commissioner or commissioners; and to provide when such compact shall become binding upon the states involved or the citizens thereof.

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

Section 1. The Governor of Nebraska may appoint a commissioner or commissioners who shall represent the State of Nebraska upon a joint commission to be composed of commissioners representing the States of Kansas and Nebraska, to be constituted by the states for the purpose of negotiating and entering into a compact or compacts for the equitable division and apportionment between the states of the waters of the Big Blue River and its tributaries and the Little Blue River and its tributaries. Any compact made on behalf of the states herein referred to shall not be binding or obligatory upon either state, or the citizens thereof, unless and until the same shall have been ratified by the Legislatures of the compacting states and approved by the Congress of the United States. The commissioner or commissioners shall have complete authority to consider and include in any compact provisions for the conservation of the waters of the aforesaid streams and may provide for the construction of works in one of the states to control water for use in the other state.

Sec. 2. Upon appointment the commissioner or commissioners shall proceed immediately to meet with the commissioners for the State of Kansas for the purpose of negotiating the compact or compacts referred to in section 1 of this act.

Source: Laws 1959, c. 268, p. 954.

1-112 WYOMING-NEBRASKA COMPACT ON UPPER NIOBRARA RIVER

AN ACT to ratify the compact entered into by the States of Wyoming and Nebraska on October 26, 1962, relating to the Upper Niobrara River; and to declare an emergency.

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

Section 1. The compact respecting the waters of the upper Niobrara River entered into on October 26, 1962, by the States of Wyoming and Nebraska, and in the negotiation of which compact a representative of the President of the United States participated, is ratified and approved in all respects and is as follows:

''UPPER NIOBRARA RIVER COMPACT

The State of Wyoming, and the State of Nebraska, parties signatory to this compact (hereinafter referred to as Wyoming and Nebraska, respectively, or individually as a 'State', or collectively as 'States'), having resolved to conclude a compact with respect to the use of waters of the Niobrara River Basin, and being duly authorized by Act of Congress of the United States of America, approved August 5, 1953 (Public Law 191, 83rd Congress, 1st Session, Chapter 324, 67 Stat. 365) and the Act of May 29, 1958 (Public Law 85-427, 85th Congress, § 2557, 72 Stat. 147) and the Act of August 3, 1961 (Public Law 87-181, 87th Congress, § 2245, 75 Stat. 412) and pursuant to the Acts of their respective Legislatures have, through their respective Governors, appointed as their Commissioners: For Wyoming, Earl Lloyd, Andrew McMaster, Richard Pfister, John Christian, Eugene P. Willson, H. T. Person, Norman B. Gray, E. J. Van Camp: For Nebraska, Dan S. Jones, Jr., who after negotiations participat-

ed in by W. E. Blomgren appointed by the President of the United States of America, have agreed upon the following articles:

ARTICLE I.

A. The major purposes of this compact are to provide for an equitable division or apportionment of the available surface water supply of the Upper Niobrara River Basin between the States; to provide for obtaining information on groundwater and underground water flow necessary for apportioning the underground flow by supplement to this compact; to remove all causes, present and future which might lead to controversies; and to promote interstate comity.

B. The physical and other conditions peculiar to the Upper Niobrara River Basin constitute the basis for this compact; and neither of the States hereby concedes that this compact establishes any general principle or precedent with respect to any other interstate stream.

C. Either State and all others using, claiming or in any other manner asserting any right to the use of waters of the Niobrara River Basin under the authority of that State, shall be subject to the terms of this compact.

ARTICLE II.

A. The term 'Upper Niobrara River' shall mean and include the Niobrara River and its tributaries in Nebraska and Wyoming west of Range 55 West of the 6th P.M.

B. The term 'Upper Niobrara River Basin' or the term 'Basin' shall mean that area in Wyoming and Nebraska which is naturally drained by the Niobrara River west of Range 55 West of the 6th P.M.

C. Where the name of a State or the term 'State' or 'States' is used, they shall be construed to include any person or entity of any nature whatsoever using, claiming, or in any manner asserting any right to the use of the waters of the Niobrara River under the authority of that State.

ARTICLE III.

It shall be the duty of the two States to administer this compact through the official in each State who is now or may hereafter be charged with the duty of administering the public water supplies, and to collect and correlate through such officials the data necessary for the proper administration of the provisions of this compact. Such officials may, by unanimous action, adopt rules and regulations consistent with the provisions of this compact.

The States agree that the United States Geological Survey, or whatever Federal agency may succeed to the functions and duties of that agency, insofar as this compact is concerned, may collaborate with the officials of the States charged with the administration of this compact in the execution of the duty of such officials in the collection, correlation, and publication of information necessary for the proper administration of this compact.

ARTICLE IV.

Each State shall itself or in conjunction with other responsible agencies cause to be established, maintained, and operated such suitable water gaging stations as are found necessary to administer this compact.

ARTICLE V.

A. Wyoming and Nebraska agree that the division of surface waters of the Upper Niobrara River shall be in accordance with the following provisions.

1. There shall be no restrictions on the use of the surface waters of the Upper Niobrara River by Wyoming except as would be imposed under Wyoming law and the following limitations:

(a) No reservoir constructed after August 1, 1957, and used solely for domestic and stock water purposes shall exceed 20 acre-feet in capacity.

(b) Storage reservoirs with priority dates after August 1, 1957, and storing water from the main stem of the Niobrara River east of Range 62 West of the 6th P.M. and from the main stem of Van Tassel Creek south of Section 27, Township 32 North, Range 60 West of the 6th P.M. shall not store in any water year (October 1 of one year to September 30 of the next year) more than a total of 500 acre-feet of water.

(c) Storage in reservoirs with priority dates prior to August 1, 1957, and storing water from the main stem of the Niobrara River east of Range 62 West and from the main stem of Van Tassel Creek south of Section 27, Township 32 North, shall be made only during the period October 1 of one year to June 1 of the next year and at such times during the period June 1 to September 30 that the water is not required to meet the legal requirements by direct flow appropriations in Wyoming and Nebraska west of Range 55 West. Where water is pumped from such storage reservoirs, the quantity of storage water pumped or otherwise diverted for irrigation purposes or other beneficial purposes from any such reservoir in any water year shall be limited to the capacity of such reservoir as shown by the records of the Wyoming State Engineer's office, unless additional storage water becomes available during the period June 1 to September 30 after meeting the legal diversion requirements by direct flow appropriations in Wyoming and in Nebraska west of Range 55 West.

(d) Storage in reservoirs with priority dates after August 1, 1957 and storing water from the main stem of the Niobrara River east of Range 62 West and the main stem of Van Tassel Creek south of Section 27, Township 32 North, shall be made only during the period October 1 of one year to May 1 of the next year and at such times during the period May 1 and September 30 that the water is not required for direct diversion by ditches in Wyoming and in Nebraska west of Range 55 West.

(e) Direct flow rights with priority dates after August 1, 1957, on the main stem of the Niobrara River east of Range 62 West and Van Tassel Creek south of Section 27, Township 32 North, shall be regulated on a priority basis with Nebraska rights west of Range 55 West, provided, that any direct flow rights for a maximum of 143 acres which may be granted by the Wyoming State Engineer with a priority date not later than July 1, 1961 for lands which had Territorial Rights under the Van Tassel No. 4 Ditch with a priority date of April 8, 1882, and the Van Tassel No. 5 Ditch with a priority date of April 18, 1882, shall be exempt from the provisions of this sub-section (e).

(f) All direct flow diversions from the main stem of the Niobrara River east of Range 62 West and from Van Tassel Creek south of Section 27, Township 32 North shall at all times be limited to their diversion rates as specified by Wyoming law, and provided that Wyoming laws relating to diversion of 'Surplus Water' (Wyoming Statutes 1957, Sections 41-181 to 41-188 inclu-

sive) shall apply only when the water flowing in the main channel of the Niobrara River west of Range 55 West is in excess of the legal diversion requirements of Nebraska ditches having priority dates before August 1, 1957.

ARTICLE VI.

A. Nebraska and Wyoming recognize that the futures use of ground water for irrigation in the Niobrara River Basin may be a factor in the depletion of the surface flows of the Niobrara River, and since the data now available are inadequate to make a determination in regard to this matter, any apportionment of the ground water of the Niobrara River Basin should be delayed until such time as adequate data on ground water of the basin are available.

B. To obtain data on ground water, Nebraska and Wyoming, with the cooperation and advice of the United States Geological Survey, Groundwater Branch, shall undertake ground water investigations in the Niobrara River Basin in the area of the Wyoming-Nebraska State Line. The investigations shall be such as are agreed to by the State Engineer of Wyoming and the Director of Water Resources of Nebraska, and may include such observation wells as the said two officials agree are essential for the investigations. Costs of the investigations may be financed under the cooperative groundwater programs between the United States Geological Survey and the States, and the States' share of the costs shall be borne equally by the two States.

C. The ground water investigations shall begin within one year after the effective date of this compact. Upon collection of not more than twelve months of ground water data Nebraska and Wyoming with the cooperation of the United States Geological Survey, shall make, or cause to be made an analysis of such data to determine the desirability or necessity of apportioning the groundwater by supplement to this compact. If, upon completion of the initial analysis, it is determined that apportionment of the groundwater is not then desirable or necessary, reanalysis shall be made at not to exceed two-year intervals, using all data collected until such apportionment is made.

D. When the results of the ground water investigations indicate that apportionment of ground water of the Niobrara River Basin is desirable, the two States shall proceed to negotiate a supplement to this compact apportioning the ground water of the Basin.

E. Any proposed supplement to this compact apportioning the groundwater shall not become effective until ratified by the legislatures of the two States and approved by the Congress of the United States.

ARTICLE VII.

The provisions of this compact shall remain in full force and effect until amended by action of the Legislatures of the Signatory States and until such amendment is consented to and approved by the Congress of the United States in the same manner as this compact is required to be ratified and consented to in order to become effective.

ARTICLE VIII.

Nothing in this compact shall be construed to limit or prevent either State from instituting or maintaining any action or proceeding, legal or equitable, in any court of competent jurisdiction for the protection of any right under this compact or the enforcement of any of its provisions.

ARTICLE IX.

Nothing in this compact shall be deemed:

A. To impair or affect any rights or powers of the United States, its agencies, or instrumentalities, in and to the use of the waters of the Upper Niobrara River Basin nor its capacity to acquire rights in and to the use of said waters; provided that, any beneficial uses of the waters allocated by this compact hereafter made within a State by the United States, or those acting by or under its authority, shall be taken into account in determining the extent of use within that State.

B. To subject any property of the United States, its agencies, or instrumentalities to taxation by either State or subdivision thereof, nor to create an obligation on the part of the United States, its agencies, or instrumentalities, by reason of the acquisition, construction or operation of any property or works of whatsoever kind, to make any payments to any State or political subdivision thereof, State agency, municipality, or entity whatsoever in reimbursement for the loss of taxes.

C. To subject any property of the United States, its agencies, or instrumentalities, to the laws of any State to an extent other than the extent to which these laws would apply without regard to the compact.

D. To affect the obligations of the United States of America to Indians or Indian tribes, or any right owned or held by or for Indians or Indian tribes which is subject to the jurisdiction of the United States.

ARTICLE X.

Should a court of competent jurisdiction hold any part of this compact to contrary to the constitution of any State or of the United States, all other severable provisions shall continue in full force and effect.

ARTICLE XI.

This compact shall become effective when ratified by the Legislatures of each of the signatory States and by the Congress of the United States.

IN WITNESS WHEREOF, the Commissioners have signed this compact in triplicate original, one of which shall be filed in the archives of the United States of America and shall be deemed the authoritative original, and one copy of which shall be forwarded to the Governor of each of the signatory States.

Done at the city of Cheyenne, in the State of Wyoming, this 26th day of October, in the year of our Lord, One Thousand Nine Hundred Sixty-Two 1962.

Commissioner for the State of Nebraska

s/Dan S. Jones, Jr.

Commissioners for the State of Wyoming

s/Earl Lloyd

s/Andrew McMaster

s/Richard Pfister

s/John Christian

s/Eugene P. Willson

s/H. T. Person

s/Norman B. Gray

s/E. J. Van Camp

I have participated in the negotiation of this compact and intend to report favorably thereon to the Congress of the United States.

s/W. E. Blomgren

Representative of the United States of America''

Sec. 2. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.

Source: Laws 1963, c. 332, p. 1063.

1-113 DRIVER LICENSE COMPACT

AN ACT relating to motor vehicles; to adopt a Driver License Compact as prescribed; and to provide an operative date.

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

Section 1. The Driver License Compact is hereby enacted into law and entered into with all other jurisdictions legally joining therein in the form substantially as follows:

ARTICLE I

Definitions

As used in this compact:

(a) State means a state, territory or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(b) Home state means the state which has issued and has the power to suspend or revoke the use of the license or permit to operate a motor vehicle.

(c) Conviction means a conviction of any offense related to the use or operation of a motor vehicle which is prohibited by state law, municipal ordinance or administrative rule or regulation, or a forfeiture of bail, bond, or other security deposited to secure appearance by a person charged with having committed any such offense, and which conviction or forfeiture is required to be reported to the licensing authority.

ARTICLE II

Reports of Conviction

The licensing authority of a party state shall report each conviction of a person from another party state occurring within its jurisdiction to the licensing authority of the home state of the licensee. Such report shall clearly identify the person convicted; describe the violation specifying the section of the statute, code, or ordinance violated; identify the court in which action was taken; indicate whether a plea of guilty or not guilty was entered, or the conviction was a result of the forfeiture of bail, bond or other security; and shall include any special findings made in connection therewith.

ARTICLE III

Effect of Conviction

(a) The licensing authority in the home state, for the purpose of suspension, revocation or limitation of the license to operate a motor vehicle, shall give the same effect to the conduct reported, pursuant to Article II of this compact, as it would if such conduct had occurred in the home state, in the case of convictions for:

(1) Manslaughter or negligent homicide resulting from the operation of a motor vehicle;

(2) Driving a motor vehicle while under the influence of intoxicating liquor or a narcotic drug, or under the influence of any other drug to a degree which renders the driver incapable of safely driving a motor vehicle;

(3) Any felony in the commission of which a motor vehicle is used;

(4) Failure to stop and render aid in the event of a motor vehicle accident resulting in the death or personal injury of another.

(b) As to other convictions, reported pursuant to Article II, the licensing authority in the home state shall give such effect to the conduct as is provided by the laws of the home state.

(c) If the laws of a party state do not provide for offenses or violations denominated or described in precisely the words employed in subdivision (a) of this article, such party state shall construe the denominations and descriptions appearing in subdivision (a) hereof as being applicable to and identifying those offenses or violations of a substantially similar nature and the laws of such party state shall contain such provisions as may be necessary to ensure that full force and effect is given to this article.

ARTICLE IV

Applications for New Licenses

Upon application for a license to drive, the licensing authority in a party state shall ascertain whether the applicant has ever held, or is the holder of a license to drive issued by any other party state. The licensing authority in the state where application is made shall not issue a license to drive to the applicant if:

(1) The applicant has held such a license, but the same has been suspended by reason, in whole or in part, of a violation and if such suspension period has not terminated.

(2) The applicant has held such a license, but the same has been revoked by reason, in whole or in part, of a violation and if such revocation has not terminated, except that after the expiration of one year from the date the license was revoked, such person may make application for a new license if permitted by law. The licensing authority may refuse to issue a license to any such applicant if, after investigation, the licensing authority determines that it will not be safe to grant to such person the privilege of driving a motor vehicle on the public highways.

(3) The applicant is the holder of a license to drive issued by another party state and currently in force unless the applicant surrenders such license.

ARTICLE V

Applicability of Other Laws

Except as expressly required by provisions of this compact, nothing contained herein shall be construed to affect the right of any party state to apply any of its other laws relating to licenses to drive to any person or circumstance, nor to invalidate or prevent any driver license agreement or other cooperative arrangement between a party state and a non-party state.

ARTICLE VI

Compact Administrator and Interchange of Information

(a) The head of the licensing authority of each party state shall be the administrator of this compact for his state. The administrators, acting jointly,

shall have the power to formulate all necessary and proper procedures for the exchange of information under this compact.

(b) The administrator of each party state shall furnish to the administrator of each other party state any information or documents reasonably necessary to facilitate the administration of this compact.

ARTICLE VII

Entry Into Force and Withdrawal

(a) This compact shall enter into force and become effective as to any state when it has enacted the same into law.

(b) Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until six months after the executive head of the withdrawing state has given notice of the withdrawal to the executive heads of all other party states. No withdrawal shall affect the validity or applicability by the licensing authorities of states remaining party to the compact of any report of conviction occurring prior to the withdrawal.

ARTICLE VIII

Construction and Severability

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

Sec. 2. As used in the compact, the term licensing authority with reference to this state, shall mean the Department of Motor Vehicles. Said department shall furnish to the appropriate authorities of any other party state any information or documents reasonably necessary to facilitate the administration of Articles II, III and IV of the compact.

Sec. 3. The compact administrator provided for in Article VI of the compact shall not be entitled to any additional compensation on account of his service as such administrator, but shall be entitled to expenses incurred in connection with his duties and responsibilities as such administrator, in the same manner as for expenses incurred in connection with any other duties or responsibilities of his office or employment.

Sec. 4. As used in the compact, with reference to this state, the term executive head shall mean the Governor.

Sec. 5. Any court or other agency of this state, or a subdivision thereof, which has jurisdiction to take any action, suspending, revoking or otherwise limiting a license to drive, shall report any such action and the adjudication upon which it is based to the Department of Motor Vehicles within ten days on forms approved by the Department of Motor Vehicles.

Sec. 6. Any act or omission of any official or employee of this state done or omitted pursuant to, or in enforcing, the provisions of the Driver License Compact shall be subject to review in accordance with the state administrative procedure act, but any review of the validity of any conviction reported pursuant to the compact shall be limited to establishing the identity of the person so convicted.

Sec. 7. The provisions of this act shall become operative January 1, 1964.

Source: Laws 1963, c. 345, p. 1106.

According to the Driver License Compact, for an out-of-state abstract to be used to assess traffic violation points in Nebraska, the following requirements must be met: (1) the out-of-state action must meet the compact's definition of ''conviction''; (2) the conviction or forfeiture must be one which is required to be reported to the out-of-state licensing authority; (3) the out-of-state report of conviction must contain the information required by article II of the compact; and (4) Nebraska law must provide that the conduct in question may be used to assess points against a driver's license. Jacobson v. Higgins, 243 Neb. 485, 500 N.W.2d 558 (1993).

Revocation of an individual's license to operate a motor vehicle as the result of accumulation of 12 or more points within a period of 2 years is not an act of a state official done pursuant to, or in enforcing, the provisions of the Driver License Compact. Gillespie v. State, 230 Neb. 587, 432 N.W.2d 801 (1988).

To be applicable in Nebraska, report of conviction in another jurisdiction must substantially comply with provisions of Article II of the Driver License Compact, and must be authenticated in due form for admission in evidence in courts of this state. Johnston v. Department of Motor Vehicles, 190 Neb. 606, 212 N.W. 2d 342 (1973).

1-114 MISSOURI-NEBRASKA BOUNDARY COMPACT

Section 1. That on and after the approval and consent of the Congress of the United States of America to this act and a similar and reciprocal act enacted by the General Assembly of the State of Missouri, as hereinafter provided, the boundary line between the States of Missouri and Nebraska shall be as follows:

MISSOURI-NEBRASKA BOUNDARY COMPACT

WHEREAS, the Missouri River has constituted the common territorial boundary between the States of Missouri and Nebraska, being the western boundary of Missouri and the eastern boundary of Nebraska, between the northern boundary of Missouri and the southern boundary of Nebraska; and

WHEREAS, by the forces of nature and the construction by the United States Army Corps of Engineers the flow of the Missouri River has changed its course and the main channel of the river has changed its position in many areas along the common territorial boundary between the states; and

WHEREAS, disputes between the States of Missouri and Nebraska, their political and governmental subdivisions, their citizens, and other persons have arisen and now exist with respect to the location of the true boundary between the states; and

WHEREAS, there has for many years existed between the States of Missouri and Nebraska a question as to the true and correct boundary line between the states; and

WHEREAS, in some areas land is taxed or may be taxed by both states, and in other areas land may be untaxed by either state; and

WHEREAS, the Nebraska courts have found some land to be located in Nebraska and the Missouri courts have found the same land to be located in Missouri; and

WHEREAS, the Missouri River is now relatively stabilized by work done under the direction and supervision of the United States Army Corps of Engineers, and a boundary based upon the present main channel of the Missouri River would be, if the works are properly maintained, as near as can be anticipated at this time, fixed and permanent; and

WHEREAS, it is to the best interest of the States of Missouri and Nebraska, their political and governmental subdivisions, and their citizens to determine a new and compromise boundary between the states, avoid litigation and multiple exercises of sovereignty and jurisdiction, encourage the optimum beneficial use of the river, its facilities, and its waters, and remove all causes of controversy between the states with respect to the boundary between the states; and

WHEREAS, the states, by entering into an agreement of a new boundary, are not recognizing and do not desire to recognize that new boundary as the true and correct former boundary between the states; and

WHEREAS, as between the states, neither state is recognizing any presumptions that the river has moved gradually into the present designed channel location because of the numerous natural cut-offs over the years and the construction and stabilization work by the United States Army Corps of Engineers, which included the dredging of canals and the construction of dikes and revetments, moving the river around and across islands, bar areas, and lands; and

WHEREAS, the states recognize that the United States Army Corps of Engineers has dug numerous canals leaving lands formerly on one side of the river isolated on the other side and the states recognize there may have been many natural cut-offs of the Missouri River prior to the stabilization work by the United States Army Corps of Engineers; and

WHEREAS, as to lands along or in proximity to the Missouri River, the states desire not to disturb private titles or claims which may have been established by private individuals by recognizing or locating any specific areas as belonging to or being within one state or the other, but the states desire to leave any questions of private titles to the parties involved; and

WHEREAS, the terms of this Compact shall be binding upon the states, their political and governmental subdivisions, and the officers and agents thereof; and

WHEREAS, the parties recognize that the present main navigable channel of the Missouri River as it exists within the designed channel as stabilized by the United States Army Corps of Engineers is or may be different from a line parallel and equidistant from the present banks of the Missouri River; and

WHEREAS, the States of Missouri and Nebraska have agreed upon the terms and provisions of a Compact to establish the boundary between the states.

To these ends, the States of Missouri and Nebraska have resolved to conclude a Compact with consent of the Congress of the United States, and have agreed upon the following articles to-wit:

ARTICLE I. Findings and Purposes

(a) The party states find that there are actual and potential disputes, controversies, criminal proceedings, and litigation arising or which may arise out of the location of the boundary line between the States of Missouri and Nebraska, that the Missouri River constituting the boundary between the states has changed its course from time to time, and that the United States Army Corps of Engineers has established a designed channel of the river for navigation and other purposes which designed channel is described and shown in the maps referred to in Article II.

(b) It is the principal purpose of the party states in executing this Compact to establish an identifiable compromise boundary between the States of Missouri

and Nebraska for the entire distance thereof as of the effective date of this Compact without interfering with or otherwise affecting private rights or titles to property, and the party states declare that further compelling purposes of this Compact are: (1) To create a friendly and harmonious interstate relationship; (2) to avoid multiple exercise of sovereignty and jurisdiction including matters of taxation, judicial and police powers, and the exercise of administrative authority; (3) to encourage settlement and disposition of pending litigation and criminal proceedings and to avoid or minimize future disputes and litigation; (4) to promote economic and political stability; (5) to encourage the optimum mutual beneficial use of the Missouri River, its waters, and its facilities; (6) to establish a forum for the settlement of future disputes; (7) to place the boundary in a new or reestablished location which can be identified or located; and (8) to express the intent and policy of the states that the common boundary be established within the confines of the Missouri River, and both states shall continue to have access to and use of the waters of the river.

ARTICLE II. Establishment of Boundary

(a) The permanent compromise boundary line between the States of Missouri and Nebraska shall be fixed at the center line of the designed channel of the Missouri River, except for that land known as McKissick's Island determined by the United States Supreme Court to be within the State of Nebraska in the case of Missouri v. Nebraska, 196 U.S. 23 and 197 U.S. 577, as described on maps jointly prepared and certified by the state surveyors of Missouri and Nebraska and identified as the Missouri-Nebraska Boundary Compact Maps, which maps are incorporated herein and made a part hereof by reference and which maps are on file with the Secretaries of State of Missouri and Nebraska. This center line of the designed channel of the Missouri River is also described in this Compact by metes and bounds in Appendix ''A'' incorporated in this Compact and made a part of this Compact by reference.

(b) This center line of the designed channel of the Missouri River as described on the maps identified as the Missouri-Nebraska Boundary Compact Maps shall hereinafter be referred to as the ''compromise boundary.''

ARTICLE III. Relinquishment of Sovereignty

The State of Missouri hereby relinquishes to the State of Nebraska all sovereignty over all lands lying on the Nebraska side of such compromise boundary and the State of Nebraska hereby relinquishes to the State of Missouri all sovereignty over all lands lying on the Missouri side of such compromise boundary except for that land known as McKissick's Island determined by the Supreme Court of the United States to be within the State of Nebraska in the case of Missouri v. Nebraska, 196 U.S. 23, and 197 U.S. 577, and being more particularly described in the Missouri-Nebraska Boundary Compact Maps.

ARTICLE IV. Pending Litigation

Nothing in this Compact shall be deemed or construed to affect any litigation pending in the courts of either of the States of Missouri or Nebraska as of the effective date of this Compact concerning the title to any of the lands, sovereignty over which is relinquished by the State of Missouri to the State of Nebraska or by the State of Nebraska to the State of Missouri, and any matter concerning the title to lands, sovereignty over which is relinquished by either state to the other, may be continued in the courts of the state where pending until the final determination thereof.

ARTICLE V. Public Records

(a) The public record of real estate titles, mortgages, and other liens in the State of Missouri to any lands, the sovereignty over which is relinquished by the State of Missouri to the State of Nebraska, shall be accepted as evidence of record title to such lands, to and including the effective date of such relinquishment by the State of Missouri, by the courts of the State of Nebraska.

(b) The public record of real estate titles, mortgages, and other liens in the State of Nebraska to any lands, the sovereignty over which is relinquished by the State of Nebraska to the State of Missouri, shall be accepted as evidence of record title to such lands, to and including the effective date of such relinquishment by the State of Nebraska, by the courts of the State of Missouri.

(c) As to lands, the sovereignty over which is relinquished, the recording officials of the counties of each state shall accept for filing documents of title using legal descriptions derived from the land descriptions of the other state. The acceptance of such documents for filing shall have no bearing upon the legal effect or sufficiency thereof.

ARTICLE VI. Taxes

(a) Taxes for the current year lawfully imposed by the States of Missouri or Nebraska may be levied and collected by such state or its authorized governmental subdivisions and agencies on land, jurisdiction over which is relinquished by the taxing state to the other, and any liens or other rights accrued or accruing, including the right of collection, shall be fully recognized and the county treasurers of the counties or other taxing authorities affected shall act as agents in carrying out the provisions of this article. All liens or other rights arising out of the imposition of taxes, accrued or accruing, shall be claimed or asserted within five years after this Compact becomes effective and if not so claimed or asserted shall be forever barred.

(b) The lands, sovereignty over which is relinquished by the State of Missouri to the State of Nebraska, shall not thereafter be subject to the imposition of taxes in the State of Missouri from and after the current year. The lands, sovereignty over which is relinquished by the State of Nebraska to the State of Missouri, shall not thereafter be subject to the imposition of taxes in the State of Nebraska from and after the current year.

ARTICLE VII. Private Rights

(a) This Compact shall not deprive any riparian owner of such riparian owner's rights based upon riparian law and the establishment of the compromise boundary between the states shall not in any way be deemed to change or affect the boundary line of riparian owners along the Missouri River as between such owners. The establishment of the compromise boundary shall not operate to limit such riparian owner's rights to accretions across such compromise boundary.

(b) No private individual or entity claiming title to lands along the Missouri River, over which sovereignty is relinquished by this Compact, shall be prejudiced by the relinquishment of such sovereignty and any claims or possessory rights necessary to establish adverse possession shall not be terminated or limited by the fact that the jurisdiction over such lands may have been transferred by this Compact. Neither state shall assert any claim of title to abandoned beds of the Missouri River, lands along the Missouri River, or the bed of the Missouri River based upon any doctrine of state ownership of the

beds or abandoned beds of navigable waters, as against any land owners or claimants claiming interest in real estate arising out of titles, muniments of title, or exercises of jurisdiction of or from the other state, which titles or muniments of title commenced prior to the effective date of this Compact.

ARTICLE VIII. Readjustment of Boundary by Negotiation

If at any time after the effective date of this Compact the Missouri River shall move or be moved by natural means or otherwise so that the flow thereof at any point along the course forming the boundary between the states occurs entirely within one of the states, each state at the request of the other agrees to enter into and conduct negotiations in good faith for the purpose of readjusting the boundary at the place or places where such movement occurred consistent with the intent, policy, and purpose hereof that the boundary will be placed within the Missouri River.

ARTICLE IX. Effective Date

(a) This Compact shall become effective when ratified by the General Assembly of the State of Missouri and the Legislature of the State of Nebraska and approved by the Congress of the United States.

(b) As of the effective date of this Compact, the States of Missouri and Nebraska shall relinquish sovereignty over the lands described herein and shall assume and accept sovereignty over such lands ceded to them as herein provided.

(c) In the event this Compact is not approved by the General Assembly of the State of Missouri and the Legislature of the State of Nebraska on or before October 1, 1998, and approved by the Congress of the United States within three years from the date hereof, this Compact shall be inoperative and for all purposes shall be void.

ARTICLE X. Enforcement

Nothing in this Compact shall be construed to limit or prevent either state from instituting or maintaining any action or proceeding, legal or equitable, in any court having jurisdiction, for the protection of any right under this Compact or the enforcement of any of its provisions.

ARTICLE XI. Amendments

This Compact shall remain in full force and effect unless amended in the same manner as that by which it was created.

Source: Laws 1971, LB 1034, § 1; Laws 1998, LB 59, § 3.

1-115 BLUE RIVER BASIN COMPACT

A BILL

FOR AN ACT to ratify the compact entered into by the States of Kansas and Nebraska on January 25, 1971, relating to the waters of the basins of the Big Blue River and the Little Blue River; and to provide duties for the Revisor of Statutes as prescribed.

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

Section 1. The compact respecting the waters of the Big Blue River Basin entered into on January 25, 1971, by the States of Kansas and Nebraska, a copy of which was filed in the office of the Secretary of State on January 28, 1971, and in the negotiation of which compact a representative of the President of the United States participated, is ratified and approved in all respects.

Sec. 2. After the effective date of this act, in any future edition of a supplement to the Revised Statutes of Nebraska, 1943, or in any reissue of permanent volume 2A of the Revised Statutes of Nebraska, the Revisor of Statutes is authorized and directed to print the entire compact referred to in section 1 of this act.

KANSAS-NEBRASKA BIG BLUE RIVER COMPACT

PREAMBLE

The State of Kansas and the State of Nebraska, acting through their duly authorized Compact representatives, Keith S. Krause for the State of Kansas and Dan S. Jones, Jr., for the State of Nebraska, after negotiations participated in by Elmo W. McClendon, appointed by the President as the representative of the United States of America, and in accordance with the consent to such negotiations granted by an Act of Congress of the United States of America, approved June 3, 1960, Public Law 489, 86th Congress, 2nd Session, have agreed that the major purposes of this Compact concerning the waters of the Big Blue River and its tributaries are:

A. To promote interstate comity between the States of Nebraska and Kansas;

B. To achieve an equitable apportionment of the waters of the Big Blue River Basin between the two States and to promote orderly development thereof; and

C. To encourage continuation of the active pollution-abatement programs in each of the two States and to seek further reduction in both natural and man-made pollution of the waters of the Big Blue River Basin.

To accomplish these purposes, the said States have agreed as set forth in the following Articles.

Article I—DEFINITIONS

As used in this Compact:

1.1 The term ''State'' shall mean either State signatory hereto, and it shall be construed to include any person, entity, or agency of either State who, by reason of official responsibility or by designation of the Governor of the State, is acting as an official representative of the State;

1.2 The term ''Kansas-Nebraska Big Blue River Compact Administration,'' or the term ''Administration,'' means the agency created by this Compact for the administration thereof;

1.3 The term ''Big Blue River Basin'' means all of the drainage basin of the Big Blue and Little Blue Rivers in Nebraska and Kansas downstream to the confluence of the Big Blue River with the Kansas River near Manhattan, Kansas;

1.4 The term ''Big Blue River Basin in Nebraska'' means all of the drainage basin of the Big Blue River in Nebraska and is exclusive of the drainage basin of the Little Blue River in Nebraska;

1.5 The term ''minimum mean daily flow'' means the minimum mean flow for any one calendar day;

1.6 The term ''pollution'' means contamination or other undesirable alteration of any of the physical, chemical, biological, radiological, or thermal properties of the waters of the basin, or the discharge into the waters of the basin of any liquid, gaseous, or solid substances that create or are likely to result in a nuisance, or that render or are likely to render the waters into which

they are discharged harmful, detrimental, or injurious to public health, safety, or welfare, or that are harmful, detrimental, or injurious to beneficial uses of the water;

1.7 The term ''water project'' means any physical structure of any man-made changes which affect the quantity or quality of natural water supplies or natural streamflows and which are designed to bring about greater beneficial use of the water resources of an area;

1.8 The term ''natural flow'' means that portion of the flow in a natural stream that consists of direct runoff from precipitation on the land surface, groundwater infiltration to the stream, return flows to the natural stream from municipal, agricultural, or other uses, and releases from storage for no designated beneficial use;

1.9 The term ''inactive water appropriation'' means a water right that is subject to cancellation or termination for non-use.

Article II—DESCRIPTION OF THE BASIN

2.1 The Big Blue River, a tributary of the Kansas River, drains an area of 9,696 square miles in south central Nebraska and north central Kansas. About 75 percent of the Big Blue River Basin is in Nebraska, and the remainder is in Kansas. The Big Blue River and its principal tributary, the Little Blue River, join near Blue Rapids, Kansas. From there, the Big Blue River flows generally southward to join the Kansas River near Manhattan, Kansas, as shown on Exhibit A.

2.2 Much of the upper portion of the basin in Nebraska is underlain with sands and gravels that supply large quantities of water to irrigation wells. The lower portion of the basin in Nebraska and that portion of the basin in Kansas lack significant groundwater supplies except within the major stream valleys.

Article III—ORGANIZATION OF COMPACT ADMINISTRATION

3.1 **Administration Agency.** There is hereby established an interstate administrative agency, to be known as the ''Kansas-Nebraska Big Blue River Compact Administration,'' to administer the Compact.

3.2 **Administration Membership.** The Administration shall be composed of one ex officio member and one advisory member from each State, plus a Federal member to be appointed by the President if he so desires. The ex officio member from each State shall be the official charged with the duty of administering the laws of his State pertaining to water rights. Said official shall designate a representative who may serve in his place at meetings of the Administration. All actions taken by the designated representative in the transaction of the business of the Administration shall be in the name of the official he represents and shall be binding on that official. The advisory member from each State may serve in any capacity within the Administration. He shall reside in the Big Blue River Basin portion of the State he represents.

The Governor of each State shall appoint the advisory member from that state for a term of 4 years. This appointment shall be made within 90 days after the effective date of this Compact.

3.3 **Administration Government.** The Administration shall hold its first meeting within 120 days after the effective date of this Compact, and it shall meet at least annually thereafter. The Federal member, if one be designated, shall

serve as Chairman, without vote. If no Federal representative is appointed, the Administration shall select a Chairman, in addition to such officers as may be provided for in the rules and regulations, to serve at the will of the Administration. A meeting quorum shall consist of the ex officio members from both States, or their designated representatives. Each State shall have but one vote, cast by the ex officio member or his representative. All actions must be approved by both ex officio members or their representatives. Minutes of each meeting shall be kept, and they shall be available for public inspection.

3.4 **Administration Powers and Duties.** The Administration shall have the power to adopt rules and regulations consistent with the provisions of this Compact, to enforce such rules and regulations, and to otherwise carry out its responsibilities. It may institute action in its own name in courts of competent jurisdiction to compel compliance with the provisions of this Compact and with the rules and regulations it adopts. The Administration is hereby authorized to employ the technical and clerical staff necessary to carry out its functions, and to maintain the office and appurtenances necessary to conduct its business. It may employ attorneys, engineers, or other consultants. It may purchase equipment and services necessary to its functions.

The Administration shall publish an annual report including a review of its activities and financial status. It may also prepare and publish such other reports and publications as it deems necessary.

In order to provide a sound basis for carrying out the apportionment provisions of this Compact, the Administration shall cause to be established such stream-gaging stations, ground-water observation wells, and other data-collection facilities as are necessary for administering this Compact; and it shall install such other equipment and collect such data therefrom, for a period of not less than 5 years, as are necessary or desirable for evaluating the effects of pumping of wells on the flows of the Big Blue and Little Blue Rivers at the Kansas-Nebraska state line. The well area to be considered is described in Article V, paragraph 5.2. The Administration shall have authority to accept funds from local, State, and Federal sources. It may enter into cooperative agreements and contribute funds to support such data-collection and analysis programs as are necessary for administration of the Compact.

Article IV—RESPONSIBILITY OF EACH STATE

4.1 **Expenses of Administration.** Each State and Federal member of the Administration shall receive such compensation and such reimbursement for travel and subsistence as are provided by the government he represents, and he shall be paid by that government.

4.2 **Budget.** Each year, the Administration shall prepare a properly documented budget covering the anticipated expenditures of the Administration for the following fiscal period. Each State shall make provision in its budget for funds to pay its share of the expenses of the Administration, which shall be divided equally between the States of Kansas and Nebraska. The Administration shall establish a fund to which each State shall contribute equally and from which the expenses of the Administration shall be paid.

4.3 **Records and Information.** The State of Kansas and the State of Nebraska shall cooperate with the Administration and furnish to it such records, information, plans, data, and assistance as may be reasonably available;

and they shall keep the Administration advised of Federal activities in connection with planning, design, construction, operation, and maintenance of water-resource projects in the Big Blue River Basin. Any local, public, or private agency collecting water data or planning, designing, constructing, operating, or maintaining any water project or facility in the Big Blue River Basin shall keep the Administration advised of its investigations and of any proposed changes and additions to existing projects and facilities, and it shall submit plans for new projects to the Administration for review of those project aspects affecting surface-water flowage and quality.

Article V—APPORTIONMENT OF WATERS OF THE BIG BLUE RIVER BASIN

5.1 **Principles of Apportionment.** The physical and other conditions peculiar to the Big Blue River Basin constitute the basis for this apportionment, and neither of the signatory States hereby, nor the Congress of the United States by its consent hereto, concedes that this apportionment establishes any general principle with respect to any other interstate stream. The States of Kansas and Nebraska subscribe to the principle of including storage capacity for low-flow regulation in reservoirs constructed by the U.S. Bureau of Reclamation and the U.S. Army Corps of Engineers, and to the principle of such administration as is required to assure that water released from storage for low-flow regulation shall remain available in the stream to accomplish its intended purpose.

5.2 **Nebraska Apportionment.** The State of Nebraska shall have free and unrestricted use of the waters of the Little Blue and Big Blue River Basins in Nebraska, such use to be in accordance with the laws of the State of Nebraska, subject to the limitations set forth below.

(a) Water appropriations of record in the Little Blue and Big Blue River Basins in Nebraska on November 1, 1968, that were then inactive, shall be cancelled by due process of laws in effect in that State.

(b) During the period, May 1-September 30, the State of Nebraska shall regulate diversions from natural flow of streams in the Little Blue and Big Blue River Basins by water appropriators junior to November 1, 1968, in order to maintain minimum mean daily flows at the state-line gaging stations (which are now located at Fairbury and Barneston, respectively, but which may be relocated at such other places as may be designated state-line gaging stations by the Administration) during each month as follows:

Little Blue River		Big Blue River	
May	45 cfs	May	45 cfs
June	45 cfs	June	45 cfs
July	75 cfs	July	80 cfs
August	80 cfs	August	90 cfs
September	60 cfs	September	65 cfs

When such action is necessary to maintain the above schedule of flows, the State of Nebraska shall:

(1) Limit diversions by natural-flow appropriators in Nebraska in accordance with their water appropriations;

(2) Close, in reverse order of priority, natural-flow appropriations with priority dates subsequent to November 1, 1968, including rights to store water in the conservation-storage zones of reservoirs;

(3) Enjoin all persons not holding valid natural-flow appropriations from taking water during periods when the exercise of junior natural-flow appropriations is being restricted;

(4) Regulate, in the same manner that diversion of natural flows is regulated, withdrawals of water from irrigation wells installed after November 1, 1968, except equivalent wells drilled to replace wells installed before that date, in the alluvium and valley side terrace deposits within one mile from the thread of the river and between the mouth of Walnut Creek and the Kansas-Nebraska state line on the Little Blue River and between the mouth of Turkey Creek and the Kansas-Nebraska state line on the Big Blue River (as delineated on Exhibits A and B of Supplement No. 1 to the Report of the Engineering Committee) provided that, if the regulation of such wells fails to yield any measurable increases in flows at the state-line gaging stations as determined by the investigations to be undertaken under Article III, paragraph 3.4, the regulation of such wells shall be discontinued. Determination of the effect on streamflow of the pumping of such wells shall rest with the Administration.

Delivery of water under the terms of this article shall be deemed to be in compliance with its provisions when the amounts passing the state-line gaging stations are substantially equivalent to the scheduled amounts. Minor irregularities in flow shall be disregarded.

(c) The storage capacity provided in reservoirs in the Little Blue River Basin in Nebraska shall be limited to a total of 200,000 acre-feet. Similarly, the storage capacity in reservoirs in the Big Blue River Basin in Nebraska shall be limited to 500,000 acre-feet. These limitations are exclusive of storage capacity that may be found necessary for regulation and use of waters imported into these basins in Nebraska; exclusive of storage capacity in small reservoir projects where the storage of water for subsequent use is less than 200 acre-feet; exclusive of storage capacity allocated to sedimentation and flood control; and exclusive of storage capacity allocated to, and from which water is released to accomplish, low-flow augmentation for improvement of water quality, for fishery, wildlife, or recreation purposes, or for meeting the flow schedules at the Kansas-Nebraska state line as set out in Article V, paragraph 5.2.

5.3 **Kansas Apportionment.** The State of Kansas shall have free and unrestricted use of all waters of the Big Blue River Basin flowing into Kansas from Nebraska in accordance with this Compact, and of all waters of the basin originating in Kansas, excepting such waters as may, in the future, flow from Kansas into Nebraska.

5.4 **Transbasin Diversion.** In the event of any importation of water into the Big Blue River Basin by either State, the State making the importation shall have exclusive use of such imported water, including identifiable return flows therefrom. Neither State shall authorize the exportation from the Big Blue River of water originating within that basin without the approval of the Administration.

Article VI—WATER QUALITY CONTROL

6.1 The States of Kansas and Nebraska mutually agree to the principle of individual State efforts to control natural and man-made water pollution within each State and to the continuing support of both States in active water pollution control programs.

6.2 The two States agree to cooperate, through their appropriate State agencies, in the investigation, abatement, and control of sources of alleged interstate pollution within the Big Blue River Basin whenever such sources are called to their attention by the Administration.

6.3 The two States agree to cooperate in maintaining the quality of the waters of the Big Blue River Basin at or above such water quality standards as may be adopted, now or hereafter, by the water pollution control agencies of the respective States in compliance with the provisions of the Federal Water Quality Act of 1965, and amendments thereto.

6.4 The two States agree to the principle that neither State may require the other to provide water for the purpose of water quality control as a substitute for adequate waste treatment.

Article VII—GENERAL PROVISIONS

7.1 **Right to Store Water in Upper State.** The right of the State of Kansas or of any person, corporation, local agency, or entity in Kansas to construct or participate in the future construction and use of any storage reservoir or diversion works in the Big Blue and Little Blue Basins of Nebraska for the purpose of regulating water to be used in Kansas shall never be denied; provided, that such right is subject to the laws of the State of Nebraska and that any such storage for use by Kansas shall be excluded from the limitations on storage under Article V, paragraph 5.2(c). Releases of water from storage provided by Kansas interests in the State of Nebraska shall not be counted toward meeting the minimum flow requirements at the State line under the provisions of paragraph 5.2(b).

7.2 **Disclaimer.** Nothing contained in this Compact shall be deemed:

1. To impair, extend, or otherwise affect any right or power of the United States, its agencies, or its instrumentalities involved herein;
2. To subject to the laws of the States of Kansas and Nebraska any property or rights of the United States that were not subject to the laws of those States prior to the date of this Compact;
3. To interfere with or impair the right or power of either signatory State to regulate within its boundaries the appropriation, use, and control of waters within that State consistent with its obligations under this Compact.

7.3 **Invalidity in Part.** Should a court of competent jurisdiction hold any part of this Compact to be contrary to the constitution of either signatory State or to the Constitution of the United States, all other severable provisions of this Compact shall continue in full force and effect.

7.4 **Future Review.** After the expiration of 5 years following the effective date of this Compact, the Administration may review any provisions hereof; and it shall meet for such review whenever a member of the Administration from either State requests such review. All provisions hereof shall remain in full force and effect until changed and amended within the intent of the Compact by unanimous action of the Administration, and until such changes in this Compact are ratified by the Legislatures of the respective States and are consented to by the Congress of the United States, in the same manner that this Compact is required to be ratified and consented to before it becomes effective.

7.5 **Termination.** This Compact may be terminated at any time by appropriate action of the Legislatures of both signatory States. In the event of amendment or termination of the Compact, the water-resource developments made in compliance with, and reliant upon, this Compact shall continue unimpaired.

Article VIII—RATIFICATION

8.1 This Compact shall become binding and obligatory when it shall have been ratified by the Legislature of each State and consented to by the Congress of the United States and when the Congressional act consenting to this Compact includes the consent of Congress to name and join the United States as a party in any litigation in the United States Supreme Court, if the United States is an indispensable party and if the litigation arises out of this Compact or its application, and if a signatory State is a party thereto.

8.2 Notice of ratification by the Legislature of each State shall be given by the Governor of that State to the Governor of the other State and to the President of the United States, and the President is hereby requested to give notice to the Governor of each State of the consent by the Congress of the United States.

IN WITNESS WHEREOF the authorized representatives have executed three counterparts hereof, each of which shall be and constitute an original, one of which shall be deposited with the Administrator of General Services of the United States, and one of which shall be forwarded to the Governor of each State.

Done at Lincoln, Nebraska, this 25th day of January 1971.

/S/ KEITH S. KRAUSE
Commissioner for the State of Kansas
/S/ DAN S. JONES, Jr.
Commissioner for the State of Nebraska

APPROVED:

/S/ ELMO W. McCLENDON
Representative of the United States of America

Source: Laws 1971, LB 609.

BIG BLUE RIVER BASIN
KANSAS - NEBRASKA
BASIN MAP
BIG BLUE RIVER COMPACT

Note:
Irrigation wells taking water from the alluvium or valley side terrace deposits at or not to exceed one mile from the thread of the stream in this reach are to be administered as if they were surface water rights.

1-116 MIDWEST NUCLEAR COMPACT

A BILL

FOR AN ACT ratifying and approving the Midwest Nuclear Compact and providing for the administration thereof.

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

Section 1. The State of Nebraska ratifies and approves the following compact:

MIDWEST NUCLEAR COMPACT

ARTICLE I. POLICY AND PURPOSE

The party states recognize that the proper employment of scientific and technological discoveries and advances in nuclear and related fields and direct and collateral application and adaptation of processes and techniques developed in connection therewith, properly correlated with the other resources of the region, can assist substantially in the industrial progress of the Midwest and the further development of the economy of the region. They also recognize that optimum benefit from nuclear and related scientific or technological resources, facilities and skills requires systematic encouragement, guidance, assistance, and promotion from the party states on a cooperative basis. It is the policy of the party states to undertake such cooperation on a continuing basis. It is the purpose of this compact to provide the instruments and framework for such a cooperative effort in nuclear and related fields, to enhance the economy of the Midwest and contribute to the individual and community well-being of the region's people.

ARTICLE II. THE BOARD

(a) There is hereby created an agency of the party states to be known as the ''Midwest Nuclear Board'', hereinafter called ''the Board''. The Board shall be composed of one member from each party state designated or appointed in accordance with the law of the state which he represents, and serving and subject to removal in accordance with such law. The law of each state also shall make specific provision for the appointment of alternates who are authorized and empowered to act for and on behalf of the Board member in his absence. The designating or appointing authority promptly shall inform the Board of the identity of its member thereon, designated alternate or alternates, and changes therein. If more than one alternate is designated, the designating authority also shall inform the Board of the order in which the alternates are empowered to act.

(b) The federal government may be represented on the Board, without vote, if provision is made by federal law for such representation.

(c) The Board members of the party states shall each be entitled to one vote on the Board. No action of the Board shall be binding unless taken at a meeting at which a majority of all members representing the party states are present and unless a majority of the total number of votes on the Board are cast in favor thereof.

(d) The Board shall have a seal.

(e) The Board shall elect annually, from among its members, a chairman, a vice-chairman, and a treasurer. The Board shall appoint an executive director who shall serve at its pleasure and who also shall act as secretary, and who, together with the treasurer and such other personnel as the Board may determine, shall be bonded in such amounts as the Board may require.

(f) Irrespective of the civil service, personnel or other merit system laws of any of the party states, the executive director, with the approval of the Board, shall appoint and remove or discharge such personnel as may be necessary for the performance of the Board's functions.

(g) The Board may establish and maintain, independently or in conjunction with any one or more of the party states, a suitable retirement system for its full-time employees. Employees of the Board shall be eligible for social security coverage in respect of old age and survivors insurance provided that the Board takes such steps as may be necessary pursuant to federal law to participate in such program of insurance as a governmental agency or unit. The Board may establish and maintain or participate in such additional programs of employee benefits as may be appropriate.

(h) The Board may borrow, accept, or contract for the services of personnel from any state or United States or any subdivision or agency thereof, from any interstate agency, or from any institution, person, firm or corporation.

(i) The Board may accept for any of its purposes and functions under this compact any and all donations, and grants of money, equipment, supplies, materials, and services (conditional or otherwise) from any state or the United States, or any subdivision or agency thereof, or interstate agency, or from any institution, person, firm, or corporation, and may receive, utilize, and dispose of the same. Any arrangements pursuant to this paragraph or paragraph (h) of this Article shall be detailed in the annual report of the Board. Such report shall include the identity of the donor, lender or contractor, the nature of the transaction, and the conditions, if any.

(j) The Board may establish and maintain such facilities as may be necessary for the transacting of its business. The Board may acquire, hold, and convey real and personal property and any interest therein.

(k) The Board shall adopt bylaws for the conduct of its business, and shall have the power to amend and rescind these bylaws. The Board shall publish its bylaws in convenient form, and shall file a copy thereof, and of any amendment thereto, with the designated agency or officer in each of the party states.

(l) The Board annually shall make to the governor and legislature of each party state, a report covering the activities of the Board for the preceding year, and embodying such recommendations as may have been adopted by the Board. The Board may issue such additional reports as it may deem desirable.

ARTICLE III. FINANCE

(a) The Board shall submit to the governor or designated officer or officers of each party state a budget of its estimated expenditures for such period as may be required by the laws of that jurisdiction for presentation to the legislature thereof.

(b) Each of the Board's budgets of estimated expenditures shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states. One half of the total amount of each budget of estimated expenditures shall be apportioned among the party states in accordance with the ratio of their populations to the total population of the entire group of party states based on the last decennial federal census; one quarter of each such budget shall be apportioned among the party states in equal shares; and one quarter of each such budget shall be apportioned among the party states on the basis of the relative average per capita income of the inhabitants in each of the party states based on the latest computations published by the federal census-taking agency. Subject to appropriation by their respective legislatures, the Board shall be provided with such funds by each of the party states as are necessary to provide the means of establishing and maintaining facilities, a staff of personnel, and such activities as may be necessary to fulfill the powers and duties imposed upon and entrusted to the Board.

(c) The Board may meet any of its obligations in whole or in part with funds available to it under Article II (i) of this compact, provided that the Board takes specific action setting aside such funds prior to the incurring of any obligation to be met in whole or in part in this manner. Except where the Board makes use of funds available to it under Article II (i) hereof, the Board shall not incur any obligation prior to the allotment of funds by the party jurisdictions adequate to meet the same.

(d) Expenses and other reasonable costs for each member of the Board in attending Board meetings shall be met by the Board.

(e) The Board shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Board shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the Board shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the Board.

(f) The accounts of the Board shall be open at any reasonable time for inspection by duly authorized representatives of the party states and by persons authorized by the Board.

ARTICLE IV. ADVISORY AND TECHNICAL COMMITTEES

The Board may establish such advisory and technical committees as it may deem necessary, membership on which may include representatives of industry, labor, commerce, agriculture, medicine, health and education; other professional, scientific, and civic groups and interests; officials of local, State and Federal Government; and representatives of the general public, and may cooperate with and use the services of any such committees and the organizations which they represent in furthering any of its activities under this compact.

ARTICLE V. POWERS

The Board shall have power to:

(a) Encourage and promote cooperation among the party states in the development and utilization of nuclear and related technologies and their application to industry and other fields.

(b) Ascertain and analyze on a continuing basis the position of the Midwest with respect to the employment in industry of nuclear and related scientific findings and technologies.

(c) Encourage the development and use of scientific advances and discoveries in nuclear facilities, energy, materials, products, byproducts, and all other appropriate adaptations of scientific and technological advances and discoveries.

(d) Collect, correlate, and disseminate information relating to civilian uses of nuclear energy, materials, and products, and other products and processes resulting from the application of related science and technology.

(e) Conduct, or cooperate in conducting, programs of training for state and local personnel engaged in any aspects of:

1. Nuclear industry, medicine, or education, or the promotion or regulation thereof.

2. Applying nuclear scientific advances or discoveries, and any industrial, commercial or other processes resulting therefrom.

3. The formulation or administration of measures designed to promote safety in any matter related to the development, use or disposal of nuclear energy, materials, products, byproducts, installations, or wastes, or to safety in the production, use and disposal of any other substances peculiarly related thereto.

(f) Organize and conduct, or assist and cooperate in organizing and conducting, demonstrations or research in any of the scientific, technological or industrial fields to which this compact relates.

(g) Undertake such nonregulatory functions with respect to nonnuclear sources of radiation as may promote the economic development and general welfare of the Midwest.

(h) Study industrial, health, safety, and other standards, laws, codes, rules, regulations, and administrative practices in or related to nuclear fields.

(i) Recommend such changes in, or amendments or additions to the laws, codes, rules, regulations, administrative procedures and practices or local laws or ordinances of the party states or their subdivisions in nuclear and related fields, as in its judgment may be appropriate. Any such recommendations shall be made through the appropriate state agency, with due consideration of the desirability of uniformity but shall also give appropriate weight to any special circumstances which may justify variation to meet local conditions.

(j) Consider and make recommendations designed to facilitate the transportation of nuclear equipment, materials, products, byproducts, wastes and any other nuclear or related substances, in such manner and under such conditions as will make their availability or disposal practicable on an economic and efficient basis.

(k) Consider and make recommendations with respect to the assumption of and protection against liability actually or potentially incurred in any phase of operations in nuclear and related fields.

(l) Advise and consult with the federal government concerning the common position of the party states in respect to nuclear and related fields.

(m) Cooperate with the Atomic Energy Commission, the National Aeronautics and Space Administration, the Office of Science and Technology, or any agencies successor thereto, any other officer or agency of the United States, and any other governmental unit or agency or officer thereof, and with any private persons or agencies in any of the fields of its interest.

(n) Act as licensee, contractor or sub-contractor of the United States Government or any party state with respect to the conduct of any research activity requiring such license or contract and operate such research facility or undertake any program pursuant thereto, provided that this power shall be exercised only in connection with the implementation of one or more other powers conferred upon the Board by this compact.

(o) Prepare, publish and distribute (with or without charge) such reports, bulletins, newsletters or other materials as it deems appropriate.

(p) Ascertain from time to time such methods, practices, circumstances, and conditions as may bring about the prevention and control of nuclear incidents in the area comprising the party states, to coordinate the nuclear incident prevention and control plans and the work relating thereto of the appropriate agencies of the party states and to facilitate the rendering of aid by the party states to each other in coping with nuclear incidents. The Board may formulate and, in accordance with need from time to time, revise a regional plan or

regional plans for coping with nuclear incidents within the territory of the party states as a whole or within any subregion or subregions of the geographic area covered by this compact. Any nuclear incident plan in force pursuant to this paragraph shall designate the official or agency in each party state covered by the plan who shall coordinate requests for aid pursuant to Article VI of this compact and the furnishing of aid in response thereto. Unless the party states concerned expressly otherwise agree, the Board shall not administer the summoning and dispatching of aid, but this function shall be undertaken directly by the designated agencies and officers of the party states. However, the plan or plans of the Board in force pursuant to this paragraph shall provide for reports to the Board concerning the occurrence of nuclear incidents and the requests for aid on account thereof, together with summaries of the actual working and effectiveness of mutual aid in particular instances. From time to time, the Board shall analyze the information gathered from reports of aid pursuant to Article VI and such other instances of mutual aid as may have come to its attention, so that experience in the rendering of such aid may be available.

ARTICLE VI. MUTUAL AID

(a) Whenever a party state, or any state or local governmental authorities therein, request aid from any other party state pursuant to this compact in coping with a nuclear incident, it shall be the duty of the requested state to render all possible aid to the requesting state which is consonant with the maintenance of protection of its own people.

(b) Whenever the officers or employees of any party state are rendering outside aid pursuant to the request of another party state under this compact, the officers or employees of such state shall, under the direction of the authorities of the state to which they are rendering aid, have the same powers, duties, rights, privileges and immunities as comparable officers and employees of the state to which they are rendering aid.

(c) No party state or its officers or employees rendering outside aid pursuant to this compact shall be liable on account of any act or omission on their part while so engaged, or on account of the maintenance or use of any equipment or supplies in connection therewith.

(d) All liability that may arise either under the laws of the requesting state or under the laws of the aiding state or under the laws of a third state on account of or in connection with a request for aid, shall be assumed and borne by the requesting state.

(e) Any party state rendering outside aid pursuant to this compact shall be reimbursed by the party state receiving such aid for any loss or damage to, or expense incurred in the operation of any equipment answering a request for aid, and for the cost of all materials, transportation, wages, salaries and maintenance of officers, employees and equipment incurred in connection with such request; provided that nothing herein contained shall prevent any assisting party state from assuming such loss, damage, expense or other cost or from loaning such equipment or from donating such services to the receiving party state without charge or cost.

(f) Each party state shall provide for the payment of compensation and death benefits to injured officers and employees and the representatives of deceased officers and employees in case officers or employees sustain injuries or death while rendering outside aid pursuant to this compact, in the same manner and

on the same terms as if the injury or death were sustained within the state by or in which the officer or employee was regularly employed.

ARTICLE VII. SUPPLEMENTARY AGREEMENTS

(a) To the extent that the Board has not undertaken an activity or project which would be within its power under the provisions of Article V of this compact, any two or more of the party states (acting by their duly constituted administrative officials) may enter into supplementary agreements for the undertaking and continuance of such an activity or project. Any such agreement shall specify its purpose or purposes; its duration and the procedure for termination thereof or withdrawal therefrom; the method of financing and allocating the costs of the activity or project; and such other matters as may be necessary or appropriate. No such supplementary agreement entered into pursuant to this Article shall become effective prior to its submission to and approval by the Board. The Board shall give such approval unless it finds that the supplementary agreement or the activity or project contemplated thereby is inconsistent with the provisions of this compact or a program or activity conducted by or participated in by the Board.

(b) Unless all of the party states participate in a supplementary agreement, any cost or costs thereof shall be borne separately by the states party thereto. The Board, if requested, may administer or otherwise assist in the operation of any supplementary agreement.

(c) No party to a supplementary agreement entered into pursuant to this Article shall be relieved thereby of any obligation or duty assumed by said party state under or pursuant to this compact, except that timely and proper performance of such obligation or duty by means of the supplementary agreement may be offered as performance pursuant to the compact.

(d) The provisions of this Article shall apply to supplementary agreements and activities thereunder, but shall not be construed to repeal or impair any authority which officers or agencies of party states may have pursuant to other laws to undertake cooperative arrangements or projects.

ARTICLE VIII. OTHER LAWS AND RELATIONS

Nothing in this compact shall be construed to:

(a) Permit or require any person or other entity to avoid or refuse compliance with any law, rule, regulation, order or ordinance of a party state or subdivision thereof now or hereafter made, enacted or in force.

(b) Limit, diminish, affect, or otherwise impair jurisdiction exercised by the Atomic Energy Commission, any agency successor thereto, or any other federal department, agency or officer pursuant to and in conformity with any valid and operative act of Congress; nor limit, diminish, affect, or otherwise impair jurisdiction exercised by any officer or agency of a party state, except to the extent that the provisions of this compact may provide therefor.

(c) Alter the relations between and respective internal responsibilities of the government of a party state and its subdivisions.

(d) Permit or authorize the Board to exercise any regulatory authority or to own or operate any nuclear reactor for the commercial generation of electric energy; nor shall the Board own or operate any nuclear facility or installation on a commercial or profit-making basis.

ARTICLE IX. ELIGIBLE PARTIES ENTRY INTO FORCE AND WITHDRAWAL

(a) Any or all of the states of Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, and Wisconsin shall be eligible to become party to this compact.

(b) As to any eligible party state, this compact shall become effective when its legislature shall have enacted the same into law; provided that it shall not become initially effective until enacted into law by six states.

(c) Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall become effective until two years after the governor of the withdrawing state shall have sent formal notice in writing to the governor of each other party state informing said governors of the action of the legislature in repealing the compact and declaring an intention to withdraw. A withdrawing state shall be liable for any obligations which it may have incurred on account of its party status up to the effective date of withdrawal, except that if the withdrawing state has specifically undertaken or committed itself to any performance of an obligation extending beyond the effective date of withdrawal it shall remain liable to the extent of such obligation.

ARTICLE X. SEVERABILITY AND CONSTRUCTION

The provisions of this compact and of any supplementary agreement entered into hereunder shall be severable and if any phrase, clause, sentence or provision of this compact or such supplementary agreement is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact or such supplementary agreement and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact or any supplementary agreement entered into hereunder shall be held contrary to the constitution of any state participating therein, the compact or such supplementary agreement shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters. The provisions of this compact and of any supplementary agreement entered into pursuant hereto shall be liberally construed to effectuate the purposes thereof.

Sec. 2. The member of the Midwest Nuclear Board representing this state shall be appointed by the Governor.

Sec. 3. The alternate required pursuant to Article II (a) of the compact shall be designated by the Midwest Nuclear Board member representing this state, and shall serve at his pleasure in an order specified by him.

Sec. 4. Pursuant to Article II (k) of the compact, the Midwest Nuclear Board shall file copies of its bylaws and any amendments thereto with the Secretary of State.

Sec. 5. The State Employees Retirement System shall enter into coverage agreements pursuant to Article II (g) of the compact with the Midwest Nuclear Board.

Sec. 6. The provisions of Chapter 48, article 1, Reissue Revised Statutes of Nebraska, 1943, and amendments thereto and any benefits payable thereunder shall apply and be payable to any persons dispatched to another state pursuant

to Article VI of the compact. If the aiding personnel are officers or employees of subdivisions of this state, they shall be entitled to the same workmen's compensation or other benefits in case of injury or death to which they would have been entitled if injured or killed while engaged in coping with a nuclear incident in their jurisdiction of regular employment.

Source: Laws 1972, LB 1085; Laws 1973, LB 346.

1-117 MIDWESTERN EDUCATION COMPACT

A BILL

FOR AN ACT to enter into the Midwestern Education Compact.

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

Section 1. That the Governor of Nebraska is hereby authorized and directed to execute a compact on behalf of the State of Nebraska with any of the United States legally joining therein in the form substantially as follows:

ARTICLE I. PURPOSE

The purpose of the Midwestern Education Compact shall be to provide greater educational opportunities and services utilizing both public and private institutions through the establishment and efficient operation and maintenance of coordinated educational programs and services for the citizens residing in the several states which are parties to this Compact, with the aim of furthering access to and choice of education.

ARTICLE II. DEFINITIONS

As used in this act:

A. ''Compact area'' means the geographic area encompassing the compacting states.

B. ''Education'' shall include those programs and services relating to higher education, post-secondary education, and vocational education.

C. ''Supplemental agreement'' means those agreements to the Compact which add to or extend this Compact and which do not change or modify the text of this Compact and which are not inconsistent with the provisions of this Compact.

D. ''Amendment'' means a change in the text of the Compact, including additions or deletions.

ARTICLE III. THE BOARD

A. The compacting states hereby create the Midwestern Education Board, hereinafter called the Board. The Board shall be a body corporate of each compacting state. The Board shall have all the responsibilities, powers and duties set forth herein, including the power to sue and be sued, and such additional powers as may be conferred upon it by subsequent action of the respective legislatures of the compacting states in accordance with the terms of this compact.

B. The Board shall consist of five resident members of each state as follows: the Governor or the Governor's designee who shall serve during the tenure of the office of the Governor; two legislators who shall serve two-year terms and be appointed by the Executive Board of the Legislative Council, and two other citizens of each state, at least one of whom shall be selected from the field of education, to be appointed by the Governor, subject to approval of the Legislature, for four-year terms.

C. The Board shall select annually, from among its members, a chairperson, a vice-chairperson and a treasurer. A governor shall serve as a chairperson during even-numbered years. A legislator shall serve as chairperson during odd-numbered years. Filling of vacancies shall be provided for in the bylaws.

D. The Board may appoint an executive director who shall serve at its pleasure and who also shall act as secretary, and who, together with the treasurer and such other personnel as the Board may determine, shall be bonded in such amounts as the Board may require.

E. Irrespective of the civil service, personnel or other merit system laws of any of the compacting states, the Board in its bylaws shall provide for the personnel policies and programs of the Compact.

F. The Board may establish and maintain, independently of or in conjunction with any one or more of the compacting states, a suitable retirement system for its full-time employees. Employees of the Board shall be eligible for social security coverage in respect of old age and survivors insurance provided that the Board takes such steps as may be necessary pursuant to federal law to participate in such program of insurance as a governmental agency or unit. The Board may establish and maintain or participate in such additional programs of employee benefits as may be appropriate.

G. The Board may borrow, accept, or contract for the services of personnel from any state or the United States or any subdivision or agency thereof, from any interstate agency, or from any institution, foundation, person, firm or corporation.

H. The Board may accept for any of its purposes and functions under this Compact any and all donations, and grants of money, equipment, supplies, materials and services (conditional or otherwise) from any state or the United States or any subdivision or agency thereof, or interstate agency, or from any institution, foundation, person, firm, or corporation, and may receive, utilize and dispose of the same.

I. The Board shall adopt a seal and suitable bylaws for its management and control.

J. The Board may establish and maintain an office within one or more of the compacting states.

K. The Board shall meet at least once each calendar year. The chairperson may call additional meetings and, upon the request of a majority of the Board members of three or more compacting states, shall call additional meetings. Public notice shall be given of all meetings and meetings shall be open to the public.

L. Each compacting state represented at any meeting of the Board is entitled to one vote. A majority of the compacting states shall constitute a quorum for the transaction of business, unless a larger quorum is required by the bylaws of the Board.

M. The Board shall submit a budget to the governor and legislature of each compacting state at such time and for such period as may be required. The budget shall contain specific recommendations of the amount or amounts to be appropriated by each of the compacting states.

N. The Board may establish such committees as it may deem necessary for the carrying out of its functions.

O. The Board may provide for actual and necessary expenses for attendance of its members at official meetings of the Board or its designated committees.

ARTICLE IV. POWERS OF THE BOARD

A. The Board may enter into such contractual agreements with any educational institution in the compact area and with any of the compacting states to provide adequate programs and services in education for the citizens of the respective compacting states. The Board shall, after negotiations with interested institutions and the compacting states, determine the cost of providing the programs and services in education for use in its contractual agreements. The contracting states shall contribute the funds not otherwise provided, as determined by the Board, for carrying out the contractual agreements. The Board may also serve as the administrative and fiscal agent in carrying out contractual agreements for educational programs and services.

B. The Board may enter into contractual agreements with any other interstate education organizations or agencies and with educational institutions not in the compact area and with any of the various states of these United States to provide adequate programs and services in education for the citizens of the respective compacting states. The Board shall, after negotiations with interested institutions and interstate organizations or agencies, determine the cost of providing the programs and services in education for use in these contractual agreements.

C. The Board annually shall report to the member legislatures and governors, to the Midwestern Governors' Conference and the Midwestern Conference of the Council of State Governments covering the activities of the Board for the preceding year, embodying such recommendations as may have been adopted by the Board. The Board shall also undertake studies of needs for educational programs and services in the compact area, the resources for meeting such needs, and the long-range effects of the Compact on education, and from time to time to prepare reports on such research for presentation to the governors and legislatures of the compacting states and other interested parties. In conducting such studies, the Board may confer with any national or regional planning body which may be established. The Board may draft and recommend to the governors and legislatures of the various compacting states suggested legislation dealing with problems of education in the compact area as it deems advisable. By no later than the end of the fourth year from the effective date of the Compact and every two years thereafter, the Board shall review its accomplishments and make recommendations to the governors and legislatures of the compacting states on the continuance of the Compact.

D. Before any two or more states who are parties to this Compact enter into an agreement between and among themselves providing for the establishment, financing and operation of educational services and programs, they shall submit such proposed agreements for the timely informational review and comment by the Board or its designated committee. Agreements in force on the date this Compact becomes initially effective are exempt from this section.

E. The Board shall inventory educational services and programs and shall serve as a clearinghouse on information regarding educational activities among institutions and agencies.

F. The Board shall prepare and adopt, after such research and study as may be necessary, a comprehensive education guide for the compacting states. It shall consist of a compilation of policy statements, goals, and standards

prescribing guides for an orderly educational development of the compact area. The comprehensive development guide shall recognize and encompass educational needs of the compact area and those future developments which are of compact area significance. Upon completion, a report on the comprehensive education guide shall be made to the governor and legislature of each compacting state. The Board shall review and update the education guide at least every five years.

G. Any compacting state may request that the Board review and comment on any proposed educational service which may have compact area educational significance or a substantial effect on compact area educational services. Within 90 days of receipt of the request, the Board shall conduct its review of the submitted proposal and shall comment thereon. All comments shall include a statement of the relationship of the proposal to the comprehensive compact area education guide and of its impact upon the educational development of the compact area. In addition, the Board may, on its own initiative, review and comment on matters it determines to be of compact area significance. Copies of each proposal comment shall be sent to the appropriate legislative officials of each compacting state.

H. The Board may provide consultative services to states and institutions.

ARTICLE V. FINANCE

A. The monies necessary to finance the general operations of the Board not otherwise provided for in carrying forth its duties, responsibilities and powers as stated herein shall be appropriated to the Board by the compacting states, when authorized by the respective legislatures, in the following manner: one-half of the total amount shall be apportioned among the compacting states in equal shares; the other half of the total amount shall be apportioned among the compacting states in accordance with the ratio of their populations to the total population of the entire group of compacting states. Populations shall be determined by the most recent federal census.

B. The Board shall not incur any obligations of any kind prior to the making of appropriations adequate to meet the same; nor shall the Board pledge the credit of any of the compacting states, except by and with the authority of the compacting state.

C. The Board shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Board shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the Board shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the Board.

D. The accounts of the Board shall be open at any reasonable time for inspection by duly authorized representatives of the compacting states and persons authorized by the Board.

ARTICLE VI. ELIGIBLE PARTIES AND ENTRY INTO FORCE

A. The states of Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, Oklahoma, South Dakota, West Virginia and Wisconsin, shall be eligible to become party to this Compact. Additional states will be eligible if approved by a majority of compacting states.

B. As to any eligible party state, this Compact shall become effective when its legislature shall have enacted the same into law; provided that it shall not

become initially effective until enacted into law by six states prior to the 31st day of December 1981.

C. Amendments to the Compact shall become effective upon their enactment by the legislatures of all compacting states. A supplemental agreement to this Compact shall become effective upon its approval by the Board and upon its enactment by two or more of the legislatures of the compacting states and shall be in force for only those states enacting such supplemental agreement.

ARTICLE VII. WITHDRAWAL, DEFAULT AND TERMINATION

A. Any compacting state may withdraw from this Compact by enacting a statute repealing the Compact, but such withdrawal shall not become effective until two years after the enactment of such statute. A withdrawing state shall be liable for any obligations which it may have incurred on account of its party status up to the effective date of withdrawal, except that if the withdrawing state has specifically undertaken or committed itself to any performance of an obligation extending beyond the effective date of withdrawal, it shall remain liable to the extent of such obligation.

B. If any compacting state shall at any time default in the performance of any of its obligations, assumed or imposed, in accordance with the provisions of this Compact, all rights, privileges and benefits conferred by this Compact or agreements hereunder, shall be suspended from the effective date of such default as fixed by the Board, and the Board shall stipulate the conditions and maximum time for compliance under which the defaulting state may resume its regular status. Unless such default shall be remedied under the stipulations and within the time period set forth by the Board, this Compact may be terminated with respect to such defaulting state by affirmative vote of a majority of the other member states. Any such defaulting state may be reinstated by performing all acts and obligations as stipulated by the Board.

ARTICLE VIII. SEVERABILITY AND CONSTRUCTION

The provisions of this Compact and of any supplementary agreement entered into hereunder shall be severable and if any phrase, clause, sentence or provision of this Compact or such supplementary agreement is declared to be contrary to the constitution of any compacting state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this Compact or such supplementary agreement and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this Compact or any supplementary agreement entered into hereunder shall be held contrary to the constitution of any compacting state, the Compact or such supplementary agreement shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters. The provisions of this Compact and of any supplementary agreement entered into pursuant hereto shall be liberally construed to effectuate the purposes thereof.

Source: Laws 1979, LB 291, § 1.

1-118 MISSOURI RIVER BARGE TRAFFIC COMPACT

A BILL

FOR AN ACT to direct the Governor to enter into a compact with Iowa, Missouri, Kansas, and other states having an interest in the promotion of barge traffic on the Missouri River; to develop the Missouri River for

more barge traffic and to promote the use of barges on the Missouri River.

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

Source: Laws 1980, LB 759, title; Laws 1981, LB 118, § 2.

Section 1. The Governor of Nebraska is hereby authorized and directed to execute a compact on behalf of the State of Nebraska with the States of Iowa, Missouri, Kansas, and other states having an interest in the promotion of barge traffic on the Missouri River legally joining therein, in form substantially as follows:

ARTICLE I

The purposes of this compact are to provide for the most efficient use of the waters of the Missouri River; to increase the amount of barge traffic on the Missouri River which flows along or through the compact states; to take necessary steps to develop the Missouri River and its banks to handle more barge traffic than is presently handled; to encourage the use of barges on the Missouri River for transporting bulk goods, especially farm commodities; and to promote joint action between the compact parties to accomplish the above purposes.

ARTICLE II

It shall be the responsibility of the compact states to accomplish the purposes in Article I through the official in each state who is now or may hereafter be charged with the duty of administering the public waters and to collect and correlate through such officials the data necessary for the proper administration of the compact. Such officials may, by unanimous action, adopt rules and regulations to accomplish the purposes of this compact. To render advice and make recommendations to the Nebraska official charged with administration of this compact, the Governor of Nebraska shall appoint an advisory committee to be composed of three individuals with a demonstrated interest in barge transportation. Members of the advisory committee shall serve terms of three years and may be reappointed. Members shall receive no compensation, but shall be reimbursed for their actual and necessary expenses incurred in performing their official duties as provided in sections 81-1174 to 81-1177 for state employees.

ARTICLE III

The states of Iowa, Missouri, Kansas, Nebraska, and other states having an interest in the promotion of barge traffic on the Missouri River agree that within a reasonable time they shall fulfill the obligations of this compact and that each shall authorize the proper official or agency in its state to take the necessary steps to promote the use of barges and develop the Missouri River for greater amounts of barge traffic.

ARTICLE IV

Nothing in this act shall be construed to limit the powers granted in any other act to enter into interstate or other agreements relating to the Missouri River, nor alter the relations between the respective internal responsibilities of the government of a party state and its subdivisions; or impair or affect any rights, powers, or jurisdiction of the United States, or those acting by or under its authority, in, over, and to the waters of the Missouri River.

ARTICLE V

Unless this compact is entered into on or before July 1, 1984, the Governor shall take no further action to execute the compact.

Source: Laws 1980, LB 759, § 1; Laws 1981, LB 118, § 1.

1-119 NONRESIDENT VIOLATOR COMPACT OF 1977

A BILL

FOR AN ACT relating to traffic violations; to amend section 60-426, Reissue Revised Statutes of Nebraska, 1943; to adopt the Nonresident Violator Compact of 1977; to change provisions relating to suspension or revocation of operator's licenses; to repeal the original section; and to declare an emergency.

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

Section 1. The Director of Motor Vehicles may enter into nonresident violator compacts with other jurisdictions. The compacts shall contain, in substantially the same form, the following provisions:

ARTICLE I

(a) In the Nonresident Violator Compact, the following words have the meaning indicated, unless the context requires otherwise.

(b)(1) Citation means any summons, ticket, or other official document issued by a police officer for a traffic violation containing an order which requires the motorist to respond.

(2) Collateral means any cash or other security deposited to secure an appearance for trial, following the issuance by a police officer of a citation for a traffic violation.

(3) Compliance means the act of answering a citation, summons or subpoena through appearance at court or a tribunal, the payment of fines and costs, or both such appearance and payment.

(4) Court means a court of law or traffic tribunal.

(5) Driver's license means any license or privilege to operate a motor vehicle issued under the laws of the home jurisdiction.

(6) Home jurisdiction means the jurisdiction that issued the driver's license of the traffic violator.

(7) Issuing jurisdiction means the jurisdiction in which the traffic citation was issued to the motorist.

(8) Jurisdiction means a state, territory, or possession of the United States, the District of Columbia, Commonwealth of Puerto Rico, Provinces of Canada, or other countries.

(9) Motorist means a driver of a motor vehicle operating in a party jurisdiction other than the home jurisdiction.

(10) Personal recognizance means an agreement by a motorist made at the time of issuance of the traffic citation that he or she will comply with the terms of that traffic citation.

(11) Police officer means any individual authorized by the party jurisdiction to issue a citation for a traffic violation.

(12) Terms of the citation means those options expressly stated upon the citation.

(13) Director shall mean the Director of Motor Vehicles.

ARTICLE II

(a) When issuing a citation for a traffic violation, a police officer shall issue the citation to a motorist who possesses a driver's license issued by a party jurisdiction and shall not, except as provided in paragraph (b) of this article, require the motorist to post collateral to secure appearance, if the officer receives the motorist's personal recognizance that he or she will comply with the terms of the citation.

(b) Unless prohibited by law, personal recognizance is acceptable. If mandatory appearance is required by law, it should take place immediately following issuance of the citation.

(c) Upon failure of a motorist to comply with the terms of a traffic citation, the appropriate official shall report the failure to comply to the licensing authority of the jurisdiction in which the traffic citation was issued and that licensing authority shall transmit the information contained in the report to the licensing authority in the home jurisdiction of the motorist.

(d) The licensing authority of the issuing jurisdiction shall not suspend the privilege of a motorist for whom a report has been transmitted.

(e) The licensing authority of the issuing jurisdiction shall not transmit a report on any violation if the date of transmission is more than six months after the date on which the traffic citation was issued.

(f) The licensing authority of the issuing jurisdiction shall not transmit a report on any violation when the date of issuance of the citation predates the most recent of the effective dates of entry for the two jurisdictions affected.

ARTICLE III

Upon receipt of a report of a failure to comply from the licensing authority of the issuing jurisdiction, the licensing authority of the home jurisdiction shall notify the motorist and initiate a suspension action, in accordance with the home jurisdiction's procedures, to suspend the motorist's driver's license until satisfactory evidence of compliance with the terms of the traffic citation has been furnished to the home jurisdiction licensing authority. Due process safeguards will be accorded.

ARTICLE IV

The provisions of this compact shall not apply to parking or standing violations, highway weight limit violations, and violations of law governing the transportation of hazardous materials.

ARTICLE V

The nonresident violator compact may contain other provisions the director reasonably determines are necessary or appropriate for inclusion in the compact. The Department of Motor Vehicles may adopt and promulgate rules and regulations to carry out the provisions of this section.

ARTICLE VI

This compact shall be known as the Nonresident Violator Compact of 1977.

Source: Laws 1981, LB 344, § 1.

1-120 NEBRASKA BOUNDARY COMMISSION

A BILL

FOR AN ACT relating to boundary lines between South Dakota, Iowa, Missouri, and Nebraska; to provide for the Nebraska Boundary Commission; to provide duties and powers; to provide when any compact shall become binding; to provide for termination; to terminate the existing commission; to repeal Laws 1959, Chapter 267; and to declare an emergency.

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

Section 1. There is hereby established the Nebraska Boundary Commission consisting of (1) the Governor, or his or her designee, (2) the Attorney General, or his or her designee, (3) the State Surveyor, or his or her designee, (4) a member of the Legislature appointed by the Governor, and (5) three persons, one from each of the three congressional districts, from the general public appointed by the Governor. The Governor, or his or her designee, shall serve as chairperson of the commission and shall be responsible for calling the meetings of the commission, managing any funds appropriated to the commission, providing clerical support to the commission, and otherwise administering this act. The Nebraska Boundary Commission shall represent the State of Nebraska in any negotiations or discussions with representatives from the States of South Dakota, Iowa, or Missouri respecting the establishment of official boundaries between Nebraska and any of these states. The Governor, Attorney General, and State Surveyor or their designees and the member of the Legislature shall serve for their terms of office and the other three appointed commissioners from the general public shall serve for indefinite terms, subject to removal at any time by the Governor. The successors to the office of Governor, Attorney General, and State Surveyor shall assume the duties for each office pursuant to this section. The Governor shall fill by appointment any position due to the termination of one of the appointed commissioners. All commissioners shall be reimbursed for their actual and necessary expenses while on commission business as provided in sections 81-1174 to 81-1177, for state employees.

Sec. 2. The Nebraska Boundary Commission is hereby directed to enter into negotiations with South Dakota, Iowa, and Missouri for the purpose of negotiating compacts with each of these states for the establishment of official boundaries between Nebraska and each of these states.

Sec. 3. Any compact negotiated by the Nebraska Boundary Commission shall not be binding or obligatory on the State of Nebraska or its citizens unless and until such compact has been ratified by the legislatures of the states involved and approved by the Congress of the United States.

Sec. 4. As soon as compact agreements to establish official boundaries with South Dakota, Iowa, and Missouri have been negotiated by the Nebraska Boundary Commission, ratified by the legislatures of the states involved, and approved by the United States Congress, the Nebraska Boundary Commission shall be dissolved. If the Nebraska Boundary Commission has not negotiated a compact agreement to establish an official boundary with one or more of such states, which has been ratified by the legislatures of the states involved and approved by the United States Congress, the Nebraska Boundary Commission may be dissolved by the Governor on a finding that further negotiation will not result in progress toward the establishment of an official boundary with any

such state. Once dissolved, the commission shall not be reestablished except by an act of the Legislature.

Source: Laws 1982, LB 669, §§ 1 to 4.

1-121 MISSOURI RIVER BARGE TRAFFIC COMPACT (1984)

A BILL

FOR AN ACT relating to barge traffic on the Missouri River; to direct the Governor to enter into a compact as prescribed.

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

Section 1. The Governor of Nebraska is hereby authorized and directed to execute a compact on behalf of the State of Nebraska with the states of Iowa, Kansas, and Missouri legally joining therein, in form substantially as follows:

ARTICLE I

The purposes of this compact are to provide for planning for the most efficient use of the waters of the Missouri River, to increase the amount of barge traffic on that segment of the Missouri River below Sioux City, to take necessary steps to develop the Missouri River and its banks to handle more barge traffic than is presently handled, to encourage barge use on that segment of the Missouri for transporting bulk goods, especially farm commodities, to insure that the intended increase in barge traffic does not impose unacceptable damage on the Missouri River in all its various uses, including agriculture, wildlife management, and recreational opportunities, to consider the effects of diversion of the waters of the Missouri River on navigation, and to promote joint action between the compact parties to accomplish these purposes. The purposes of the compact do not include lobbying activities against user fees for barge traffic and such activities under this compact are prohibited.

ARTICLE II

It is the responsibility of the four states to accomplish the purposes in Article I through the official in each state charged with the duty of administering the public waters and to collect and correlate through those officials the data necessary for the proper administration of the compact. Those officials may, by unanimous action, adopt rules and regulations to accomplish the purposes of this compact.

ARTICLE III

The states of Iowa, Missouri, Kansas, and Nebraska agree that within a reasonable time they shall fulfill the obligations of this compact and that each shall authorize the proper official or agency in its state to take the necessary steps to promote barge use and develop the Missouri River as it flows between and within the compact states for additional barge traffic.

ARTICLE IV

This compact does not limit the powers granted in any other act to enter into interstate or other agreements relating to the Missouri River flowing between and within the compact states, alter the relations between the respective internal responsibilities of the government of a party state and its subdivisions, or impair or affect any rights, powers, or jurisdiction of the United States, or those acting by or under its authority, in, over, and to those waters of the Missouri River. Adoption of this compact by the Legislature shall not require

the signatory states to adopt any legislation or to appropriate funds for its implementation.

ARTICLE V

Other states having an interest in the promotion of barge traffic on the Missouri River can join in this compact by unanimous consent of the member states.

Any member state can withdraw at any time by appropriate action of its legislature.

Source: Laws 1984, LB 1058.

1-122 INTERSTATE COMPACT ON AGRICULTURAL GRAIN MARKETING

Repealed. Laws 1997, LB 6, § 1.

1-123 SOUTH DAKOTA-NEBRASKA BOUNDARY COMPACT

A BILL

FOR AN ACT to establish certain parts of the boundary between South Dakota and Nebraska.

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

Section 1. Ratification and approval is hereby given to the South Dakota-Nebraska boundary compact as signed at the city of Lincoln in the State of Nebraska on the twenty-fourth day of February 1989 by the duly authorized commissioners of the State of South Dakota and of the State of Nebraska which South Dakota-Nebraska boundary compact is in full as follows:

SOUTH DAKOTA-NEBRASKA BOUNDARY COMPACT

WHEREAS, the Missouri River has constituted the territorial boundary between the State of Nebraska and the State of South Dakota common to Dakota County, Nebraska, and Union County, South Dakota; and

WHEREAS, by the forces of nature and construction, operation and maintenance efforts by agencies of the federal government, the flow of the Missouri River has changed its course, and the main channel of the river has changed its position in many areas along the boundary between said counties of the States; and

WHEREAS, disputes between the State of Nebraska and the State of South Dakota, their political and governmental subdivisions, citizens and other persons have arisen with respect to the location of the true boundary between said counties of the States; and

WHEREAS, there has for many years existed as between said counties of the States, a question as to the true and correct boundary line between them; and

WHEREAS, in some areas land is taxed or may be taxed by governmental bodies in both States and in other areas land may be untaxed by governmental bodies in either State; and

WHEREAS, at times Courts have found some land as located in Nebraska and at other times the Courts have found the same land as located in South Dakota; and

WHEREAS, the Missouri River is now relatively stabilized by work done under the direction and supervision of the United States Army Corps of Engineers, and a boundary based upon the present main channel of the

Missouri River would be, if the works are properly maintained, as near as can be anticipated at this time, fixed and permanent; and

WHEREAS, it is to the best interest of the States of Nebraska and South Dakota, their political and governmental subdivisions and their citizens, to determine a new and compromise boundary between said counties of the States, to avoid litigation and multiple exercises of sovereignty and jurisdiction, to encourage the optimum beneficial use of the river, its facilities and its waters, and to remove all causes of controversy between said States with respect to the boundary between said counties of the States; and

WHEREAS, the States by entering into an Agreement for a new boundary are not recognizing and do not desire to recognize the former Compact boundary established between them by their Legislative actions and the consent of the Congress in 1905; and

WHEREAS, because of the numerous natural cut-offs over the years and the construction and stabilization work by the Corps of Engineers, which included the dredging of channels and construction of dikes and revetments, thus moving the river around and across islands, bar areas, and lands, as between the States, neither of them recognizes any presumption that the river has moved gradually into the present designed channel location; and

WHEREAS, the States recognize that the Corps of Engineers' activities have caused tracts of land formerly on one side of the river to be isolated on the other side, and the States recognize there may have been many natural cut-offs of the Missouri River prior to the stabilization work by the Corps of Engineers; and

WHEREAS, as to lands along or in proximity to the Missouri River, the States desire not to disturb private titles or claims which may have been established by individuals by recognizing or locating any specific areas as belonging to or being within one State or the other; instead the States desire to leave any questions of private titles to the parties involved; and

WHEREAS, the terms of this Compact shall be binding upon the States, their political and governmental subdivisions and officers and agents thereof; and

WHEREAS, the parties recognize that the present main channel of the Missouri River as it exists within the designed channel stabilized by the Corps of Engineers is or may be different from a line parallel and equidistant from the present banks of the Missouri River; and

WHEREAS, the States of Nebraska and South Dakota have agreed upon the terms and provisions of a Compact to establish the boundary between said counties of the States.

To these ends, duly appointed Commissioners for the State of Nebraska and the State of South Dakota jointly convened on February 24, 1989, in Lincoln, Nebraska, and have resolved to conclude a Compact, following enactment by their respective Legislative bodies and with consent of the Congress of the United States, and have agreed upon the following Articles:

ARTICLE I. FINDINGS AND PURPOSES

(a) The State of Nebraska and the State of South Dakota find that there have been actual and potential disputes, controversies, criminal proceedings and litigation arising or which may arise out of the location of the boundary line between Dakota County, Nebraska, and Union County, South Dakota; that the Missouri River constituting the boundary between said counties of the States

has changed its course from time to time, and that the United States Army Corps of Engineers has established a designed channel of the river for navigation and other purposes, which is described and shown in the survey referred to in Article II.

(b) It is the principal purpose of the States in executing this Compact to establish an identifiable compromise boundary between said counties of the States for the entire distance thereof as of the effective date of this Compact without interfering with or otherwise affecting private rights or titles to property, and the States declare that further compelling purposes of this Compact are: (1) to create a friendly and harmonious interstate relationship; (2) to avoid multiple exercise of sovereignty and jurisdiction including matters of taxation, judicial and police powers and exercise of administrative authority; (3) to encourage settlement and disposition of pending litigation and criminal proceedings and avoid or minimize future disputes and litigation; (4) to promote economic and political stability; (5) to encourage the optimum mutual beneficial use of the Missouri River, its waters and its facilities; (6) to establish a forum for settlement of future disputes; (7) to place the boundary in a new or reestablished location which can be identified or located; and (8) to express the intent and policy of the States that the common boundary between said counties be established within the confines of the Missouri River and both States shall continue to have access to and use of the waters of the river.

ARTICLE II. ESTABLISHMENT OF BOUNDARY

(a) The permanent compromise boundary line between said counties of the States shall be fixed at the centerline of the designed channel of the Missouri River (the westerly channel adjacent to Section 5, Township 29 North, Range 7 East of the 6th P.M. shall be considered the main channel). The State of Nebraska and the State of South Dakota by the ratification of this document agree to accurately describe the centerline of the design channel by reference to permanent monuments which shall be placed at locations which are easily accessible and safe from destruction. The Nebraska State Surveyors Office and a representative from South Dakota shall jointly supervise and approve placement of the monuments and the location of the Compact boundary. Upon completion, the maps and record of the survey shall be incorporated herein and made a part hereof by reference. Said maps shall be placed on file with the Secretaries of State of South Dakota and Nebraska. The approval of contracts and all necessary costs for the accurate survey and placement of proper monuments shall be shared equally between the States of South Dakota and Nebraska.

(b) This centerline of the channel of the Missouri River as described on said survey shall hereinafter be referred to as the ''compromise boundary''.

ARTICLE III. RELINQUISHMENT OF SOVEREIGNTY

On the effective date of this Compact, the State of South Dakota hereby relinquishes to the State of Nebraska all sovereignty over lands lying on the Nebraska side of said compromise boundary and the State of Nebraska hereby relinquishes to the State of South Dakota all sovereignty over lands lying on the South Dakota side of compromise boundary.

ARTICLE IV. PENDING LITIGATION

Nothing in this Compact shall be deemed or construed to affect any litigation pending in the Courts of either of the States concerning title to any of the lands,

sovereignty over which is relinquished by the State of South Dakota to the State of Nebraska or by the State of Nebraska to the State of South Dakota and any matter concerning the title to lands, sovereignty over which is relinquished by either State to the other, may be continued in the Courts of the State where pending until a final determination thereof.

ARTICLE V. PUBLIC RECORDS

(a) On and following the effective date of this Compact, the public record of real estate titles, mortgages and other liens in the State of Nebraska to any lands, the sovereignty over which is relinquished by the State of Nebraska to the State of South Dakota, shall be accepted as evidence of record title to such lands, to and including the effective date of such relinquishment by the State of Nebraska, by the Courts of the State of South Dakota.

(b) On and following the effective date of this Compact, the public record of real estate titles, mortgages and other liens in the State of South Dakota to any lands, the sovereignty over which is relinquished by the State of South Dakota to the State of Nebraska, shall be accepted as evidence of record title to such lands, to and including the effective date of such relinquishment by the State of South Dakota, by the Courts of the State of Nebraska.

(c) As to lands, the sovereignty over which is relinquished, on the effective date of this Compact the recording officials of each State including the counties thereof shall accept for filing documents of title using legal descriptions derived from the land descriptions of the other State. The acceptance of such documents for filing shall have no bearing upon the legal effect or sufficiency thereof.

ARTICLE VI. TAXES

(a) Taxes for the calendar year of the effective date of this Compact which are lawfully imposed by either Nebraska or South Dakota may be levied and collected by such State or its authorized governmental subdivisions and agencies on land, subsequent jurisdiction over which is relinquished by the taxing State to the other, and any liens or other rights accrued or accruing, including the right of collection, shall be fully recognized and the county treasurers of the said counties or other taxing authorities affected shall act as agents in carrying out the provisions of this Article; provided, that all liens or other rights arising out of the imposition of taxes, accrued or accruing as aforesaid, shall be claimed or asserted within five years after this Compact becomes effective and if not so claimed or asserted shall be forever barred.

(b) The lands, sovereignty over which is relinquished by the State of South Dakota to the State of Nebraska, shall not thereafter be subject to the imposition of taxes in the State of South Dakota from and after the calendar year of the effective date of this Compact. The lands, sovereignty over which is relinquished by the State of Nebraska to the State of South Dakota, shall not thereafter be subject to the imposition of taxes in the State of Nebraska from and after the calendar year of the effective date of this Compact.

ARTICLE VII. PRIVATE RIGHTS

(a) This Compact shall not deprive any riparian owner of such riparian owner's rights based upon riparian law and the establishment of the compromise boundary between said counties of the States shall not in any way be deemed to change or affect the boundary line of riparian owners along the Missouri River as between such owners. The establishment of the compromise

boundary shall not operate to limit such riparian owner's rights to accretions across such compromise boundary.

(b) No private individual or entity claiming title to lands along the Missouri River, over which sovereignty is relinquished by this Compact, shall be prejudiced by the relinquishment of such sovereignty and any claims or possessory rights necessary to establish adverse possession shall not be terminated or limited by the fact that the jurisdiction over such lands may have been transferred by the Compact. Neither State will assert any claim of title to abandoned beds of the Missouri River, lands along the Missouri River, or the bed of the Missouri River based upon any doctrine of State ownership of the beds or abandoned beds of navigable waters, as against any land owners or claimants claiming interest in real estate arising out of titles, muniments of title, or exercises of jurisdiction of or from the other State, which titles or muniments of title commenced prior to the effective date of this Compact.

ARTICLE VIII. READJUSTMENT OF BOUNDARY BY NEGOTIATION

If at any time after the effective date of this Compact, the Missouri River shall move or be moved by natural means or otherwise so that the flow thereof at any point along the course forming the boundary between the States occurs entirely within one of the States, each State at the request of the other, agrees to enter into and conduct negotiations in good faith for the purpose of readjusting the boundary at the place or places where such movement occurred consistent with the intent, policy and purpose hereof that the boundary will be placed within the Missouri River.

ARTICLE IX. EFFECTIVE DATE

(a) This Compact shall become effective when ratified by the Legislature of the State of Nebraska and the Legislature of the State of South Dakota and approved by the Congress of the United States.

(b) As of the effective date of this Compact, the State of Nebraska and the State of South Dakota shall relinquish sovereignty over the lands described herein and shall assume and accept sovereignty over such lands ceded to them as herein provided.

(c) In the event this Compact is not approved by the Legislature of each State on or before July 1, 1990, and approved by the Congress of the United States within three years from the date hereof, this Compact shall be inoperative and for all purposes shall be void.

ARTICLE X. ENFORCEMENT

Nothing in this Compact shall be construed to limit or prevent either State from instituting or maintaining any action or proceeding, legal or equitable, in any Court having jurisdiction, for the protection of any right under this Compact or the enforcement of any of its provisions.

Sec. 2. The compact is not binding or obligatory upon any of the contracting parties unless and until it has been ratified by the Legislature of each State and approved by the Congress of the United States. The Governor of Nebraska shall give notice of the ratification and approval of the compact by the Nebraska Legislature to the Governor of the State of South Dakota and to the President of the United States.

Source: Laws 1989, LB 817, §§ 1 and 2.

1-124 Emergency Management Assistance Compact.

The Legislature of Nebraska hereby ratifies the Emergency Management Assistance Compact on behalf of the State of Nebraska with any other state legally joining therein in the form substantially as follows:

EMERGENCY MANAGEMENT ASSISTANCE COMPACT

ARTICLE I - PURPOSE AND AUTHORITIES

This compact is made and entered into by and between the participating member states which enact this compact, hereinafter called party state. For the purposes of this agreement, the term ''states'' is taken to mean the several states, the Commonwealth of Puerto Rico, the District of Columbia, and all United States territorial possessions.

The purpose of this compact is to provide for mutual assistance between the states entering into this compact in managing any emergency or disaster that is duly declared by the governor of the affected states, whether arising from natural disaster, technological hazard, manmade disaster, civil emergency aspects of resources shortages, community disorders, insurgency, or enemy attack.

This compact shall also provide for mutual cooperation in emergency-related exercises, testing, or other training activities using equipment and personnel simulating performance of any aspect of the giving and receiving of aid by party states or subdivisions of party states during emergencies, such actions occurring outside actual declared emergency periods. Mutual assistance in this compact may include the use of the states' National Guard forces, either in accordance with the National Guard Mutual Assistance Compact or by mutual agreement between states.

ARTICLE II - GENERAL IMPLEMENTATION

Each party state entering into this compact recognizes many emergencies transcend political jurisdictional boundaries and that intergovernmental coordination is essential in managing these and other emergencies under this compact. Each state further recognizes that there will be emergencies which require immediate access and present procedures to apply outside resources to make a prompt and effective response to such an emergency. This is because few, if any, individual states have all the resources they may need in all types of emergencies or the capability of delivering resources to areas where emergencies exist.

The prompt, full, and effective utilization of resources of the participating states, including any resources on hand or available from the Federal Government or any other source, that are essential to the safety, care, and welfare of the people in the event of any emergency or disaster declared by a party state, shall be the underlying principle on which all articles of this compact shall be understood.

On behalf of the governor of each state participating in the compact, the legally designated state official who is assigned responsibility for emergency management will be responsible for formulation of the appropriate interstate mutual aid plans and procedures necessary to implement this compact.

ARTICLE III - PARTY STATE RESPONSIBILITIES

A. It shall be the responsibility of each party state to formulate procedural plans and programs for interstate cooperation in the performance of the

responsibilities listed in this article. In formulating such plans, and in carrying them out, the party states, insofar as practical, shall:

i. Review individual state hazards analyses and, to the extent reasonably possible, determine all those potential emergencies the party states might jointly suffer, whether due to natural disaster, technological hazard, manmade disaster, emergency aspects of resource shortages, civil disorders, insurgency, or enemy attack.

ii. Review party states' individual emergency plans and develop a plan which will determine the mechanism for the interstate management and provision of assistance concerning any potential emergency.

iii. Develop interstate procedures to fill any identified gaps and to resolve any identified inconsistencies or overlaps in existing or developed plans.

iv. Assist in warning communities adjacent to or crossing the state boundaries.

v. Protect and assure uninterrupted delivery of services, medicines, water, food, energy and fuel, search and rescue, and critical lifeline equipment, services, and resources, both human and material.

vi. Inventory and set procedures for the interstate loan and delivery of human and material resources, together with procedures for reimbursement or forgiveness.

vii. Provide, to the extent authorized by law, for temporary suspension of any statutes or ordinances that restrict the implementation of the above responsibilities.

B. The authorized representative of a party state may request assistance of another party state by contacting the authorized representative of that state. The provisions of this agreement shall only apply to requests for assistance made by and to authorized representatives. Requests may be verbal or in writing. If verbal, the request shall be confirmed in writing within thirty days of the verbal request. Requests shall provide the following information:

i. A description of the emergency service function for which assistance is needed, such as but not limited to fire services, law enforcement, emergency medical, transportation, communications, public works and engineering, building inspection, planning and information assistance, mass care, resource support, health and medical services, and search and rescue.

ii. The amount and type of personnel, equipment, materials, and supplies needed, and a reasonable estimate of the length of time they will be needed.

iii. The specific place and time for staging of the assisting party's response and a point of contact at that location.

C. There shall be frequent consultation between state officials who have assigned emergency management responsibilities and other appropriate representatives of the party states with affected jurisdictions and the United States Government, with free exchange of information, plans, and resource records relating to emergency capabilities.

ARTICLE IV - LIMITATIONS

Any party state requested to render mutual aid or conduct exercises and training for mutual aid shall take such action as is necessary to provide and make available the resources covered by this compact in accordance with the terms hereof; provided that it is understood that the state rendering aid may

withhold resources to the extent necessary to provide reasonable protection for such state. Each party state shall afford to the emergency forces of any party state, while operating within its state limits under the terms and conditions of this compact, the same powers (except that of arrest unless specifically authorized by the receiving state), duties, rights, and privileges as are afforded forces of the state in which they are performing emergency services. Emergency forces will continue under the command and control of their regular leaders, but the organizational units will come under the operational control of the emergency services authorities of the state receiving assistance. These conditions may be activated, as needed, only subsequent to a declaration of a state of emergency or disaster by the governor of the party state that is to receive assistance or commencement of exercises or training for mutual aid and shall continue so long as the exercises or training for mutual aid are in progress, the state of emergency or disaster remains in effect or loaned resources remain in the receiving states, whichever is longer.

ARTICLE V - LICENSES AND PERMITS

Whenever any person holds a license, certificate, or other permit issued by any state party to the compact evidencing the meeting of qualifications for professional, mechanical, or other skills, and when such assistance is requested by the receiving party state, such person shall be deemed licensed, certified, or permitted by the state requesting assistance to render aid involving such skill to meet a declared emergency or disaster, subject to such limitations and conditions as the governor of the requesting state may prescribe by executive order or otherwise.

ARTICLE VI - LIABILITY

Officers or employees of a party state rendering aid in another state pursuant to this compact shall be considered agents of the requesting state for tort liability and immunity purposes; and no party state or its officers or employees rendering aid in another state pursuant to this compact shall be liable on account of any act or omission in good faith on the part of such forces while so engaged or on account of the maintenance or use of any equipment or supplies in connection therewith. Good faith in this article shall not include willful misconduct, gross negligence, or recklessness.

ARTICLE VII - SUPPLEMENTARY AGREEMENTS

Inasmuch as it is probable that the pattern and detail of the machinery for mutual aid among two or more states may differ from that among the states that are party hereto, this instrument contains elements of a broad base common to all states, and nothing herein contained shall preclude any state from entering into supplementary agreements with another state or affect any other agreements already in force between states. Supplementary agreements may comprehend, but shall not be limited to, provisions for evacuation and reception of injured and other persons and the exchange of medical, fire, police, public utility, reconnaissance, welfare, transportation and communications personnel, and equipment and supplies.

ARTICLE VIII - COMPENSATION

Each party state shall provide for the payment of compensation and death benefits to injured members of the emergency forces of that state and representatives of deceased members of such forces in case such members sustain injuries or are killed while rendering aid pursuant to this compact, in the same

manner and on the same terms as if the injury or death were sustained within their own state.

ARTICLE IX - REIMBURSEMENT

Any party state rendering aid in another state pursuant to this compact shall be reimbursed by the party state receiving such aid for any loss or damage to or expense incurred in the operation of any equipment and the provision of any service in answering a request for aid and for the costs incurred in connection with such requests; provided, that any aiding party state may assume in whole or in part such loss, damage, expense, or other cost, or may loan such equipment or donate such services to the receiving party state without charge or cost; and provided further, that any two or more party states may enter into supplementary agreements establishing a different allocation of costs among those states. Article VIII expenses shall not be reimbursable under this provision.

ARTICLE X - EVACUATION

Plans for the orderly evacuation and interstate reception of portions of the civilian population as the result of any emergency or disaster of sufficient proportions to so warrant, shall be worked out and maintained between the party states and the emergency management/services directors of the various jurisdictions where any type of incident requiring evacuations might occur. Such plans shall be put into effect by request of the state from which evacuees come and shall include the manner of transporting such evacuees, the number of evacuees to be received in different areas, the manner in which food, clothing, housing, and medical care will be provided, the registration of the evacuees, the providing of facilities for the notification of relatives or friends, and the forwarding of such evacuees to other areas or the bringing in of additional materials, supplies, and all other relevant factors. Such plans shall provide that the party state receiving evacuees and the party state from which the evacuees come shall mutually agree as to reimbursement of out-of-pocket expenses incurred in receiving and caring for such evacuees, for expenditures for transportation, food, clothing, medicines and medical care, and like items. Such expenditures shall be reimbursed as agreed by the party state from which the evacuees come. After the termination of the emergency or disaster, the party state from which the evacuees come shall assume the responsibility for the ultimate support of repatriation of such evacuees.

ARTICLE XI - IMPLEMENTATION

A. This compact shall become operative immediately upon its enactment into law by any two states; thereafter, this compact shall become effective as to any other state upon its enactment by such state.

B. Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until thirty days after the governor of the withdrawing state has given notice in writing of such withdrawal to the governors of all other party states. Such action shall not relieve the withdrawing state from obligations assumed hereunder prior to the effective date of withdrawal.

C. Duly authenticated copies of this compact and of such supplementary agreements as may be entered into shall, at the time of their approval, be deposited with each of the party states and with the Federal Emergency

Management Agency and other appropriate agencies of the United States Government.

ARTICLE XII - VALIDITY

This compact shall be construed to effectuate the purposes stated in Article I hereof. If any provision of this compact is declared unconstitutional, or the applicability thereof to any person or circumstances is held invalid, the constitutionality of the remainder of this compact and the applicability thereof to other persons and circumstances shall not be affected thereby.

ARTICLE XIII - ADDITIONAL PROVISIONS

Nothing in this compact shall authorize or permit the use of military force by the National Guard of a state at any place outside that state in any emergency for which the President is authorized by law to call into federal service the militia, or for any purpose for which the use of the Army or the Air Force would in the absence of express statutory authorization be prohibited under 18 U.S.C. 1385.

Source: Laws 1999, LB 83, § 1.

APPENDIX
CLASSIFICATION OF PENALTIES

CLASS I FELONY **Death**

28-303	Murder in the first degree

CLASS IA FELONY **Life imprisonment without parole**

28-202	Criminal conspiracy to commit a Class IA felony
28-303	Murder in the first degree
28-313	Kidnapping
28-391	Murder of an unborn child in the first degree
28-1223	Using explosives to damage or destroy property resulting in death
28-1224	Using explosives to kill or injure any person resulting in death

CLASS IB FELONY **Maximum—life imprisonment**
Minimum—twenty years imprisonment

28-111	Sexual assault of a child in the first degree committed against a person because of his or her race, color, religion, ancestry, national origin, gender, sexual orientation, age, or disability or because of his or her association with such a person
28-111	Sexual assault of a child in the second or third degree, with prior sexual assault convictions, committed against a person because of his or her race, color, religion, ancestry, national origin, gender, sexual orientation, age, or disability or because of his or her association with such a person
28-115	Sexual assault of a child in the second or third degree with prior sexual assault conviction committed against a pregnant woman
28-115	Sexual assault of a child in the first degree committed against a pregnant woman
28-202	Criminal conspiracy to commit a Class IB felony
28-304	Murder in the second degree
*28-319.01	Sexual assault of a child in the first degree with prior sexual assault conviction
28-392	Murder of an unborn child in the second degree
28-416	Knowingly or intentionally manufacturing, distributing, delivering, dispensing, or possessing with intent to manufacture, distribute, deliver, or dispense amphetamine or methamphetamine in a quantity of 140 grams or more
28-416	Offenses relating to amphetamine or methamphetamine in a quantity of at least 10 grams but less than 28 grams, second or subsequent offense involving minors or near youth facilities
28-416	Offenses relating to amphetamine or methamphetamine in a quantity of 28 grams or more involving minors or near youth facilities
28-416	Possessing a firearm while violating prohibition on the manufacture, distribution, delivery, dispensing, or possession of amphetamine or methamphetamine in a quantity of at least 28 grams
28-416	Knowingly or intentionally manufacturing, distributing, delivering, dispensing, or possessing with intent to manufacture, distribute, deliver, or dispense cocaine or any mixture containing cocaine, or base cocaine (crack) or any mixture containing base cocaine, in a quantity of 140 grams or more
28-416	Knowingly or intentionally manufacturing, distributing, delivering, dispensing, or possessing with intent to manufacture, distribute, deliver, or dispense heroin or any mixture containing heroin in a quantity of 140 grams or more
28-416	Offenses relating to cocaine or base cocaine (crack) in a quantity of 28 grams or more involving minors or near youth facilities

28-416	Offenses relating to cocaine or base cocaine (crack) in a quantity of at least 10 grams but less than 28 grams, second or subsequent offense involving minors or near youth facilities
28-416	Possessing a firearm while violating prohibition on the manufacture, distribution, delivery, dispensing, or possession of cocaine or any mixture containing cocaine, or base cocaine (crack) or any mixture containing base cocaine, in a quantity of 28 grams or more
28-416	Offenses relating to heroin in a quantity of 28 grams or more involving minors or near youth facilities
28-416	Offenses relating to heroin in a quantity of at least 10 grams but less than 28 grams, second or subsequent offense involving minors or near youth facilities
28-416	Possessing a firearm while violating prohibition on the manufacture, distribution, delivery, dispensing, or possession of heroin or any mixture containing heroin in a quantity of at least 28 grams
28-457	Permitting a child or vulnerable adult to inhale, have contact with, or ingest methamphetamine resulting in death
28-707	Child abuse committed knowingly and intentionally and resulting in death

CLASS IC FELONY — **Maximum—fifty years imprisonment**
Mandatory minimum—five years imprisonment

28-202	Criminal conspiracy to commit a Class IC felony
*28-320.01	Sexual assault of a child in the second degree with prior sexual assault conviction
28-320.01	Sexual assault of a child in the third degree with prior sexual assault conviction
28-416	Knowingly or intentionally manufacturing, distributing, delivering, dispensing, or possessing with intent to manufacture, distribute, deliver, or dispense cocaine or any mixture containing cocaine, or base cocaine (crack) or any mixture containing base cocaine, in a quantity of at least 28 grams but less than 140 grams
28-416	Knowingly or intentionally manufacturing, distributing, delivering, dispensing, or possessing with intent to manufacture, distribute, deliver, or dispense heroin or any mixture containing heroin in a quantity of at least 28 grams but less than 140 grams
28-416	Offenses relating to cocaine or base cocaine (crack) in a quantity of at least 10 grams but less than 28 grams, first offense involving minors or near youth facilities
28-416	Offenses relating to heroin in a quantity of at least 10 grams but less than 28 grams, first offense involving minors or near youth facilities
28-416	Possessing a firearm while violating prohibition on the manufacture, distribution, delivery, dispensing, or possession of cocaine or any mixture containing cocaine, or base cocaine (crack) or any mixture containing base cocaine, in a quantity of at least 10 grams but less than 28 grams
28-416	Possessing a firearm while violating prohibition on the manufacture, distribution, delivery, dispensing, or possession of heroin or any mixture containing heroin in a quantity of at least 10 grams but less than 28 grams
28-416	Manufacture, distribute, deliver, dispense, or possess exceptionally hazardous drug in Schedule I, II, or III of section 28-405, second or subsequent offense involving minors or near youth facilities
28-416	Knowingly or intentionally manufacturing, distributing, delivering, dispensing, or possessing with intent to manufacture, distribute, deliver, or dispense amphetamine or methamphetamine in a quantity of at least 28 grams but less than 140 grams
28-416	Offenses relating to amphetamine or methamphetamine in a quantity of at least 10 grams but less than 28 grams, first offense involving minors or near youth facilities

28-416 Possessing a firearm while violating prohibition on the manufacture, distribution, delivery, dispensing, or possession of amphetamine or methamphetamine in a quantity of at least 10 grams but less than 28 grams

CLASS ID FELONY **Maximum—fifty years imprisonment**
Mandatory minimum—three years imprisonment

28-111 Kidnapping (certain situations) committed against a person because of his or her race, color, religion, ancestry, national origin, gender, sexual orientation, age, or disability or because of his or her association with such a person

28-111 Sexual assault in the first degree committed against a person because of his or her race, color, religion, ancestry, national origin, gender, sexual orientation, age, or disability or because of his or her association with such a person

28-111 Arson in the first degree committed against a person because of his or her race, color, religion, ancestry, national origin, gender, sexual orientation, age, or disability or because of his or her association with such a person

28-111 Sexual assault of a child in the second degree, first offense, committed against a person because of his or her race, color, religion, ancestry, national origin, gender, sexual orientation, age, or disability or because of his or her association with such a person

28-115 Sexual assault in the first degree committed against a pregnant woman

28-115 Sexual assault of a child in the second degree, first offense, committed against a pregnant woman

28-115 Domestic assault in the first degree, second or subsequent offense against same intimate partner, committed against a pregnant woman

28-115 Assault on an officer in the first degree committed against a pregnant woman

28-115 Certain acts of assault, terroristic threats, kidnapping, or false imprisonment committed by legally confined person against a pregnant woman

28-202 Criminal conspiracy to commit a Class ID felony

28-416 Knowingly or intentionally manufacturing, distributing, delivering, dispensing, or possessing with intent to manufacture, distribute, deliver, or dispense cocaine or any mixture containing cocaine, or base cocaine (crack) or any mixture containing base cocaine, in a quantity of at least 10 grams but less than 28 grams

28-416 Knowingly or intentionally manufacturing, distributing, delivering, dispensing, or possessing with intent to manufacture, distribute, deliver, or dispense heroin or any mixture containing heroin in a quantity of at least 10 grams but less than 28 grams

28-416 Knowingly or intentionally manufacturing, distributing, delivering, dispensing, or possessing with intent to manufacture, distribute, deliver, or dispense amphetamine or methamphetamine in a quantity of at least 10 grams but less than 28 grams

28-416 Manufacture, distribute, deliver, dispense, or possess exceptionally hazardous drug in Schedule I, II, or III of section 28-405, first offense involving minors or near youth facilities

28-416 Possessing a firearm while violating prohibition on the manufacture, distribution, delivery, dispensing, or possession of an exceptionally hazardous drug in Schedule I, II, or III of section 28-405

28-416 Manufacture, distribute, deliver, dispense, or possess certain controlled substances in Schedule I, II, or III of section 28-405, second or subsequent offense involving minors or near youth facilities

CLASS II FELONY **Maximum—fifty years imprisonment**
Minimum—one year imprisonment

28-111	Manslaughter committed against a person because of his or her race, color, religion, ancestry, national origin, gender, sexual orientation, age, or disability or because of his or her association with such a person
28-111	Assault in the first degree committed against a person because of his or her race, color, religion, ancestry, national origin, gender, sexual orientation, age, or disability or because of his or her association with such a person
28-111	Sexual assault in the second degree committed against a person because of his or her race, color, religion, ancestry, national origin, gender, sexual orientation, age, or disability or because of his or her association with such a person
28-111	Arson in the second degree committed against a person because of his or her race, color, religion, ancestry, national origin, gender, sexual orientation, age, or disability or because of his or her association with such a person
28-115	Assault in the first degree committed against a pregnant woman
28-115	Sexual assault in the second degree committed against a pregnant woman
28-115	Sexual abuse of an inmate or parolee in the first degree committed against a pregnant woman
28-115	Sexual abuse of a protected individual, first degree, committed against a pregnant woman
28-115	Domestic assault in the first degree, first offense, committed against a pregnant woman
28-115	Domestic assault in the second degree, second or subsequent offense against same intimate partner, committed against a pregnant woman
28-115	Assault on an officer in the second degree committed against a pregnant woman
28-201	Criminal attempt to commit a Class I, IA, or IB felony
28-202	Criminal conspiracy to commit a Class I or II felony
*28-306	Motor vehicle homicide by person driving under the influence of alcohol or drugs with prior conviction of driving under the influence of alcohol or drugs
28-313	Kidnapping (certain situations)
*28-319	Sexual assault in the first degree
28-320.01	Sexual assault of a child in the second degree, first offense
28-323	Domestic assault in the first degree, second or subsequent offense against same intimate partner
28-324	Robbery
28-416	Manufacture, distribute, deliver, dispense, or possess exceptionally hazardous drug in Schedule I, II, or III of section 28-405
28-416	Manufacture, distribute, deliver, dispense, or possess certain controlled substances in Schedule I, II, or III of section 28-405, first offense involving minors or near youth facilities
28-416	Manufacture, distribute, deliver, dispense, or possess controlled substances in Schedule IV or V of section 28-405, second or subsequent offense involving minors or near youth facilities
28-416	Possessing a firearm while violating prohibition on the manufacture, distribution, delivery, dispensing, or possession of certain controlled substances in Schedule I, II, or III of section 28-405
28-502	Arson in the first degree
28-831	Commercial sexual activity, sexually-explicit performance, or pornography involving a minor by use of force or threat of force or when minor is under 15 years of age
28-929	Assault on an officer in the first degree
28-933	Certain acts of assault, terroristic threats, kidnapping, or false imprisonment committed by legally confined person
28-1205	Use of firearm to commit a felony
28-1222	Using explosives to commit a felony, second or subsequent offense

28-1223	Using explosives to damage or destroy property resulting in personal injury
28-1224	Using explosives to kill or injure any person resulting in personal injury
28-1463.04	Child pornography, second or subsequent offense
30-3432	Sign or alter without authority or alter, forge, conceal, or destroy a power of attorney for health care or conceal or destroy a revocation with the intent and effect of withholding or withdrawing life-sustaining procedures or nutrition or hydration
60-690	Aiding or abetting a violation of the Nebraska Rules of the Road
*60-6,197.03	Operation of a motor vehicle while under the influence of alcoholic liquor or of any drug or refusing chemical test, fifth or subsequent offense committed with .15 gram alcohol concentration

CLASS III FELONY **Maximum—twenty years imprisonment, or twenty-five thousand dollars fine, or both**
Minimum—one year imprisonment

8-138	Officer, agent, or employee receiving deposits on behalf of insolvent bank
8-139	Acting or assisting another to act as active executive officer of a bank when not licensed
8-175	Banks, false entry or statements, offenses relating to records
8-224.01	Substitution or investment of estate or trust assets for or in securities of the trust company controlling the estate or trust; loans of trust company assets to trust company officials or employees
9-814	Altering lottery tickets to defraud under the State Lottery Act
24-216	Clerk of the Supreme Court intentionally making a false report under oath, perjury
25-2310	Fraudulently invoking privilege of proceeding in forma pauperis
28-107	Felony defined outside of criminal code
28-111	Assault in the second degree committed against a person because of his or her race, color, religion, ancestry, national origin, gender, sexual orientation, age, or disability or because of his or her association with such a person
28-111	False imprisonment in the first degree committed against a person because of his or her race, color, religion, ancestry, national origin, gender, sexual orientation, age, or disability or because of his or her association with such a person
28-111	Sexual assault of a child in the third degree, first offense, committed against a person because of his or her race, color, religion, ancestry, national origin, gender, sexual orientation, age, or disability or because of his or her association with such a person
28-115	Assault in the second degree committed against a pregnant woman
28-115	Sexual assault of a child in the third degree, first offense, committed against a pregnant woman
28-115	Domestic assault in the second degree, first offense, committed against a pregnant woman
28-115	Assault on an officer in the third degree committed against a pregnant woman
28-115	Assault on an officer using a motor vehicle committed against a pregnant woman
*28-115	Causing serious bodily injury to pregnant woman while driving while intoxicated
28-201	Criminal attempt to commit a Class II felony
28-202	Criminal conspiracy to commit a Class III felony
28-204	Harboring, concealing, or aiding a felon who committed a Class I, IA, IB, IC, or ID felony
28-305	Manslaughter
*28-306	Motor vehicle homicide by person driving under the influence of alcohol or drugs with no prior conviction
28-308	Assault in the first degree

28-310.01	Strangulation using dangerous instrument, resulting in serious bodily injury, or after previous conviction for strangulation
28-320	Sexual assault in the second degree
28-320.02	Sexual assault of minor or person believed to be a minor lured by computer, second offense or with previous conviction of sexual assault
28-322.02	Sexual abuse of an inmate or parolee in the first degree
28-322.04	Sexual abuse of a protected individual in the first degree
28-323	Domestic assault in the first degree, first offense
28-323	Domestic assault in the second degree, second or subsequent offense against same intimate partner
28-328	Performance of partial-birth abortion
28-342	Sale, transfer, distribution, or giving away of live or viable aborted child or consenting to, aiding, or abetting the same
28-393	Manslaughter of an unborn child
*28-394	Motor vehicle homicide of an unborn child by person driving under the influence of alcohol or drugs with prior conviction of driving under the influence of alcohol or drugs
28-397	Assault of an unborn child in the first degree
28-416	Manufacture, distribute, deliver, dispense, or possess certain controlled substances in Schedule I, II, or III of section 28-405
28-416	Manufacture, distribute, deliver, dispense, or possess controlled substances in Schedule IV or V of section 28-405, first offense involving minors or near youth facilities
28-416	Possessing a firearm while violating prohibition on the manufacture, distribution, delivery, dispensing, or possession of controlled substances in Schedule IV or V of section 28-405
28-503	Arson in the second degree
28-507	Burglary
28-518	Theft when value is over $1,500
28-602	Forgery in the first degree
28-603	Forgery in the second degree when face value is $1,000 or more
28-608	Criminal impersonation if the credit, money, goods, services, or other thing of value that was gained or was attempted to be gained was $1,500 or more
28-611	Issuing a bad check or other order in an amount of $1,500 or more
28-620	Unauthorized use of a financial transaction device when total value is $1,500 or more within a six-month period
28-621	Criminal possession of four or more financial transaction devices
28-622	Unlawful circulation of a financial transaction device in the first degree
28-625	Criminal sale of two or more blank financial transaction devices
28-627	Unlawful manufacture of a financial transaction device
28-631	Committing a fraudulent insurance act when the amount involved is $1,500 or more
28-703	Incest
28-707	Child abuse committed knowingly and intentionally and resulting in serious bodily injury
28-831	Forced labor or services resulting from inflicting or threatening serious personal injury or restraining or threatening restraint of another
28-831	Commercial sexual activity, sexually explicit performance, or pornography involving a minor without use of force or threat of force when minor is 15 years of age or older
28-912	Escape when detained or under arrest on a felony charge
28-912	Escape using force, threat, deadly weapon, or dangerous instrument
28-912	Escape, public servant concerned in detention permits another to escape
28-915	Perjury and subornation of perjury
28-930	Assault on an officer in the second degree
28-932	Assault with a deadly or dangerous weapon by a legally confined person

28-1102	Promoting gambling in the first degree, third or subsequent offense
28-1105.01	Gambling debt collection
28-1205	Use of deadly weapon other than a firearm to commit a felony
28-1206	Possession of a firearm by a fugitive from justice or felon
28-1212.02	Unlawful discharge of firearm at an occupied building, vehicle, or aircraft
28-1222	Using explosives to commit a felony, first offense
28-1223	Using explosives to damage or destroy property unless personal injury or death occurs
28-1224	Using explosives to kill or injure any person unless personal injury or death occurs
28-1344	Unauthorized access to a computer which deprives another of property or services or obtains property or services of another with value of $1,000 or more
28-1345	Unauthorized access to a computer which causes damages of $1,000 or more
28-1423	Swearing falsely regarding sales of tobacco
28-1463.04	Child pornography, first offense
*29-4011	Failure by felony sex offender to register under the Sex Offender Registration Act, second or subsequent offense
30-2215	Falsifying representation under the Uniform Probate Code
30-24,125	False statement regarding personal property of decedent
30-24,129	False statement regarding real property of decedent
32-1514	Forging candidate filing form for election nomination
32-1516	Forging initials or signatures on official ballots or falsifying, destroying, or suppressing candidate filing forms
32-1517	Employer penalizing employee for serving as election official
32-1522	Unlawful distribution of ballots or other election supplies by election official, printer, or custodian of supplies
38-140	Violation of cease and desist order prohibiting the unauthorized practice of a credentialed profession or unauthorized operation of a credentialed business under the Uniform Credentialing Act
38-1,124	Violation of cease and desist order prohibiting the unauthorized practice of a credentialed profession or unauthorized operation of a credentialed business under the Uniform Credentialing Act
44-10,108	Fraudulent statement in report or statement for benefits from a fraternal benefit society
54-1,123	Selling livestock without evidence of ownership
54-1,124	Branding another's livestock, defacing marks
54-1,125	Forging or altering livestock ownership document when value is $1,000 or more
57-1211	Intentionally making false oath to uranium severance tax return or report
60-169	False statement on affidavit of affixture for mobile home or manufactured home
60-690	Aiding or abetting a violation of the Nebraska Rules of the Road
*60-6,197.03	Operation of a motor vehicle while under the influence of alcoholic liquor or of any drug or refusing chemical test, fourth offense committed with .15 gram alcohol concentration
*60-6,197.03	Operation of a motor vehicle while under the influence of alcoholic liquor or of any drug or refusing chemical test, fifth or subsequent offense committed with less than .15 gram alcohol concentration
*60-6,197.06	Operating a motor vehicle when operator's license has been revoked for driving under the influence, second or subsequent offense
66-727	Violation of motor fuel tax laws when the amount involved is $5,000 or more, provisions relating to evasion of tax, keeping books and records, making false statements
71-7462	Wholesale drug distribution in violation of the Wholesale Drug Distributor Licensing Act
71-8929	Veterinary drug distribution in violation of the Veterinary Drug Distribution Licensing Act

75-151	Violation by officer or agent of common carriers in consolidation or increase in stock, issuance of securities
77-5016.01	Falsifying a representation before the Tax Equalization and Review Commission
79-541	School district meeting or election, false oath
83-174.05	Failure to comply with community supervision, second or subsequent offense
83-184	Escape from custody (certain situations)

CLASS IIIA FELONY — **Maximum—five years imprisonment, or ten thousand dollars fine, or both**
Minimum—none

28-111	Terroristic threats committed against a person because of his or her race, color, religion, ancestry, national origin, gender, sexual orientation, age, or disability or because of his or her association with such a person
28-111	Stalking, certain situations or subsequent conviction within 7 years, committed against a person because of his or her race, color, religion, ancestry, national origin, gender, sexual orientation, age, or disability or because of his or her association with such a person
28-111	Arson in the third degree, damages of $100 or more, committed against a person because of his or her race, color, religion, ancestry, national origin, gender, sexual orientation, age, or disability or because of his or her association with such a person
28-111	Criminal mischief, pecuniary loss in excess of $300 or substantial disruption of public communication or utility, committed against a person because of his or her race, color, religion, ancestry, national origin, gender, sexual orientation, age, or disability or because of his or her association with such a person
28-115	Sexual abuse of an inmate or parolee in the second degree committed against a pregnant woman
28-115	Sexual abuse of a protected individual, second degree, committed against a pregnant woman
28-115	Domestic assault in the third degree, second or subsequent offense against same intimate partner, committed against a pregnant woman
28-201	Criminal attempt to commit assault in the first degree, sexual assault in the second degree, possession or distribution of certain controlled substances, incest, child abuse, assault on an officer in the second degree, or assault by a confined person with a deadly or dangerous weapon
28-202	Criminal conspiracy to commit a Class IIIA felony
28-204	Harboring, concealing, or aiding a felon who committed a Class II felony
28-306	Motor vehicle homicide by person driving in a reckless manner
28-309	Assault in the second degree
28-314	False imprisonment in the first degree
28-320.01	Sexual assault of a child in the third degree, first offense
28-320.02	Sexual assault of minor or person believed to be a minor lured by computer, first offense
28-323	Domestic assault in the second degree, first offense
28-386	Knowing and intentional abuse of a vulnerable adult
28-398	Assault of an unborn child in the second degree
28-416	Manufacture, distribute, deliver, dispense, or possess controlled substances in Schedule IV or V of section 28-405
28-457	Permitting a child or vulnerable adult to ingest methamphetamine, second or subsequent offense
28-457	Permitting a child or vulnerable adult to inhale, have contact with, or ingest methamphetamine causing serious bodily injury
28-634	Unlawful use of an electronic payment card scanning device or reencoder, second or subsequent offense

28-707	Child abuse committed knowingly and intentionally and not resulting in serious bodily injury or death
28-904	Resisting arrest, second or subsequent offense
28-904	Resisting arrest using deadly or dangerous weapon
28-931	Assault on an officer in the third degree
28-931.01	Assault on an officer using a motor vehicle
28-932	Assault by legally confined person without a deadly weapon
28-1463.05	Possession of child pornography with intent to distribute
60-690	Aiding or abetting a violation of the Nebraska Rules of the Road
60-698	Motor vehicle accident resulting in personal injury or death, violation of duty to stop
*60-6,197.03	Operation of a motor vehicle while under the influence of alcoholic liquor or of any drug or refusing chemical test, third offense committed with .15 gram alcohol concentration
*60-6,197.03	Operation of a motor vehicle while under the influence of alcoholic liquor or of any drug or refusing chemical test, fourth offense committed with less than .15 gram alcohol concentration
*60-6,198	Causing serious bodily injury to person or unborn child while driving while intoxicated

CLASS IV FELONY **Maximum—five years imprisonment, or ten thousand dollars fine, or both**
Minimum—none

2-1825	Forge, counterfeit, or use without authorization an inspection legend or certificate of Director of Agriculture on potatoes
8-103	Department of Banking and Finance personnel borrowing money from financial institutions
8-133	Inducing person to make or retain deposit in bank or accepting such inducement
8-143.01	Illegal bank loans to executive officers, directors, or shareholders
8-147	Banks, illegal transfer of assets, limitation on amounts of loans and investments
8-1,139	Financial institutions, misappropriation of funds or assets
8-225	Trust companies, false statement or book entry, destruction or secretion of records
8-333	Building and loan association, false statement or book entry
8-1117	Violation of Securities Act of Nebraska
*8-1729	Willful violation of Commodity Code or rule, regulation, or order under the code
*9-262	Second or subsequent violation of Nebraska Bingo Act when not otherwise specified
9-262	Specified violations of Nebraska Bingo Act
*9-352	Second or subsequent violation of Nebraska Pickle Card Lottery Act when not otherwise specified
9-352	Specified violations of Nebraska Pickle Card Lottery Act
*9-434	Second or subsequent violation of Nebraska Lottery and Raffle Act when not otherwise specified
9-434	Specified violations of Nebraska Lottery and Raffle Act
*9-652	Second or subsequent violation of Nebraska County and City Lottery Act when not otherwise specified
9-652	Specified violations of Nebraska County and City Lottery Act
9-814	Providing false information pursuant to the State Lottery Act
10-509	Funding bonds of counties, fraudulent issue or use
11-101.02	False statement in oath of office
23-135.01	False claim against county when value is $1,000 or more
23-3113	County purchasing agent or staff member violating County Purchasing Act
25-1630	Tampering with jury list
25-1635	Illegal disclosure of juror names
28-111	Assault in the third degree (certain situations) committed against a person because of his or her race, color, religion, ancestry, national

	origin, gender, sexual orientation, age, or disability or because of his or her association with such a person
28-111	Stalking, first offense or certain situations, committed against a person because of his or her race, color, religion, ancestry, national origin, gender, sexual orientation, age, or disability or because of his or her association with such a person
28-111	False imprisonment in the second degree committed against a person because of his or her race, color, religion, ancestry, national origin, gender, sexual orientation, age, or disability or because of his or her association with such a person
28-111	Sexual assault in the third degree committed against a person because of his or her race, color, religion, ancestry, national origin, gender, sexual orientation, age, or disability or because of his or her association with such a person
28-111	Arson in the third degree, damages less than $100, committed against a person because of his or her race, color, religion, ancestry, national origin, gender, sexual orientation, age, or disability or because of his or her association with such a person
28-111	Criminal mischief, pecuniary loss of $500 or more but less than $1,500, committed against a person because of his or her race, color, religion, ancestry, national origin, gender, sexual orientation, age, or disability or because of his or her association with such a person
28-111	Criminal trespass in the first degree committed against a person because of his or her race, color, religion, ancestry, national origin, gender, sexual orientation, age, or disability or because of his or her association with such a person
28-115	Assault in the third degree (certain situations) committed against a pregnant woman
28-115	Sexual assault in the third degree committed against a pregnant woman
28-115	Domestic assault in the third degree, first offense, committed against a pregnant woman
28-201	Criminal attempt to commit certain Class III felonies
28-202	Criminal conspiracy to commit a Class IV felony
28-204	Harboring, concealing, or aiding a felon who committed a Class III or IIIA felony
28-204	Obstructing the apprehension of a felon who committed a felony other than a Class IV felony
28-205	Aiding consummation of felony
28-307	Assisting suicide
28-310.01	Strangulation generally
28-311	Criminal child enticement with previous conviction of certain crimes
28-311.01	Terroristic threats
28-311.04	Stalking (certain situations)
28-316	Violation of custody with intent to deprive custodian of custody of child
28-322.03	Sexual abuse of an inmate or parolee in the second degree
28-322.04	Sexual abuse of a protected individual in the second degree
28-323	Domestic assault in the third degree, second or subsequent offense against same intimate partner
28-332	Abortion violations
28-335	Abortion by other than licensed physician
28-336	Abortion by other than accepted medical procedures
28-346	Use of premature infant aborted alive for experimentation
*28-394	Motor vehicle homicide of an unborn child by person driving under the influence of alcohol or drugs with no prior conviction
28-394	Motor vehicle homicide of an unborn child by person driving in a reckless manner
28-412	Unlawful prescription of narcotic drugs for detoxification or maintenance treatment

28-416	Knowingly or intentionally unlawfully possessing controlled substance other than marijuana
28-416	Knowingly or intentionally possessing more than one pound of marijuana
28-416	Possession of money used or intended to be used to violate provisions relating to controlled substances
28-418	Knowing or intentional violation of Uniform Controlled Substances Act
28-451	Possession of anhydrous ammonia with intent to manufacture methamphetamine
28-452	Possession of ephedrine, pseudoephedrine, or phenylpropanolamine with intent to manufacture methamphetamine
28-457	Permitting a child or vulnerable adult to inhale or have contact with methamphetamine, second or subsequent offense
28-504	Arson in the third degree, damages of $100 or more
28-505	Burning to defraud insurer
28-508	Possession of burglar's tools
28-514	Theft of lost, mislaid, or misdelivered property when value is over $1,500
28-516	Unauthorized use of a propelled vehicle, third or subsequent offense
28-518	Theft when value is $500 or more but not more than $1,500
28-518	Theft when value is more than $200 but less than $500, second or subsequent offense
28-518	Theft when value is $200 or less, third or subsequent offense
28-519	Criminal mischief, pecuniary loss of $1,500 or more or substantial disruption of public communication or utility service
28-603	Forgery in the second degree when face value is over $300 but less than $1,000
28-604	Criminal possession of a forged instrument prohibited by section 28-602
28-604	Criminal possession of a forged instrument prohibited by section 28-603, amount or value is $1,000 or more
28-605	Criminal possession of forgery devices
28-608	Criminal impersonation if the credit, money, goods, services, or other thing of value that was gained or was attempted to be gained was $500 or more but less than $1,500
28-608	Criminal impersonation if the credit, money, goods, services, or other thing of value that was gained or was attempted to be gained was $200 or more but less than $500, second or subsequent offense
28-608	Criminal impersonation if no credit, money, goods, services, or other thing of value was gained or was attempted to be gained, or if the credit, money, goods, services, or other thing of value that was gained or was attempted to be gained was less than $200, third or subsequent offense
28-611	Issuing a bad check or other order in an amount of $500 or more but less than $1,500
28-611	Issuing a bad check or other order in an amount under $500, second or subsequent offense
28-612	False statement or book entry in or destruction or secretion of records of financial institution or organization
28-619	Issuing two or more false financial statements to obtain two or more financial transaction devices
28-620	Unauthorized use of a financial transaction device when total value is $500 or more but less than $1,500 within a six-month period
28-621	Criminal possession of two or three financial transaction devices
28-623	Unlawful circulation of a financial transaction device in the second degree
28-624	Criminal possession of two or more blank financial transaction devices
28-625	Criminal sale of one blank financial transaction device
28-626	Criminal possession of a forgery device
28-628	Laundering of sales forms

Section	Offense
28-629	Unlawful acquisition of sales form processing services
28-630	Unlawful factoring of a financial transaction device
28-631	Committing a fraudulent insurance act when the amount involved is $500 or more but less than $1,500
28-631	Committing a fraudulent insurance act when the amount involved is $200 or more but less than $500, second or subsequent offense
28-631	Committing a fraudulent insurance act with intent to defraud
28-634	Unlawful use of an electronic payment card scanning device or reencoder, first offense
28-706	Criminal nonsupport in violation of a court order
*28-801.01	Solicitation of prostitution, second or subsequent offense
28-802	Pandering
28-813.01	Possession of visual depiction of sexually explicit conduct containing a child
28-831	Forced labor or services resulting from destroying or holding another's identification or immigration documents
28-831	Recruiting or transporting adults for forced labor or services
28-831	Benefiting from forced labor or services
28-833	Enticement by electronic communication device
*28-905	Operating a motor vehicle to avoid arrest which is a second or subsequent offense, results in death or injury, or involves willful reckless driving
*28-905	Operating a boat to avoid arrest for felony
28-912	Escape (certain situations excepted)
28-912	Knowingly causing or facilitating an escape
28-912.01	Accessory to escape of juvenile from custody of Office of Juvenile Services
28-917	Bribery
28-918	Bribery of a witness
28-918	Witness accepting bribe or benefit
28-919	Tampering with witness, informant, or juror
28-920	Bribery of a juror
28-920	Juror accepting bribe or benefit
28-922	Tampering with physical evidence
28-1005	Dogfighting, cockfighting, bearbaiting, etc., promoter, owner, employee, or spectator
28-1009	Abandonment or cruel neglect of animal resulting in serious injury, illness, or death
28-1009	Harassment of police animal resulting in death of animal
28-1009	Cruel mistreatment of animal involving torture or mutilation
28-1009	Cruel mistreatment of animal not involving torture or mutilation, second or subsequent offense
28-1102	Promoting gambling in the first degree, second offense
28-1202	Carrying a concealed weapon, second or subsequent offense
28-1203	Transporting or possessing a machine gun, short rifle, or short shotgun
28-1204.01	Unlawful transfer of a firearm to a juvenile
28-1206	Possession of deadly weapon other than a firearm by a felon or fugitive from justice
28-1207	Possession of a defaced firearm
28-1208	Defacing a firearm
28-1212.03	Possession, receipt, retention, or disposal of a stolen firearm knowing or believing it to be stolen
28-1215	Unlawful possession of explosive materials in the first degree
28-1217	Unlawful sale of explosives
28-1219	Explosives, obtaining a permit through false representations
28-1220	Possession of a destructive device
28-1221	Threatening the use of explosives or placing a false bomb
28-1301	Removing, abandoning, or concealing human skeletal remains or burial goods
28-1307	Sell or offer for sale diseased meat
28-1343.01	Unauthorized computer access creating grave risk of death

28-1344	Unauthorized access to a computer which deprives another of property or services or obtains property or services of another with value under $1,000
28-1345	Unauthorized access to a computer causing damages under $1,000
*28-1469	Operation of aircraft while under the influence of alcohol or drugs, third or subsequent offense
28-1482	Unlawful paramilitary activities
29-908	Failing to appear when on bail for felony offense
29-4011	Failure by felony sex offender to register under the Sex Offender Registration Act, first offense
29-4011	Failure by misdemeanor sex offender to register under the Sex Offender Registration Act, second or subsequent offense
32-1502	Election falsification
32-1503	Elections, unlawful registration acts
32-1504	Elections, neglect of duty, corruption, or fraud by deputy registrar
32-1508	Election registration, perjury by voter
32-1526	Fraudulent voting by election official
32-1529	Resident of another state voting in this state
32-1530	Voting by ineligible person
32-1531	Voting outside county of residence
32-1532	Aiding unlawful voting
32-1533	Procuring another to vote in county other than that of residence
32-1534	Voting more than once in same election
32-1537	Employer coercing political action of employees
32-1538	Deceiving illiterate elector
32-1539	Violations relating to ballots for early voting
32-1540	Fraudulent voting
32-1541	Making fraudulent entry in list of voters book
32-1542	Unlawful possession of list of voters book, official summary, or election returns
32-1543	Obtaining or attempting to obtain or destroy ballot boxes or ballots by improper means
32-1544	Destruction or falsification of election materials
32-1545	Disclosing election returns before polls have closed or without authorization from election officials
32-1546	Offering or receiving money for signing petitions or falsely swearing to circulator's affidavit on petition
32-1551	Special elections by mail, specified violations
32-1607	Filing a false campaign spending estimate by a candidate intending to exceed spending limitations
37-554	Prohibited use of explosives or poisons in waters of state
37-1288	Forgery of motorboat title or certificate or use of false name in bill of sale or sworn statement of ownership
37-1298	Knowingly transfer motorboat without salvage certificate of title
38-1,117	False or forged document or fraud in procuring license, certificate, or registration to practice a health profession, aiding or abetting person practicing without a credential, or impersonating a credentialed person
38-2052	Person purporting to be a physician's assistant when not licensed
38-3130	Psychologist filing false diploma, license of another, or forged affidavit of identification
42-924	Knowingly violating a protection order issued pursuant to domestic abuse or harassment case with a prior conviction for violating the same protection order or a protection order granted to the same petitioner
44-165	Financial conglomerate or its directors, officers, employees, or agents violating supervision requirements
44-3,121	Borrowing or rental of securities of insurance company by member, director, or attorney
44-2146	Willful violation of Insurance Holding Company System Act
44-2147	Willful filing of false report under Insurance Holding Company System Act

45-191.03	Loan broker collecting advance fee in excess of $300 and other violations of loan broker provisions
45-926	Operating delayed deposit services business without license
*46-155	Irrigation districts, officers interested in contracts, accepting bribes or gratuities
48-654.01	Engaging in business practices to avoid higher combined tax rates under the Employment Security Law
49-1476.01	Campaign contributions or expenditures by state lottery contractor
49-14,134	Filing false statement, report, or verification under Nebraska Political Accountability and Disclosure Act
49-14,135	Perjury before Nebraska Accountability and Disclosure Commission
53-122	Bribery involving signatures on petitions for elections regarding sale of liquor
54-1,125	Using false document of livestock ownership
54-1,125	Forging or altering livestock ownership document when value is over $300 but less than $1,000
54-753.05	Importation of livestock in violation of an embargo issued by State Veterinarian
54-1509	Importation of swine with hog cholera, interference with destruction
54-1521	Violation of laws pertaining to hog cholera control and eradication
54-1808	Violation of Nebraska Livestock Sellers Protective Act
54-1913	Violation of Nebraska Meat and Poultry Inspection Law with intent to defraud or by distributing adulterated article
57-719	Preparation or presentation of false or fraudulent oil and gas severance tax document
59-801	Unlawful restraint of trade or commerce
59-802	Unlawful monopolizing of trade or commerce
59-805	Unlawful restraint of trade; underselling
59-815	Corporation or other association engaged in unlawful restraint of trade
59-825	Refusal to attend and testify in restraint of trade proceedings
59-1522	Unlawful sale and distribution of cigarettes
59-1757	Violations in sales or leases of seller-assisted marketing plans
60-176	Knowing transfer of wrecked, damaged, or destroyed motor vehicle, all-terrain vehicle, or minibike without appropriate certificate of title
60-179	Fraud or forgery in obtaining certificate of title to motor vehicle, all-terrain vehicle, or minibike
60-196	Violating laws relating to odometers
*60-484.02	Disclosure of digital image or signature by Department of Motor Vehicles or law enforcement
60-492	Impersonating an officer under Motor Vehicle Operator's License Act
60-4,111.01	Disclosure of machine-readable information encoded on driver's license or state identification card
60-690	Aiding or abetting a violation of the Nebraska Rules of the Road
*60-6,197.06	Operating a motor vehicle when operator's license has been revoked for driving under the influence, first offense
60-1416	Acting as motor vehicle, motorcycle, or trailer dealer, salesperson, or manufacturer, etc., without license
60-2912	Misrepresenting identity or making false statement on application submitted under the Uniform Motor Vehicle Records Disclosure Act
66-727	Violations of motor fuel tax laws when the amount involved is less than $5,000, provisions relating to evasion of tax, keeping books and records, making false statements
66-727	Violations of motor fuel tax laws, including making returns and reports, assignment of licenses and permits, payment of tax
66-1226	Selling automotive spark ignition engine fuels not within specifications, second or subsequent offense
66-1822	False or fraudulent entries in books of a jurisdictional utility
68-1017	Obtaining through fraud assistance to aged, blind, disabled or aid to dependent children when value is $500 or more

68-1017.01	Unlawful use, alteration, or transfer of food stamp benefits when value is $500 or more
68-1017.01	Unlawful possession or redemption of food stamp benefits when value is $500 or more
68-1017.01	Unlawful possession of blank food stamp program authorizations
69-109	Sale or transfer of personal property with security interest without consent
69-2408	Providing false information on an application for a certificate to purchase a handgun
69-2420	Unlawful acts relating to purchase of a handgun
69-2421	Unlawful sale or delivery of a handgun
69-2422	Knowingly and intentionally obtaining a handgun for purposes of unlawful transfer of the handgun
69-2430	Falsified concealed handgun permit application
70-508	False statement on sale, lease, or transfer of public electric plant
70-511	Excessive promotion expenses on sale of public electric plant
70-514	Failure to file statement of expenditures related to transfer of electric plant facilities or filing false statement
71-649	Vital statistics, unlawful acts
71-2228	Illegal receipt of food supplement benefits when value is $500 or more
71-2229	Unlawful use, alteration, or transfer of food instruments or food supplements when value is $500 for more
71-2229	Unlawful possession or redemption of food supplement benefits when value is $500 or more
71-2229	Unlawful possession of blank authorization to participate in the WIC program or CSF program
71-6312	Unlawfully engaging in an asbestos project without a valid license or using unlicensed employees subsequent to the levy of a civil penalty, second or subsequent offense
71-6329	Engaging in a lead abatement project or lead-based paint profession without a valid license or using unlicensed employees after assessment of a civil penalty, second or subsequent offense
71-6329	Conducting a lead abatement project or lead-based paint profession training program without departmental accreditation after assessment of a civil penalty, second or subsequent offense
71-6329	Issuing fraudulent licenses under the Residential Lead-Based Paint Professions Practice Act after assessment of a civil penalty, second or subsequent offense
75-909	Violation of Grain Dealer Act
76-2325.01	Interference with utility poles and wires or transmission of light, heat, power, or telecommunications, loss of $1,500 or more or substantial disruption of service
76-2728	Violation of Nebraska Foreclosure Protection Act
77-1726	Failure of a corporation, company, or officer or agent to pay taxes
77-2310	Unlawful removal of state funds or illegal profits by State Treasurer
77-2323	Violation of provisions on deposit of county funds
77-2325	Unlawful removal of county funds or illegal profits by county treasurers
77-2381	Violation of provisions on deposit of local hospital district funds
77-2383	Unlawful removal of funds or illegal profits by secretary-treasurer of local hospital district
77-2614	Altered, forged, or counterfeited stamp, license, permit, or cigarette tax meter impression for sale of cigarettes
77-2615	Violation of cigarette tax provisions when not otherwise specified
77-2713	Failure to collect or false returns on sales and use tax
77-27,113	Evasion of income tax
77-27,114	Failure to collect or account for income taxes
77-27,116	False return on income tax
*77-27,119	Unauthorized disclosure of confidential tax information by Auditor of Public Accounts or Legislative Performance Audit Section
77-4024	Violation of Tobacco Products Tax Act or evasion of act

77-4309	Dealer distributing or possessing marijuana or a controlled substance without affixing the official stamp, label, or other indicium
77-5544	Unlawful disclosure of confidential information by qualified independent accounting firm under Invest Nebraska Act
*81-161.05	Materiel division personnel having financial or beneficial personal interest or receiving gifts or rebates
*81-1108.56	State building division personnel having financial or beneficial personal interest or receiving gifts or rebates
81-1508.01	Specific violations of Environmental Protection Act, Integrated Solid Waste Management Act, or Livestock Waste Management Act
81-15,111	Violation of Low-Level Radioactive Waste Disposal Act
81-3442	Violation of Engineers and Architects Regulation Act, second or subsequent offense
83-174.05	Failure to comply with community supervision, first offense
83-184	Escape from custody (certain situations)
83-198	Threatening or attempting to influence a member of the Board of Parole
83-1,127.02	Operation of vehicle with disabled, bypassed, or altered ignition interlock device or without an ignition interlock device or permit in violation of board order
83-1,133	Threatening or attempting to influence a member of the Board of Pardons
83-417	Allowing a committed offender to escape or be visited without approval
83-443	Financial interest in convict labor
*83-912	Director or employee of Department of Correctional Services receiving prohibited gift or gratuity
86-290	Intercepting or interfering with wire, electronic, or oral communication
86-295	Unlawful tampering with communications equipment or transmissions
86-296	Shipping or manufacturing devices capable of intercepting certain communications
86-2,102	Interference with satellite transmissions or operation
86-2,104	Unauthorized access to electronic communication services
87-303.09	Violation of court order or written assurance of voluntary compliance under Uniform Deceptive Trade Practices Act
88-543	Issuing a receipt for grain not received, improperly recording grain as received or loaded, or creating a post-direct delivery storage position without proper documentation or grain in storage
88-545	Violation of Grain Warehouse Act when not otherwise specified

UNCLASSIFIED FELONY, see section 28-107

69-110	Removal from county of personal property subject to a security interest with intent to deprive of security interest —fine of not more than one thousand dollars —imprisonment of not more than ten years
77-27,119	Unauthorized disclosure of confidential tax information by Tax Commissioner, officer, employee, or third-party auditor —fine of not less than one hundred dollars nor more than five hundred dollars —imprisonment of not more than five years —both
77-3210	Receipt of profit from rental, management, or disposition of Land Reutilization Authority lands —imprisonment of not less than two years nor more than five years
83-1,124	Parolee leaving state without permission —imprisonment of not more than five years

OTHER MANDATORY MINIMUMS:

29-2221	Habitual criminal

CLASS I MISDEMEANOR	**Maximum—not more than one year imprisonment, or one thousand dollars fine, or both Minimum—none**
2-1215	Conducting horseracing or betting on horseraces without license or violating horseracing provisions
2-1218	Drugging horses or permitting drugged horses to run in a horserace
2-2647	Violation of Pesticide Act, second or subsequent offense
8-119	Officers of corporation filing false statement for banking purposes
8-145	Improper solicitation or receipt of benefits, unlawful inducement for bank loan
8-189	Attempting to prevent Department of Banking and Finance from taking possession of insolvent or unlawfully operated bank
8-1,138	Violation of a final order issued by Director of Banking and Finance
8-224.01	Division of fees for legal services by a trust company attorney
9-230	Unlawfully conducting or awarding a prize at a bingo game, second or subsequent offense
9-262	Violation of Nebraska Bingo Act when not otherwise specified, first offense
9-266	Disclosure by Tax Commissioner or employee of reports or records of a licensed distributor or manufacturer under Nebraska Bingo Act
9-351	Unlawfully possessing pickle cards or conducting a pickle card lottery
9-352	Violation of Nebraska Pickle Card Lottery Act when not otherwise specified, first offense
9-356	Disclosure by Tax Commissioner or employee of returns or reports of licensed distributor or manufacturer under Nebraska Pickle Card Lottery Act
9-434	Violation of Nebraska Lottery and Raffle Act when not otherwise specified, first offense
9-652	Violation of Nebraska County and City Lottery Act when not otherwise specified, first offense
9-653	Disclosure by Tax Commissioner or employee of reports or records of a licensed manufacturer-distributor under Nebraska County and City Lottery Act
9-814	Sale of lottery tickets under the State Lottery Act without authorization or at other than the established price
9-814	Release of information obtained from background investigation under the State Lottery Act
10-807	Misrepresentations for aid from county aid bonds
*18-2532	Initiative and referendum, making false affidavit or taking false oath
*18-2533	Initiative and referendum, destruction, falsification, or suppression of a petition
*18-2534	Initiative and referendum petition, signing by person not registered to vote or paying for or deceiving another to sign a petition
*18-2535	Initiative and referendum, failure by city clerk to comply or unreasonable delay in complying with statutes
20-334	Willful failure to obey a subpoena or order or intentionally mislead another in proceedings under the Nebraska Fair Housing Act
20-344	Coerce, intimidate, threaten, or interfere with the exercise or enjoyment of rights under the Nebraska Fair Housing Act
20-411	Physician or health care provider failing to transfer care of patient under declaration or living will
20-411	Physician failing to record a living will or a determination of a terminal condition or persistent vegetative state
20-411	Concealing, canceling, defacing, obliterating, falsifying, or forging a living will
20-411	Concealing, falsifying, or forging a revocation of a living will
20-411	Requiring or prohibiting a living will for health care services or insurance
20-411	Coercing or fraudulently inducing an individual to make a living will
21-1912	Signing a false document under the Nebraska Nonprofit Corporation Act with intent to file with the Secretary of State

21-2012	Signing a false document under the Business Corporation Act with intent to file with the Secretary of State
28-107	Misdemeanor defined outside of criminal code
28-111	Assault in the third degree (certain situations) committed against a person because of his or her race, color, religion, ancestry, national origin, gender, sexual orientation, age, or disability or because of his or her association with such a person
28-111	Criminal mischief, pecuniary loss of $200 or more but less than $500, committed against a person because of his or her race, color, religion, ancestry, national origin, gender, sexual orientation, age, or disability or because of his or her association with such a person
28-111	Criminal trespass in the second degree (certain situations) committed against a person because of his or her race, color, religion, ancestry, national origin, gender, sexual orientation, age, or disability or because of his or her association with such a person
28-115	Assault in the third degree (certain situations) committed against a pregnant woman
28-201	Criminal attempt to commit a Class IIIA or IV felony
28-204	Harboring, concealing, or aiding a felon who committed a Class IV felony
28-204	Obstructing the apprehension of a felon who committed a Class IV felony
28-301	Compounding a felony
28-306	Motor vehicle homicide by person not under the influence of alcohol or drugs or not driving in a reckless manner
28-310	Assault in the third degree (certain situations)
28-311	Criminal child enticement
28-311.04	Stalking (certain situations)
28-315	False imprisonment in the second degree
28-320	Sexual assault in the third degree
28-323	Domestic assault in the third degree, first offense
28-394	Motor vehicle homicide of an unborn child by person not under the influence of alcohol or drugs or not driving in a reckless manner
28-399	Assault of an unborn child in the third degree
28-443	Delivering drug paraphernalia to a minor
28-457	Permitting a child or vulnerable adult to inhale, have contact with, or ingest methamphetamine, first offense
28-504	Arson in the third degree, damages less than $100
28-514	Theft of lost, mislaid, or misdelivered property when value is $500 or more but not more than $1,500
28-514	Theft of lost, mislaid, or misdelivered property when value is more than $200 but less than $500, second or subsequent offense
28-514	Theft of lost, mislaid, or misdelivered property when value is $200 or less, third or subsequent offense
28-516	Unauthorized use of a propelled vehicle, second offense
28-518	Theft when value is more than $200 but less than $500
28-518	Theft when value is $200 or less, second offense
28-519	Criminal mischief, pecuniary loss of $500 or more but less than $1,500
28-520	Criminal trespass in the first degree
28-523	Littering, third or subsequent offense
28-603	Forgery in the second degree when face value is $300 or less
28-604	Criminal possession of a forged instrument prohibited by section 28-603, value is more than $300 but less than $1,000
28-607	Making, using, or uttering of slugs of value of $100 or more
28-608	Criminal impersonation if the credit, money, goods, services, or other thing of value that was gained or was attempted to be gained was $200 or more but less than $500, first offense
28-608	Criminal impersonation if no credit, money, goods, services, or other thing of value was gained or was attempted to be gained, or if the credit, money, goods, services, or other thing of value that was

	gained or was attempted to be gained was less than $200, second offense
28-610	Impersonating a peace officer
28-611	Issuing a bad check or other order in an amount of $100 or more but less than $500, first offense
28-613	Commercial bribery or breach of duty to act disinterestedly
28-616	Altering an identification number
28-617	Receiving an altered article
28-619	Issuing a false financial statement to obtain a financial transaction device
28-620	Unauthorized use of a financial transaction device when total value is $200 or more but less than $500 within a six-month period
28-624	Criminal possession of a blank financial transaction device
28-631	Possessing fake or counterfeit insurance policies, certificates, identification cards, or binders with intent to defraud or deceive
28-631	Committing a fraudulent insurance act when the amount involved is $200 or more but less than $500, first offense
28-633	Printing more than the last 5 digits of a payment card account number upon a receipt provided to payment card holder, second or subsequent offense
28-635	Install object or material not designed for motor vehicle air bag system
28-701	Bigamy
28-705	Abandonment of spouse, child, or dependent stepchild
28-707	Child abuse committed negligently
28-709	Contributing to the delinquency of a child
*28-801	Prostitution, third or subsequent offense
*28-801.01	Solicitation of prostitution, first offense
28-804	Keeping a place of prostitution
28-805	Debauching a minor
28-808	Obscene literature and material, sell or possess with intent to sell to minor
28-809	Obscene motion picture, show, or presentation, admission of minor
28-813	Prepare, distribute, order, produce, exhibit, or promote obscene literature or material
28-831	Forced labor or services resulting from causing or threatening financial harm
28-901	Obstructing government operations
28-904	Resisting arrest, first offense
*28-905	Operating a motor vehicle to avoid arrest which is a first offense, does not result in death or injury, or does not involve willful reckless driving
*28-905	Operating a boat to avoid arrest for misdemeanor or ordinance violation
28-906	Obstructing a peace officer, judge, or police animal
28-907	False reporting (certain situations)
28-908	Interference with firefighter on official duty
28-909	Falsifying records of a public utility
28-913	Introducing escape implements
28-915.01	False statement under oath or affirmation in an official proceeding or to mislead a public servant
28-1009	Abandonment or cruel neglect of animal not resulting in serious injury, illness, or death
28-1009	Cruel mistreatment of animal not involving torture or mutilation, first offense
28-1009.02	Intentionally trip, cause to fall, or lasso or rope the legs of an equine for entertainment, sport, practice, or contest
28-1009.03	Intentionally trip, cause to fall, or drag by its tail a bovine for entertainment, sport, practice, or contest
28-1019	Violation of court order related to felony animal abuse conviction
28-1102	Promoting gambling in the first degree, first offense
28-1202	Carrying a concealed weapon, first offense

28-1216	Unlawful possession of explosive materials in the second degree
28-1218	Use of explosives without a permit if not eligible for a permit
28-1302	Concealment of death to prevent determination of cause or circumstances of death
28-1312	Interfering with the police radio system
28-1343.01	Unauthorized computer access creating risk to public health and safety
28-1346	Unauthorized access to or use of a computer to obtain confidential information, second or subsequent offense
29-1926	Improper release or use of a videotape of a child victim or child witness
30-3432	Altering, forging, concealing, or destroying a power of attorney for health care or a revocation of a power of attorney for health care
30-3432	Physician or health care provider willfully preventing transfer of care of principal under durable power of attorney for health care
*32-1518	Election officials, violation of duties imposed by election laws
32-1522	Unlawful printing, possession, or use of ballots
32-1546	Signing petition without being registered to vote
37-618	Possession of suspended or revoked permit to hunt, fish, or harvest fur
37-809	Unlawful acts relating to endangered or threatened species of wildlife or wild plants
38-1,106	Disclosure of confidential complaints, investigational records, or reports regarding violation of Uniform Credentialing Act
39-310	Depositing materials on roads or ditches, third or subsequent offense
39-311	Placing burning materials or items likely to cause injury on highways, third or subsequent offense
42-113	Failing to file and record or filing false marriage certificate or illegally joining others in marriage
42-924	Knowingly violating a protection order issued pursuant to domestic abuse or harassment case with a prior conviction for violating a protection order
44-10,108	Making a fraudulent statement to a fraternal benefit society
44-2007	Violation of Unauthorized Insurers Act
44-4806	Failing to cooperate with, obstructing, interfering with, or violating any order issued by the Director of Insurance under the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act
45-191.03	Loan broker collecting advance fee of $300 or less or failing to make required filings
45-708	Engaging in mortgage banking if convicted of certain misdemeanors or a felony
45-1015	Acting without license under the Nebraska Installment Loan Act
46-1141	Unlawful tampering with or damaging chemigation equipment
48-125.01	Attempted avoidance of payment of workers' compensation benefits
48-145.01	Failure to comply with workers' compensation insurance required of employers
48-211	Failure or refusal to supply laborer's service letter
48-821	Interfere with or coerce others to strike or otherwise hinder governmental service
48-1908	Drug or alcohol tests, altering results
48-1909	Drug or alcohol tests, tampering with body fluids
53-122	Violations involving signatures on petitions for elections regarding sale of liquor
53-180.05	Creation or alteration of identification for sale or delivery to a person under twenty-one years of age
53-180.05	Dispensing alcohol in any manner to minors or incompetents
54-1,125	Forging or altering livestock ownership document when value is $300 or less
54-634	Violation of Commercial Dog and Cat Operator Inspection Act
54-750	Harboring or prohibited sale of diseased animals, second or subsequent offense

54-751	Violation of rules and regulations relating to diseased animals and disposal of carcasses, second or subsequent offense
54-752	Violation of laws relating to diseased animals and disposal of carcasses, second or subsequent offense
54-758	Failure to perform ministerial duties pertaining to anthrax eradication
54-760	Harboring or selling any animal affected with anthrax
54-761	Violation of anthrax eradication and control provisions
59-505	Unlawful discrimination in sales or purchases of products, commodities, or property
60-559	Forging or filing a forged document for proof of financial responsibility for a motor vehicle
60-690	Aiding or abetting a violation of the Nebraska Rules of the Road
60-696	Second or subsequent conviction in 12 years for failure of driver to stop and report a motor vehicle accident
*60-6,197.03	Operation of a motor vehicle while under the influence of alcoholic liquor or of any drug or refusing chemical test, second offense committed with .15 gram alcohol concentration
*60-6,218	Reckless driving or willful reckless driving, third or subsequent offense
*60-2912	Disclosure of sensitive personal information by Department of Motor Vehicles
66-1226	Selling automotive spark ignition engine fuels not within specifications, first offense
*69-2408	Intentional violation of provisions on acquisition of handguns
69-2419	Unlawful request for criminal history record check or dissemination of such information
*69-2443	Refusal to allow peace officer or emergency services personnel to secure concealed handgun
*69-2443	Carrying concealed handgun at prohibited site or while under the influence, second or subsequent offense
*69-2443	Failure to report discharge of concealed handgun, second or subsequent offense
*69-2443	Failure to carry or display concealed handgun permit, second or subsequent offense
*69-2443	Failure to inform peace officer of concealed handgun, second or subsequent offense
71-458	Violation of Health Care Facility Licensure Act
71-649	Vital statistics, unlawful acts
71-4608	Illegal manufacture or sale of manufactured homes or recreational vehicles
71-4608	Violation of manufactured home or recreational vehicle standards endangering the safety of a purchaser
71-6312	Unlawfully engaging in an asbestos project without a valid license or using unlicensed employees subsequent to the levy of a civil penalty, first offense
71-6329	Engaging in a lead abatement project or lead-based paint profession without a valid license or using unlicensed employees after assessment of a civil penalty, first offense
71-6329	Conducting a lead abatement project or lead-based paint profession training program without departmental accreditation after assessment of a civil penalty, first offense
71-6329	Issuing fraudulent licenses under the Residential Lead-Based Paint Professions Practice Act after assessment of a civil penalty, first offense
74-921	Operating a locomotive or acting as the conductor while intoxicated
75-127	Unjust discrimination or prohibited practice in rates by common carrier, shipper, or consignee
76-1315	Violation of laws on retirement communities and subdivisions
76-1722	Unlawful time-share interval disposition or violating time-share laws

76-2325.01	Interference with utility poles and wires or transmission of light, heat, power, or telecommunications, loss of $500 or more but less than $1,500 (certain situations)
77-1816	Fraudulent sales of real property for delinquent real estate taxes
77-2115	Disclosure of confidential information on estate or generation-skipping transfer tax records
77-2326	Failure to act regarding deposit of county funds by county treasurers
77-2384	Secretary-treasurer of local hospital district, failure to comply with provisions on deposit of public funds
77-2704.33	Failure of a contractor or taxpayer to pay certain sales taxes of $300 or more
77-2711	Wrongful disclosure of records and reports relating to sales and use tax
77-2711	Disclosure of taxpayer information by employees of Legislative Performance Audit Section or Auditor of Public Accounts or former employees
77-3522	Oath or affirmation regarding false or fraudulent application for homestead exemption
77-5016	False statement to Tax Equalization and Review Commission
81-829.73	Fraudulently or willfully making a misstatement of fact in connection with an application for financial assistance under the Emergency Management Act
81-1508.01	Violations of solid waste and livestock waste laws and regulations
81-1717	Unlawful soliciting of professional services under Nebraska Consultants' Competitive Negotiation Act
81-1718	Professional making unlawful solicitation under Nebraska Consultants' Competitive Negotiation Act
81-1719	Agency official making unlawful solicitation under Nebraska Consultants' Competitive Negotiation Act
81-1830	False claim under Nebraska Crime Victim's Reparations Act
81-2143	Violation of State Electrical Act
81-3442	Violation of Engineers and Architects Regulation Act, first offense
81-3535	Unauthorized practice of geology, second or subsequent offense
86-234	Violation of Telemarketing and Prize Promotions Act
86-290	Intercepting or interfering with certain wire, electronic, or oral communication
86-298	Unlawful use of pen register or trap-and-trace device
*86-2,104	Unlawful access to electronic communication service
88-548	Illegal use of grain probes
89-1,101	Violation of Weights and Measures Act or order of Department of Agriculture, second or subsequent offense

CLASS II MISDEMEANOR **Maximum—six months imprisonment, or one thousand dollars fine, or both**
Minimum—none

1-166	Accountants, persons using titles, initials, trade names when not qualified or authorized to do so
2-10,115	Specified violations of Plant Protection and Plant Pest Act, second or subsequent offense
2-1221	Receipt or delivery of certain off-track wagers
2-1240	Improper placement or acceptance of wagers by telephone deposit center
2-1811	Violation of Nebraska Potato Development Act
3-152	Violation of State Aeronautics Department Act
*8-109	Bank examiner failing to report bank insolvency or unsafe condition
8-118	Promoting the organization of a corporation to conduct the business of banking or selling stock prior to issuance of charter
8-702	Banking institution failing to give notice if deposits are not insured
9-345.03	Unlawfully placing a pickle card dispensing device in operation
9-513	Violation of Nebraska Small Lottery and Raffle Act, second or subsequent offense
9-701	Violation of provisions relating to gift enterprises

9-814	Failure by lottery game retailer to maintain and make available records of separate accounts under State Lottery Act
9-814	Knowingly sell lottery tickets to person under 19 years of age
12-1118	False or fraudulent reporting or any violation under Burial Pre-Need Sale Act
*22-303	Relocation of county seats, refusal by officers to move offices and records
23-135.01	False claim against county when value is more than $100 but less than $1,000
23-2325	False or fraudulent acts to defraud the Retirement System for Nebraska Counties
23-2544	Violation of county personnel provisions for counties with population under 150,000
*23-3596	Board of trustees of hospital authority, pecuniary interest in contracts
24-711	False or fraudulent acts to defraud the Nebraska Judges Retirement System
28-111	Criminal mischief, pecuniary loss is less than $200, committed against a person because of his or her race, color, religion, ancestry, national origin, gender, sexual orientation, age, or disability or because of his or her association with such a person
28-111	Criminal trespass in the second degree (certain situations) committed against a person because of his or her race, color, religion, ancestry, national origin, gender, sexual orientation, age, or disability or because of his or her association with such a person
28-201	Criminal attempt to commit a Class I misdemeanor
28-310	Assault in the third degree (certain situations)
28-311.06	Hazing
28-311.08	Knowingly intrude upon any other person without his or her consent or knowledge in a place of solitude or seclusion when the victim is under eighteen years of age
28-311.09	Violation of harassment protection order
28-316	Violation of custody without intent to deprive custodian of custody of child
28-339	Discrimination against person refusing to participate in an abortion
28-344	Violation of provisions relating to abortion reporting forms
28-442	Unlawful possession or manufacture of drug paraphernalia
28-445	Manufacture or delivery of an imitation controlled substance, second or subsequent offense
28-514	Theft of lost, mislaid, or misdelivered property when value is more than $200 but less than $500
28-514	Theft of lost, mislaid, or misdelivered property when value is $200 or less, second offense
28-515.01	Fraudulently obtaining telecommunications service
28-518	Theft when value is $200 or less
28-519	Criminal mischief, pecuniary loss of $200 or more but less than $500
28-521	Criminal trespass in the second degree (certain situations)
28-523	Littering, second offense
28-604	Criminal possession of a forged instrument prohibited by section 28-603, value is $300 or less
28-607	Making, using, or uttering of slugs of value less than $100
28-608	Criminal impersonation if no credit, money, goods, services, or other thing of value was gained or was attempted to be gained, or if the credit, money, goods, services, or other thing of value that was gained or was attempted to be gained was less than $200, first offense
28-611	Issuing a bad check or other order in an amount of less than $100, first offense
28-611	Issuing bad check or other order with insufficient funds or no account
28-614	Tampering with a publicly exhibited contest
28-620	Unauthorized use of a financial transaction device when total value is less than $200 within a six-month period

28-631	Committing a fraudulent insurance act when the amount involved is less than $200
28-706	Criminal nonsupport not in violation of court order
*28-801	Prostitution, first or second offense
28-806	Public indecency
28-811	Obscene literature, material, etc., false representation of age by minor, parent, or guardian, unlawful employment of minor
28-903	Refusing to aid a peace officer
28-910	Filing false reports with regulatory bodies
28-911	Abuse of public records
28-915.01	False statement under oath or affirmation if statement is required by law to be sworn or affirmed
28-924	Official misconduct
28-926	Oppression under color of office
*28-927	Neglecting to serve warrant if offense for warrant is a felony
28-1103	Promoting gambling in the second degree
28-1105	Possession of gambling records in the first degree
28-1107	Possession of a gambling device
28-1204.04	Unlawful possession of a firearm on school grounds
28-1218	Use of explosives without a permit if eligible for a permit
28-1233	Failure to notify fire protection district of use or storage of explosive material over one pound
28-1240	Unlawful transportation of anhydrous ammonia
28-1304.01	Unlawful use of liquified remains of dead animals
28-1311	Interference with public service companies
28-1326	Unlawful transfer of recorded sound
28-1326	Sell, distribute, circulate, offer for sale, or possess for sale recorded sounds without proper label
28-1343.01	Unauthorized computer access compromising security of data
28-1346	Unauthorized access to or use of a computer to obtain confidential information, first offense
28-1347	Unauthorized access to or use of a computer, second or subsequent offense
29-739	Extradition and detainer, unlawful delivery of accused persons
29-908	Failing to appear when on bail for misdemeanor or ordinance violation
32-1536	Bribery or threats used to procure vote of another
32-1604	Failure to file affidavit to report spending 40 percent or more of limitation on campaign expenditures
32-1607	Knowingly and willfully exceeding campaign spending limitations
*37-401	Violation of hunting, fishing, and fur-harvesting permits
*37-411	Hunting, fishing, or fur-harvesting without permit
*37-411	Luring or enticing wildlife into a domesticated cervine animal facility
*37-4,108	Violating commercial put-and-take fishery licensure requirements
37-504	Unlawfully hunt, trap, or possess mountain sheep
37-509	Violations relating to hunting or harassing birds, fish, or other animals from aircraft
37-524.01	Release, kill, wound, or attempt to kill or wound a pig for amusement or profit
37-554	Use of explosives in water to remove obstructions without permission
37-555	Polluting waters of state
37-556	Polluting waters of state with carcasses
*37-573	Hunt or enable another to hunt through the Internet or host hunting through the Internet
37-809	Violation of restrictions on endangered or threatened species
*37-1254.01	Operating a motorboat while under the influence of alcohol or controlled substance
*37-1254.02	Refusing to submit to a chemical test for operating a motorboat while under the influence of alcohol or controlled substance
37-1272	Reckless or negligent operation of motorboat, water skis, surfboard, etc.
37-12,110	Violation of provisions relating to abandonment of motorboats

38-1,118	Violation of Uniform Credentialing Act when not otherwise specified, second or subsequent offense
38-1,133	Failure of insurer to report violations of Uniform Credentialing Act, second or subsequent offense
38-1424	Willful malpractice, solicitation of business, and other unprofessional conduct in the practice of funeral directing and embalming
38-28,103	Violations of Pharmacy Practice Act except as otherwise specifically provided
38-3130	Representing oneself as a psychologist or practicing psychology without a license
39-310	Depositing materials on roads or ditches, second offense
39-311	Placing burning materials or items likely to cause injury on highways, second offense
39-2612	Illegal location of junkyard
42-357	Knowingly violating a restraining order relating to dissolution of marriage
42-924	Knowingly violating a protection order issued pursuant to domestic abuse or harassment case, first offense
42-1204	False or incorrect information on application to restrict disclosure of applicant's address
43-2,107	Violation of restraining or other court order under Nebraska Juvenile Code
44-3,156	Violations of provisions permitting purchase of workers' compensation insurance by associations
44-1209	Reciprocal insurance, violations by attorney in fact
45-208	Violation of maximum rate of time-price differential, revolving charge agreements
45-343	Installment sales, failure to obtain license
45-343	Violation of Nebraska Installment Sales Act
45-708	Engaging in mortgage banking without a license or registration
45-814	Violation of Credit Services Organization Act
45-1037	Violations regarding installment loans
46-254	Interfering with closed waterworks, taking water without authority
46-263.01	Molesting or damaging water flow measuring devices
46-807	Unlawful diversion or drainage of natural lakes
46-1119	Violation of emergency permit provisions of Nebraska Chemigation Act
46-1139	Unlawfully engaging in chemigation without a chemigation permit
46-1140	Unlawfully engaging in chemigation with a suspended or revoked chemigation permit
46-1239	Violating the licensure requirements of the Water Well Standards and Contractors' Practice Act
48-144.04	Failing, neglecting, or refusing to file reports required by Nebraska Workers' Compensation Court
48-146.03	Unlawfully requiring employee to pay deductible amount under workers' compensation policy or requiring or attempting to require employee to give up right of selection of physician
48-147	Deducting from employee's pay for workers' compensation benefits
48-311	Violation of child labor laws
48-414	Using a machine or device or working at a location which Commissioner of Labor has labeled unsafe
48-424	Violations involving health and safety regulations
48-434	Violations of safety requirements in construction of buildings
48-645	Unlawful waiver of or deductions for unemployment compensation or discrimination in hire or tenure
48-910	Violation of laws relating to secondary boycotts
48-1714	Violation by farm labor contractor or applicant for farm labor contractor license
48-1714	Violations related to farm labor contractor licenses
48-1816	Violation of Nebraska Amusement Ride Act
48-2533	Install a conveyance in violation of the Conveyance Safety Act

50-1215	Obstruct, hinder, or mislead a legislative performance audit or preaudit inquiry
52-124	Failure to discharge construction liens, failure to apply payments for lawful claims
53-111	Nebraska Liquor Control Commission, gifts or gratuities forbidden
53-164.02	Evasion of liquor tax
53-186.01	Permitting consumption of liquor in unlicensed public places, second or subsequent offense
53-187	Nonbeverage liquor licensee giving or selling liquor fit for beverage purposes, second or subsequent offense
53-1,100	Violation of Nebraska Liquor Control Act, second or subsequent offense
54-1,125	Using false evidence of ownership of livestock
54-1,126	Violation of Livestock Brand Act when not otherwise specified
54-415	Estrays, illegal sale, disposition of proceeds
54-706.05	Interfere with or obstruct inspections or tests under the Bovine Tuberculosis Act
54-706.08	Prevent testing of or remove animal quarantined under the Bovine Tuberculosis Act
54-706.10	Interfere with or obstruct confining of affected herds or examinations or tests under the Bovine Tuberculosis Act
54-706.17	Other violations of the Bovine Tuberculosis Act or rules and regulations
54-750	Harboring or prohibited sale of diseased animals, first offense
54-751	Violation of rules and regulations relating to diseased animals and disposal of carcasses, first offense
54-752	Violation of laws relating to diseased animals and disposal of carcasses, first offense
54-796	Violation of Animal Importation Act, second or subsequent offense
54-861	Violation of Commercial Feed Act, second or subsequent offense
54-1171	Violation of Livestock Auction Market Act
54-1181.01	Person engaging in livestock commerce violating veterinarian inspection provisions
54-1811	Illegal purchase of slaughter livestock
54-1913	Interference with inspection of meat and poultry, attempting to bribe inspector or employee of Department of Agriculture
54-1913	Violation of Nebraska Meat and Poultry Inspection Law when not otherwise specified unless intent was to defraud
54-2288	Violation of quarantine requirements under Pseudorabies Control and Eradication Act, second or subsequent offense
54-22,100	Violation of Pseudorabies Control and Eradication Act, second or subsequent offense
54-2323	Violation of Domesticated Cervine Animal Act, second or subsequent offense
54-2761	Violation of Scrapie Control and Eradication Act, second or subsequent offense
55-142	Trespassing on place of military duty, obstructing person in military duty, disrupting orderly discharge of military duty, disturbing or preventing passage of military troops
55-175	Refusal by restaurant, hotel, or public facility to serve person wearing prescribed National Guard uniform
55-428	Code of military justice, witness failure to appear
57-915	Violation of oil and gas conservation laws
*60-3,167	Operating or allowing the operation of motor vehicle or trailer without proof of financial responsibility
*60-4,108	Operating motor vehicle in violation of court order or while operator's license is revoked or impounded
*60-4,109	Operating motor vehicle in violation of court order or while operator's license is revoked or impounded for violation of city or village ordinance
60-690	Aiding or abetting a violation of the Nebraska Rules of the Road

60-696	Failure of driver to stop and report a motor vehicle accident, first offense in 12 years
*60-6,130	Unlawful removal or possession of sign or traffic control or surveillance device
*60-6,130	Willfully or maliciously injuring, defacing, altering, or knocking down any sign, traffic control device, or traffic surveillance device
60-6,195	Speed competition or drag racing on highways
60-6,211.05	Tampering with or circumventing ignition interlock device or driving a vehicle without an ignition interlock device in violation of court order
*60-6,217	Reckless driving or willful reckless driving, second offense
60-6,336	Snowmobile contest on highway without permission, second or subsequent offense within one year
60-6,343	Violation of provisions relating to snowmobiles, second or subsequent offense within one year
60-6,362	Violation of all-terrain vehicle requirements, second or subsequent offense within one year
60-1911	Violating laws relating to abandoned vehicles
69-408	Violation of secondary metals recycling requirements
69-1215	Willfully or knowingly engaging in business of debt management without license
69-1324	Willful failure to deliver abandoned property to the State Treasurer
69-2409.01	Intentionally causing the Nebraska State Patrol to request mental health history information without reasonable belief that the named individual has submitted a written application or completed a consent form for a handgun
71-962	Filing petition with false allegations or depriving a subject of rights under Nebraska Mental Health Commitment Act or the Sex Offender Commitment Act
71-962	Willful violation involving records under Nebraska Mental Health Commitment Act or the Sex Offender Commitment Act
71-15,141	Approve, sign, or file a local housing agency annual report which is materially false or misleading
71-1805	Sale and distribution of pathogenic microorganisms
71-2416	Violation of Emergency Box Drug Act
71-2512	Violation of provisions on poisons and adulterated or misbranded drugs when not otherwise specified, second offense
71-3213	Violation of laws pertaining to private detectives
72-245	Waste, trespass, or destruction of trees on school lands
*72-313	Violation of mineral or water rights on state lands
72-802	Violation of plans, specifications, bids, or appropriations on public buildings
75-127	Unjust discrimination or prohibited practices in rates by officers, agents, or employees of a common carrier
75-428	Failure of railroad to provide transfer facilities at intersections upon order of the Public Service Commission
75-723	Violation of laws on transmission lines
76-1722	Acting as a sales agent for real property in a time-share interval arrangement without a license
76-2114	Acting as membership camping contract salesperson without registration
76-2325.01	Interference with utility poles and wires or transmission of light, heat, power, or telecommunications, loss of at least $200 but less than $500 (certain situations)
77-1232	Failure to list or filing false list of personal property for tax purposes for 1993 and thereafter
77-2311	Failure or refusal to perform duties regarding deposit of state funds by State Treasurer
77-2790	Claiming excessive exemptions or overstating withholding to evade income taxes
77-27,115	Taxpayer, failure to pay, account, or keep records on income tax
77-3009	Violation of Mechanical Amusement Device Tax Act

77-3110	Violation of laws on registration by nonresident contractors for taxation purposes
77-3522	False or fraudulent claim for homestead exemption
79-949	False or fraudulent acts to defraud the school retirement system
79-9,107	Illegal interest in investment of school employees retirement system funds
80-405	Obtaining veterans relief by fraud
81-2,162.17	Violation of Nebraska Commercial Fertilizer and Soil Conditioner Act
81-885.45	Acting as real estate broker, salesperson, or subdivider without license or certificate or under suspended license or certificate
81-8,254	Obstruct, hinder, or mislead Public Counsel in inquiries
81-1023	Use of improperly marked or equipped state-owned motor vehicle
81-1117.03	Prohibited release of state computer file data
81-1933	Truth and deception examination, unlawful use by employer
81-1935	Violation of provisions on truth and deception examinations
81-2038	False or fraudulent acts to defraud the Nebraska State Patrol Retirement System
81-3535	Unauthorized practice of geology, first offense
84-1327	False or fraudulent acts to defraud the State Employees Retirement System
85-1650	Violating private postsecondary career school provisions
86-607	Discrimination in rates by telegraph companies
86-608	Failure by telegraph companies to provide newspapers equal facilities
87-303.08	Violation of Uniform Deceptive Trade Practices Act when not otherwise specified

CLASS III MISDEMEANOR	**Maximum—three months imprisonment, or five hundred dollars fine, or both** **Minimum—none**
2-1825	Violation of Nebraska Potato Inspection Act
2-2319	Violation of Nebraska Wheat Resources Act
2-2647	Violation of Pesticide Act, first offense
2-3008	Violation of Nebraska Poultry Disease Control Act
2-3416	Violation of Nebraska Poultry and Egg Resources Act
2-3635	Violation of Nebraska Corn Resources Act
2-3765	Violation of Dry Bean Resources Act
2-3963	Violation of Dairy Industry Development Act
2-4020	Violation of Grain Sorghum Resources Act
2-5605	Violations relating to excise taxes on grapes
3-330	Violation of Airport Zoning Act
3-408	Violation of provisions regulating aircraft obstructions or structures
3-504	Violation of city airport authority regulations
3-613	Violation of county airport authority regulations
4-106	Alien elected to office in labor or educational organization
7-101	Unauthorized practice of law
8-127	Violation of inspection provisions for list of bank stockholders
8-1,119	Violation of the Nebraska Banking Act when not otherwise specified
8-1014	Violation of Nebraska Sale of Checks and Funds Transmission Act, acting without license
9-230	Unlawfully conducting or awarding a prize at a bingo game, first offense
9-422	Unlawfully conducting a lottery or raffle
12-1205	Failing to report the presence and location of human skeletal remains or burial goods associated with an unmarked human burial
13-1617	Violation of confidentiality requirements of Political Subdivisions Self-Funding Benefits Act
14-224	City council, officers, and employees receiving or soliciting gifts
14-2149	Violations relating to gas and water utilities in cities of the metropolitan class
18-305	Telephone company providing special rates to city or village officer or such officer accepting special rates

18-306	Electric company providing special rates to city or village officer
18-307	City or village officer accepting electric service at special rates
18-308	Water company providing special rates to city or village officer or such officer accepting special rates
18-1741.05	Failure to appear or comply with handicapped parking citation
18-2715	Unauthorized disclosure of confidential business information under city ordinance pursuant to Local Option Municipal Economic Development Act
19-2906	Disclosures by accountant of results of examination of municipal accounts
20-129	Interfering with rights of blind, deaf, or physically disabled persons and with admittance to or enjoyment of public facilities
20-129	Interfering with rights of a service animal trainer and with admittance to or enjoyment of public facilities
21-622	Illegal use of society emblems
23-114.05	Violation of county zoning regulations
23-135.01	False claim against county when value is less than $100
*23-350	Failing to file or filing false or incorrect inventory statement by county officers or members of county board
28-201	Criminal attempt to commit a Class II misdemeanor
28-311.08	Knowingly intrude upon any other person without his or her consent or knowledge in a place of solitude or seclusion unless the victim is under eighteen years of age
28-384	Failure to make report under Adult Protective Services Act
28-385	Wrongful release of information gathered under Adult Protective Services Act
28-403	Administering secret medicine
28-416	Knowingly or intentionally possessing more than 1 ounce but not more than 1 pound of marijuana
28-417	Unlawful acts relating to packaging, possessing, or using narcotic drugs and other controlled substances
28-424	Inhaling or drinking certain intoxicating compounds
28-424	Selling or offering for sale certain intoxicating compounds
28-424	Selling or offering for sale certain intoxicating compounds without maintaining register for one year
28-424	Inducing or enticing another to sell, inhale, or drink certain intoxicating compounds or to fail to maintain register for one year
28-425	Use of arsenic or strychnine in embalming fluids, violations of labeling requirements
28-444	Drug paraphernalia advertisement prohibited
28-445	Manufacture or delivery of an imitation controlled substance, first offense
28-450	Unlawful sale, distribution, or transfer of ephedrine, pseudoephedrine, or phenylpropanolamine for use as a precursor to a controlled substance or with reckless disregard as to its use
28-514	Theft of lost, mislaid, or misdelivered property when value is $200 or less, first offense
28-515.02	Theft of utility service and interference with utility meter
28-516	Unauthorized use of a propelled vehicle, first offense
28-519	Criminal mischief, pecuniary loss of less than $200
28-521	Criminal trespass in the second degree (certain situations)
28-523	Littering, first offense
28-606	Criminal simulation of antiquity, rarity, source, or composition
28-609	Impersonating a public servant
28-621	Criminal possession of one financial transaction device
28-633	Printing more than the last 5 digits of a payment card account number upon a receipt provided to payment card holder, first offense
28-717	Willful failure to report abused or neglected children
28-730	Unlawful disclosures by a child abuse and neglect team member
28-902	Failure to report injury of violence
28-914	Loitering about a penal institution

28-923	Simulating legal process
28-925	Misuse of official information
*28-927	Neglecting to serve warrant if offense for warrant is a misdemeanor
28-928	Mutilation of a flag of the United States or the State of Nebraska
28-1009.01	Violence on or interference with a service animal
28-1010	Indecency with an animal
28-1204	Unlawful possession of a revolver
28-1209	Failure to register tranquilizer guns
28-1210	Failure to notify sheriff of sale of tranquilizer gun
28-1225	Storing explosives in violation of safety regulations
28-1226	Failure to report theft of explosives
28-1227	Violations of provisions relating to explosives
28-1240	Unlawful use of tank or container which contained anhydrous ammonia
28-1242	Unlawful throwing of fireworks
*28-1250	Violation of laws relating to fireworks
28-1251	Unlawful testing or inspection of fire alarms
*28-1303	Raising or producing stagnant water on river or stream
28-1309	Refusing to yield a telephone party line
28-1310	Intimidation by telephone call
28-1313	Unlawful use of a white cane or guide dog
28-1314	Failure to observe a blind person
28-1316	Unlawful use of locks and keys
28-1317	Unlawful picketing
28-1318	Mass picketing
28-1319	Interfering with picketing
28-1320	Intimidation of pickets
28-1320.03	Unlawful picketing of a funeral
*28-1321	Maintenance of nuisances
28-1322	Disturbing the peace
28-1331	Unauthorized use of receptacles
28-1332	Unauthorized possession of a receptacle
28-1335	Discharging firearm or weapon using compressed gas from public highway, road, or bridge
28-1419	Selling or furnishing tobacco to minors
28-1420	Sale or purchase for resale of tobacco without license
*28-1425	Licensee selling or furnishing tobacco to minors
*28-1429.02	Dispensing cigarettes or other tobacco products from vending machines or similar devices in certain locations
28-1438	Unlawful possession of legend drug substances
*28-1467	Operation of aircraft while under the influence of alcohol or drugs, first offense
*28-1468	Operation of aircraft while under the influence of alcohol or drugs, second offense
28-1478	Deceptive or misleading advertising
28-1479	Sale of certain beverage cans with removable tabs
*29-817	Disclosing of search warrant prior to its execution
29-835	Refusing to permit, interfering with, or preventing inspection pursuant to inspection warrant
29-4110	Unlawful possession of DNA samples or records
29-4111	Unlawful disclosure of DNA samples or records
32-1501	Interfering or refusing to comply with election requirements of Secretary of State
32-1505	Deputy registrar drinking liquor at or bringing liquor to place of voter registration
*32-1506	Theft, destruction, removal, or falsification of voter registration and election records
32-1510	Hindering voter registration
32-1511	Obstructing deputy registrars at voter registration
32-1513	Bribery involving candidate filing forms and nominating petitions
32-1515	Wrongfully or willfully suppressing election nomination papers

*32-1517	Service as election official, threat of discharge or coercion by employer
32-1519	Misconduct or neglect of duty by election official
32-1521	Printing or distribution of election ballots by other than election officials
32-1528	Voting outside of resident precinct, school district, or village
32-1549	Failing to appear or comply with citation issued under Election Act
35-520	False alarm or report of fire in rural fire protection district or area
35-801	Knowingly accepting, transferring, selling, or offering to sell or purchase firefighting clothing or equipment which does not meet standards
*37-248	Violation of Game Law when not otherwise specified
37-336	Violation of provisions for state wildlife management areas
37-348	Violation of provisions for state park system
*37-406	Duplication of electronically issued license, permit, or stamp under the Game Law
*37-410	Obtaining permit to hunt, fish, or harvest fur by false pretenses or misuse of permit
*37-461	Violating permit to destroy muskrats
37-462	Performing taxidermy services without permit and failure to keep complete records
37-504	Hunting, trapping, or possessing animals or birds out of season
37-504	Unlawfully taking or possessing game
*37-505	Unlawful purchase, sale, or barter of animals, birds, or fish or parts thereof
37-507	Abandonment, waste, or failure to dispose of fish, birds, or animals
37-508	Storing game or fish in cold storage after prescribed storage season or without proper tags
37-510	Violating game shipment requirements
*37-511	Violating importation restrictions on game shipments
37-512	Violating regulations relating to the shipment of raw fur
*37-513	Shooting at wildlife from highway
*37-514	Hunting wildlife with artificial light
*37-515	Hunting, driving, or stirring up game birds or animals with aircraft or boat
37-521	Use of aircraft, vessel, vehicle, or other equipment to harass certain game animals
*37-522	Carrying loaded shotgun in or on vehicle on highway
*37-525	Taking game birds or game animals during closed season while training or running dogs
*37-525	Running dogs on private property without permission
*37-526	Unlawful use or possession of ferrets
37-531	Unlawful use of explosive traps or poison gas on wild animals
37-532	Setting an unmarked trap
*37-533	Violating restrictions on hunting fur-bearing animals and disturbing their nests, dens, and holes
*37-535	Hunting game from propelled boat or watercraft
*37-536	Hunting game birds with certain weapons
*37-537	Baiting game birds
*37-538	Hunting game birds from vehicle
*37-539	Taking or destroying nests or eggs of game birds
*37-543	Unlawful taking of fish
*37-545	Unlawful removal of fish from privately owned pond and violations of commercial fishing permits
*37-546	Unlawful taking, use, or possession of baitfish
37-548	Release, importation, exportation, or commercial exploitation of wildlife
37-552	Failure to maintain fish screens in good repair
37-557	Disturbing hatching boxes and nursery ponds
37-570	Knowing and intentional interference or attempt to interfere with hunting, trapping, fishing, or associated activity
37-605	Failure to appear on an alleged violation of the Game Law

*37-615	Taking wildlife or applying for permit with a suspended or revoked permit
37-703	Defacing a sign at a game reserve, bird refuge, or wild fowl sanctuary
37-705	Disturbing or otherwise violating provisions relating to reserves, sanctuaries, and closed waters
37-709	Hunting, carrying firearms, or operating a motorboat in state game refuges
37-727	Violation of provisions for hunting on privately owned land
37-1254.02	Refusing to submit to a preliminary breath test relating to operating a motorboat while under the influence of alcohol or controlled substance
37-1289	Operation or sale of motorboat without certificate of title, failure to surrender certificate upon cancellation, deface a certificate of title
38-1,118	Violation of Uniform Credentialing Act when not otherwise specified, first offense
38-1,133	Failure of insurer to report violations of Uniform Credentialing Act, first offense
38-10,165	Performing body art on minor without written consent of parent or guardian and keeping record 5 years
38-2867	Unlicensed person practicing pharmacy
39-103	Operation of motor vehicle in violation of published rules and regulations of the Department of Roads
39-310	Depositing materials on roads or ditches, first offense
39-311	Placing burning materials or items likely to cause injury on highways, first offense
39-806	Destroying bridge or landmark
39-1335	Illegal use of adjoining property for access to state highway
39-1362	Digging up or crossing state highway
39-1412	Loads exceeding posted capacity on county bridges
39-1806	Refusal of access to lands for placement of snow fences, willful or malicious damage thereto
39-1810	Livestock lanes, driving livestock on adjacent highways
39-1815	Leaving gates open on road over private property
43-257	Detaining or placing a juvenile in violation of certain Nebraska Juvenile Code provisions
43-709	Illegal placement of children
43-1310	Unauthorized disclosure of confidential information regarding foster children and their parents or relatives
43-1414	Violation of genetic paternity testing provisions, second or subsequent offense
43-3001	Public disclosure of confidential information received concerning a child who is or may be in state custody
43-3327	Unauthorized disclosure or release of confidential information regarding a child support order
43-3714	Violation of confidentiality provisions of Court Appointed Special Advocate Act
44-394	Violation of Chapter 44 when not otherwise specified
44-530	Violation of Standardized Health Claim Form Act
*44-1113	Violation of Viatical Settlements Act
44-3721	Violation of Motor Club Services Act
44-5508	Surplus lines licensee violations relating to financial condition of insurer
45-601	Operating a collection agency business without a license or violation of Collection Agency Act
45-714	Mortgage loan violations by licensee
45-1023	Making a false statement to secure a loan
46-263	Neglecting or preventing delivery of irrigation water
46-1142	Failure to provide notice of a chemigation accident
46-1240	Engaging in business or employing another without complying with standards under Water Well Standards and Contractors' Practice Act
48-213	Employment regulations, violation of lunch hour requirements

48-216	Discrimination in employment by manufacturer or distributor of military supplies
*48-511	Employment agencies splitting fees with employers
*48-513	Violation of private employment agency provisions when not otherwise specified
48-612	Commissioner of Labor employees violating provisions relating to administration of Employment Security Law
48-612.01	Unauthorized disclosure of information received for administration of Employment Security Law
48-614	Contumacy or disobedience to subpoenas in unemployment compensation proceedings
48-663	False statements or failure to disclose information by employees to obtain unemployment compensation benefits
48-664	False statements by employers to obtain unemployment compensation benefits
48-666	Violation of Employment Security Law when not otherwise specified
48-736	Violation of Boiler Inspection Act
*48-1005	Age discrimination in employment or interfering with enforcement of statutes relating to age discrimination in employment
48-1118	Unlawful disclosure of information under Nebraska Fair Employment Practice Act
48-1123	Interference with Equal Opportunity Commission in performance of duty under Nebraska Fair Employment Practice Act
48-1227	Discrimination on the basis of sex
49-231	Failure of state, county, or political subdivision officer to furnish information required by constitutional convention
49-1447	Campaign practices, violation by committee treasurer or candidate in statements or reports
49-1461.01	Ballot question committee violating surety bond requirements
49-1469.08	Violation of campaign practices by businesses and organizations in contributions, expenditures, and volunteer services
49-1471	Campaign contribution or expenditure in excess of $50 made in cash
49-1472	Campaign practices, acceptance of anonymous contribution
49-1473	Campaign practices, legal name of contributor required
49-1474	Campaign practices, political newsletter or mass mailing sent at public expense
49-1475	Campaign practices, failing to disclose name and address of contributor
49-1476.02	Accepting or receiving a campaign contribution from a state lottery contractor
49-1477	Campaign practices, required information on contributions from persons other than committees
49-1478	Campaign practices, violation of required reports on expenditures
49-1479	Campaign practices, unlawful contributions or expenditures made for transfer to candidate committee
49-1479.01	Violations related to earmarked campaign contributions
49-1490	Prohibited acts relating to gifts by principals or lobbyists
49-1492	Prohibited practices of a lobbyist
49-1492.01	Violation of gift reporting requirements by certain entities
49-1499.01	Violation of prohibition on employing, supervising, or recommending a family member by executive branch official or employee
49-14,101	Conflicts of interest, prohibited acts of public official, employee, candidate, and other individuals
49-14,101.01	Public official or employee using office, confidential information, personnel, property, or funds for financial gain or public official or immediate family member accepting gift of travel or lodging if made for immediate family member to accompany the public official
49-14,103.04	Knowing violation of conflict of interest prohibitions
49-14,104	Official or full-time employee of executive branch representing a person or acting as an expert witness

49-14,115	Unlawful disclosure of confidential information by member or employee of Nebraska Accountability and Disclosure Commission
49-14,135	Violation of confidentiality of proceedings of Nebraska Accountability and Disclosure Commission
50-1213	Divulging confidential information or records relating to a legislative performance audit or preaudit inquiry
53-167.02	Violations relating to beer keg identification numbers
53-167.03	Tamper with, alter, or remove beer keg identification number or possess beer container with altered or removed keg identification number
53-180.05	Liquor, violations involving minors
53-186.01	Consumption of liquor in unlicensed public places
54-796	Violation of Animal Importation Act, first offense
54-1408	Violations when sheep are infected with scabies
54-1711	Livestock dealer violating provisions of Nebraska Livestock Dealer Licensing Act
*54-1913	Meat and poultry inspector, officer, or employee accepting bribes
54-2288	Violation of quarantine requirements under Pseudorabies Control and Eradication Act, first offense
57-507	Unlawful use of liquefied petroleum gas cylinders
57-1106	Willfully and maliciously breaking, injuring, damaging, or interfering with oil or gas pipeline, plant, or equipment
60-180	Prohibited acts relating to certificates of title for motor vehicles, all-terrain vehicles, or minibikes
60-3,170	Violation of Motor Vehicle Registration Act when not otherwise specified
60-3,171	Fraud in registration of motor vehicle or trailer
60-3,176	Disclosure of information regarding undercover license plates to unauthorized individual
60-3,206	Violation of International Registration Plan Act
60-480.01	Disclosure of information regarding undercover drivers' licenses to unauthorized individual
*60-4,108	Operating motor vehicle while operator's license is suspended or after revocation or impoundment but before licensure
*60-4,109	Operating motor vehicle while operator's license is suspended or after revocation or impoundment but before licensure for violation of city or village ordinance
60-4,111	Violation of Motor Vehicle Operator's License Act when not otherwise specified
60-4,118	Failure to surrender operator's license or appear before examiner regarding determination of physical or mental competence
60-4,140	Commercial driver, multiple operators' licenses
60-4,141	Operation of commercial motor vehicle outside operator's license classification
*60-4,146.01	Violation of privileges conferred by commercial drivers' licenses
60-4,159	Commercial driver, failure to provide notifications relating to conviction or disqualification
60-4,161	Commercial driver, failure to provide information to prospective employer
60-4,162	Employer failing to require information or allowing commercial driver to violate highway-rail grade crossing or licensing provisions
60-4,170	Failure to surrender commercial driver's license
60-4,179	Violation of driver training instructor or school provisions
60-4,184	Failure to surrender operator's license for loss of license under point system
*60-4,186	Illegal operation of motor vehicle under period of license revocation for loss of license under point system
60-558	Failure to return motor vehicle license or registration to Department of Motor Vehicles for violation of financial responsibility provisions
60-560	Violation of Motor Vehicle Safety Responsibility Act when not otherwise specified

60-678	Operation of vehicles in certain public places where prohibited, where not permitted, without permission, or in a dangerous manner
60-690	Aiding or abetting a violation of the Nebraska Rules of the Road
60-6,110	Failing to obey lawful order of law enforcement officer given under Nebraska Rules of the Road to apprehend violator
60-6,130	Willful damage or destruction of road signs, monuments, traffic control or surveillance devices by shooting upon highway
60-6,215	Reckless driving, first offense
*60-6,216	Willful reckless driving, first offense
*60-6,222	Violations in connection with headlights and taillights
60-6,228	Vehicle proceeding forward on highway with backup lights on
*60-6,234	Violations involving rotating or flashing lights on motor vehicles
*60-6,235	Violation of vehicle clearance light requirements
*60-6,245	Violation of motor vehicle brake requirements
60-6,259	Application of an illegal sunscreening or glazing material on a motor vehicle
60-6,263	Operating or owning vehicle in violation of safety glass requirements
60-6,291	Exceeding limitations on width, length, height, or weight of motor vehicles when not otherwise specified
60-6,299	Violation of or failure to obtain permit to move building or other object on highway
60-6,303	Refusal to weigh vehicle or lighten load
60-6,336	Snowmobile contest on highway without permission, first offense within one year
60-6,343	Violation of provisions relating to snowmobiles, first offense within one year
60-6,352	Illegal operation of minibikes on state highway
60-6,353	Operating a minibike in a place, at a time, or in a manner not permitted by regulatory authority
60-6,362	Violation of all-terrain vehicle requirements, first offense within one year
60-1307	Failing to appear at hearing for violations discovered at weigh stations
60-1308	Failure to comply with weigh station requirements
60-1309	Resisting arrest or disobeying order of carrier enforcement officer at weigh station
60-1418	Violating conditions of a motor vehicle sale
62-304	Limitation upon negotiation of tuition notes or contracts of business colleges
64-105.03	Unauthorized practice of law by notary public
66-107	Illegal use of containers for gasoline or kerosene
66-1345.03	Failure to administer and keep records of excise tax on corn and grain sorghum under Ethanol Development Act
68-314	Unlawful use and disclosure of books and records of Department of Health and Human Services
68-1017	Obtaining through fraud assistance to aged, blind, or disabled or aid to dependent children when value is less than $500
68-1017.01	Unlawful use, alteration, or transfer of food stamp benefits when value is less than $500
68-1017.01	Unlawful possession or redemption of food stamp benefits when value is less than $500
69-2012	Violation of Degradable Products Act
*69-2443	Carrying concealed handgun at prohibited site or while under the influence, first offense
*69-2443	Failure to report discharge of concealed handgun, first offense
*69-2443	Failure to carry or display concealed handgun permit, first offense
*69-2443	Failure to inform peace officer of concealed handgun, first offense
69-2709	Selling, possessing, or distributing cigarettes in violation of stamping requirements
71-220	Violation of barbering provisions

71-506	Willful or malicious disclosure of confidential reports, notifications, and investigations relating to communicable diseases
71-542	Unauthorized disclosure of confidential immunization information
71-613	Violation of provisions on vital statistics
71-1371	Violation of the Cremation of Human Remains Act
71-1631.01	Violating regulation for protecting public health and preventing communicable diseases
71-1905	Violations regarding children in foster care
71-2228	Illegal receipt of food supplement benefits when value is less than $500
71-2229	Using, altering, or transferring food instruments or food supplements when value is less than $500
71-2229	Illegal possession or redemption of food supplement benefits when value is less than $500
71-2512	Violation involving poisons and adulterated or misbranded drugs when not otherwise specified, first offense
71-4632	Mobile home parks established, conducted, operated, or maintained without license, nuisance
71-6741	Violation of the Medication Aide Act
71-6907	Knowingly and intentionally performing an abortion in violation of parental notification provisions
74-609.01	Hunting on railroad right-of-way without permission
74-1331	Failure to construct, maintain, and repair railroad bridges in compliance with law
75-114	Refusal to allow access to the Public Service Commission to records of a motor or common carrier
75-367	Violation of motor carrier safety regulations or hazardous materials regulations
76-505	Judges and other county officers engaging in business of abstracting
76-558	Unlawful practice in business of abstracting
76-2246	Unlawful practice as a real property appraiser
76-2325.01	Interference with utility poles and wires or transmission of light, heat, power, or telecommunications, loss of less than $200 (certain situations)
77-1719.02	Violations by county board members regarding collection of personal taxes and false returns
77-2619	Fail, neglect, or refuse to report or make false statement regarding cigarette taxation
77-3407	Unlawful signature on budget limitation petition
79-210	Violation of compulsory school attendance provisions
79-603	School vehicles, violation of safety requirements and operating school vehicles which violate safety requirements when not otherwise specified
79-727	Violation of character education requirements
79-897	Illegal inquiries concerning religious affiliation of teacher applicants
79-8,101	Illegal solicitation of business from classroom teachers
79-1607	Violation of laws on private, denominational, and parochial schools
81-2,157	Unlawful sale or marking of hybrid seed corn
81-2,179	Violation of Nebraska Apiary Act
81-513	Violation of order of State Fire Marshal directing the closing of a building pending repair
81-8,127	Unlawful practice of land surveying or use of title
81-8,142	Violation of provisions relating to the State Athletic Commissioner
81-8,205	Unlawful practice as a professional landscape architect
81-1508.01	Knowing and willful violation of Environmental Protection Act, Integrated Solid Waste Management Act, or Livestock Waste Management Act when not otherwise specified
81-2008	Failure to obey rules or orders of or resisting arrest by Nebraska State Patrol
82-111	Destroy, deface, remove, or injure monuments marking Oregon Trail

82-507	Knowingly and willfully appropriate, excavate, injure, or destroy any archaeological resource on public land without written permission from the State Archaeology Office
82-508	Enter or attempt to enter upon the lands of another without permission and intentionally appropriate, excavate, injure, or destroy any archaeological resource or any archaeological site
84-311	Disclosure of restricted information by the Auditor of Public Accounts or an employee of the auditor
84-712.09	Violation of provisions for access to public records
84-1213	Mutilation, transfer, removal, damage, or destruction of or refusal to return government records
84-1414	Unlawful action by members of public bodies in public meetings, second or subsequent offense
85-1104	Violation of provisions relating to out-of-state institutions of higher education
85-1110.01	Violation of requirements for obtaining approval to establish a private college
86-290	Intercepting or interfering with certain wire, electronic, or oral communication
86-606	Unlawful delay or disclosure of telegraph dispatches
89-1,101	Violation of Weights and Measures Act or order of Department of Agriculture, first offense
90-104	Use of state banner as advertisement or trademark

CLASS IIIA MISDEMEANOR **Maximum—seven days imprisonment, five hundred dollars fine, or both**
Minimum—none

*28-416	Knowingly or intentionally possessing one ounce or less of marijuana, third or subsequent offense
*54-623	Owning a dangerous dog within 10 years after conviction of violating dangerous dog laws
*54-623	Dangerous dog attacking or biting a person when owner of dog has a prior conviction for violating dangerous dog laws
60-690	Aiding or abetting a violation of the Nebraska Rules of the Road
60-6,275	Operating or possessing radar transmission device while operating motor vehicle
77-2704.33	Failure of a contractor or taxpayer to pay certain sales taxes of less than $300
79-1602	Transmitting or providing for transmission of false school information when electing not to meet school accreditation or approval requirements
89-1,107	Use of a grain moisture measuring device which has not been tested
89-1,108	Violation of laws on grain moisture measuring devices

CLASS IV MISDEMEANOR **Maximum—no imprisonment, five hundred dollars fine**
Minimum—one hundred dollars fine

2-220.03	Failure to file specified security or certificates by carnival companies, booking agencies, or shows for state and county fairs
2-957	Unlawful movement of article through which noxious weeds may be disseminated
2-963	Violation of provisions relating to weed control
2-10,115	Specified violations of Plant Protection and Plant Pest Act, first offense
2-1207	Knowingly aiding or abetting a minor to make a parimutuel wager
2-1806	Engaging in business as a potato shipper without a license
2-1807	Failure by potato shipper to file statement or pay tax
2-3109	Violation of Nebraska Soil and Plant Analysis Laboratory Act when not otherwise specified
2-3223.01	Failure to file audit of natural resources district
2-3524	Violation of Nebraska Graded Egg Act

2-4327	Violation of Agricultural Liming Materials Act, second or subsequent offense
8-142	Bank officer or employee allowing an excessive loan to certain persons
9-513	Violation of Nebraska Small Lottery and Raffle Act, first offense
9-814	Purchase of state lottery ticket by person under 19 years of age
12-512.07	Violations in administering perpetual care trust funds for cemeteries
12-617	Violation relating to perpetual care trust funds for public mausoleums and other burial structures
12-1115	Failure to surrender a license under the Burial Pre-Need Sale Act
19-1847	Violation of Civil Service Act
20-149	Failure of consumer reporting agency to provide reports to consumers
23-387	Violation of provisions relating to community antenna television service
*23-919	Violation of County Budget Act of 1937
23-1507	Failure of register of deeds to perform duties
23-1821	Failure to notify coroner of a death during apprehension or while in custody
25-1563	Attachment or garnishment procedure used to avoid exemption laws
25-1640	Penalizing employee due to jury service
28-410	Failure to comply with inventory requirements by manufacturer, distributor, or dispenser of controlled substances
*28-416	Knowingly or intentionally possessing one ounce or less of marijuana, second offense
28-1009	Harassment of police animal not resulting in death of animal
28-1019	Violation of court order related to misdemeanor animal abuse conviction
28-1104	Promoting gambling in the third degree
28-1253	Distribution, sale, or use of refrigerants containing liquefied petroleum gas
28-1304	Putting carcass or filthy substance in well or running water
28-1405	Failure to acquire locksmith registration certificate
29-3527	Unlawful access to or dissemination of criminal history record information
32-1507	Elections, false representation of political party affiliation
32-1517	Refusing to serve as election official
32-1520	Printing or distribution of illegal ballots
32-1547	Elections, filing for more than one elective office
36-213.01	Unlawful assignment or notice of assignment of wages of head of family
37-403	Violation of farm or ranch land hunting permit exemption
*37-463	Dealing in raw furs without fur buyer's permit, failure to keep complete records of furs bought or sold
37-471	Violation relating to aquatic organisms raised under an aquaculture permit
37-482	Keeping wild birds or animals in captivity without permit
*37-4,103	Unlawfully taking, maintaining, or selling raptors
37-524	Importation, possession, or release of certain wild or nonnative animals
37-558	Placing harmful matter into waters stocked by Game and Parks Commission
37-1238.02	Failure of vessel to comply with order of officer to stop
37-1271	Violation of certain provisions of State Boat Act
39-302	Failure to properly equip certain sprinkler irrigation systems with endgun
43-1414	Violation of genetic paternity testing provisions, first offense
44-3,142	Unauthorized release of relevant insurance information relating to motor vehicle theft or insurance fraud
44-10,108	Soliciting membership for a fraternal benefit society not licensed in this state
44-2615	Acting as insurance consultant without license

45-101.07	Lender imposing certain conditions on mortgage loan escrow accounts
46-613.02	Violations of registration and spacing requirements for water wells; illegal transfer of ground water
46-687	Withdrawing or transferring ground water in violation of Industrial Ground Water Regulatory Act
46-1127	Placing chemical in irrigation distribution system without complying with law
46-1143	Violation of Nebraska Chemigation Act when not otherwise specified
46-1666	Willfully obstruct, hinder, or prevent Department of Natural Resources from performing duties under Safety of Dams and Reservoirs Act
48-219	Contracting to deny employment due to relationship with labor organization
48-230	Violation of provisions allowing preference to veterans seeking employment
48-433	Failure of architect to comply with law in preparing building plans
48-1206	Minimum wage rate violations
48-1505	Violations relating to sheltered workshops
48-2211	Violating recruiting restrictions related to non-English-speaking persons
49-1445	Violation of requirement to form candidate committee upon raising, receiving, or expending more than five thousand dollars in a calendar year
49-1446	Violations relating to campaign committee funds
49-1467	Failure to report campaign expenditure in excess of $250
49-1474.01	Violation of distribution requirements for political material
53-186.01	Permitting consumption of liquor in unlicensed public places, first offense
53-187	Nonbeverage liquor licensee giving or selling liquor fit for beverage purposes, first offense
53-194.03	Importation of alcohol for personal use in certain quantities
53-1,100	Violation of Nebraska Liquor Control Act, first offense
54-315	Leaving well or pitfall uncovered, failure to decommission inactive well
54-613	Allowing dogs to run at large, damage property, injure persons, or kill animals
54-622	Violation of restrictions on dangerous dogs
*54-726.04	Importing diseased swine without permit
54-753.04	Unlawful feeding of garbage to animals
54-861	Violation of Commercial Feed Act, first offense
54-861	Improper use of trade secrets in violation of Commercial Feed Act
54-1371	Failure by owner to carry out brucellosis testing responsibilities
54-1377	Diversion of livestock from particular destination without permission or removing or altering livestock identification for such purposes
54-1384	Violation of Nebraska Bovine Brucellosis Act when not otherwise specified
54-1411	Violation of provisions relating to animals with scabies when not otherwise specified
54-1605	Violation of accreditation provisions for specific pathogen-free swine
54-22,100	Violation of Pseudorabies Control and Eradication Act, first offense
54-2323	Violation of Domesticated Cervine Animal Act, first offense
*54-2612	Unlawful sale of swine by packer
54-2615	False reporting of swine by packer
*54-2622	Unlawful sale of cattle by packer
54-2625	False reporting of cattle by packer
54-2761	Violation of Scrapie Control and Eradication Act, first offense
*55-165	Discriminating against an employee who is a member of the reserve military forces
*55-166	Discharging employee who is a member of the National Guard or armed forces of the United States for military service
57-516	Violation of provisions relating to sale of liquefied petroleum gas

57-719	Violating or aiding and abetting violations of oil and gas severance tax laws
57-1213	Failure or refusal to make uranium severance tax return or report
60-3,168	Failure to have and keep liability insurance or other proof of financial responsibility on motor vehicle
*60-3,169	Unauthorized use of vehicle registered as farm truck
60-3,172	Registration of motor vehicle or trailer in location other than that authorized by law
60-3,173	Improper increase of gross weight or failure to pay registration fee on commercial trucks and truck-tractors
*60-3,174	Improper use of a vehicle with a special equipment license plate
60-4,129	Violation involving use of an employment driving permit
60-4,130	Failure to surrender an employment driving permit
60-4,130.01	Violation involving use of a medical hardship driving permit
60-690	Aiding or abetting a violation of the Nebraska Rules of the Road
60-6,175	Improperly passing a school bus with warning signals flashing or stop signal arm extended
60-6,197.01	Failure to report unauthorized use of immobilized vehicle
60-6,292	Violation of requirements for extra-long vehicle combinations
60-6,302	Unlawful repositioning fifth-wheel connection device of truck-tractor and semitrailer combination
60-6,304	Operation of vehicle improperly constructed or loaded or with cargo or contents not properly secured
60-1407.02	Unauthorized use of sales tax permit relating to sale of vehicle or trailer
*63-103	Printing copies of a publication in excess of the authorized quantity
66-495.01	Unlawfully using or selling diesel fuel or refusing an inspection
66-6,115	Fueling a motor vehicle with untaxed compressed fuel
66-727	Failure to obtain license as required under motor fuel tax laws
66-727	Failure to produce motor fuel license or permit for inspection
66-1521	Sell, distribute, deliver, or use petroleum as a producer, refiner, importer, distributor, wholesaler, or supplier without a license
69-1808	Violation of American Indian Arts and Crafts Sales Act
70-310	Willful and malicious interference with electric poles or wires
71-1563	Modular housing unit sold or leased without official seal
71-1613	Violation of provisions relating to district health boards
71-1914.03	Providing unlicensed child care when a license is required
71-2049	Failure to provide an itemized list and explanation of medical expenses
71-2096	Interfere with enforcement of provisions relating to health care facility receivership proceedings
71-3517	Violation of Radiation Control Act
71-4632	Mobile home parks established, conducted, operated, or maintained without license
71-5312	Violation of Nebraska Safe Drinking Water Act
71-5407	Violation of Nebraska Drug Product Selection Act or rules and regulations under the act
*71-5733	Smoking in place of employment or public place, second or subsequent offense
71-5733	Proprietor violating Nebraska Clean Indoor Air Act, second or subsequent offense
*71-5870	Engaging in activity prohibited by the Nebraska Health Care Certificate of Need Act
71-8711	Disclose actions, decisions, proceedings, discussions, or deliberations of patient safety organization meeting
73-105	Violation of laws on public lettings
*74-1323	Failure to comply with order by Public Service Commission to store or park railroad cars safe distance from crossing
75-117	Refusal to comply with an order of the Public Service Commission by a motor or common carrier
75-155	Knowing and willful violation of Chapter 75 or 86 when not otherwise specified

75-358	Operating motor vehicle in interstate commerce in violation of provisions for a common, contract, or private carrier
75-371	Operating motor vehicle in violation of insurance and bond requirements for motor carriers
75-398	Operation of vehicle in violation of provisions relating to the unified carrier registration plan and agreement
75-426	Failure to file report of railroad accident
77-1232	Failure to list or filing false list of personal property for tax purposes prior to 1993
77-1324	False statement of assessment of public improvements
77-2026	Receipt by inheritance tax appraiser of extra fee or reward
77-2350.02	Failure to perform duties relating to deposit of public funds by school district or township treasurer
77-2713	Violation of laws relating to sales and use taxes when not otherwise specified
77-3709	Violation of reporting and permit requirements for mobile homes
81-2,147.09	Violation of Nebraska Seed Law
81-2,154	Violation of state-certified seed laws
81-2,290	Violation of Nebraska Pure Food Act
81-520.02	Violation of open burning ban or range-management burning permit
81-5,131	Violation of provisions relating to arson information
81-674	Wrongful disclosure of confidential data from medical record and health information registries or deceitful use of such information
81-1525	Failure or refusal to remove accumulation of junk
81-1559	Failure of manufacturer or wholesaler to obtain litter fee license
81-1560.01	Failure of retailer to obtain litter fee license
81-1577	Failure to register hazardous substances storage tanks
81-1626	Lighting and thermal efficiency violations
84-1414	Unlawful action by members of public bodies in public meetings, first offense
86-162	Failure to provide telephone services

CLASS V MISDEMEANOR **Maximum—no imprisonment, one hundred dollars fine**
Minimum—none

2-219	Conducting indecent shows or exhibits or gambling at state, district, or county fairs
2-220	State, district, and county fairs, refusal or failure to remove illegal devices
2-3292	Conducting recreational activities outside of designated areas in a natural resources district recreation area
2-3293	Smoking and use of fire or fireworks in a natural resources district recreation area
2-3294	Pets or other animals in a natural resources district recreation area
2-3295	Hunting, fishing, trapping, or using weapons in a natural resources district recreation area
2-3296	Conducting prohibited water-related activities in a natural resources district recreation area
2-3297	Destruction or removal of property, constructing a structure, or trespassing in a natural resources district recreation area
2-3298	Abandoning vehicle in a natural resources district recreation area
2-3299	Unauthorized sale or trading of goods in a natural resources district recreation area
2-32,100	Violation of traffic rules in a natural resources district recreation area
2-3974	Violation of Nebraska Milk Act or impeding or attempting to impede enforcement of the act
2-4327	Violation of Agricultural Liming Materials Act, first offense
7-111	Practice of law by certain judges, clerks, sheriffs, or other officials
8-113	Unauthorized use of the word ''bank''
8-114	Unauthorized conduct of banking business

8-226	Unauthorized use of the words ‘‘trust’’, ‘‘trust company’’, ‘‘trust association’’, or ‘‘trust fund’’
8-305	Unauthorized use of ‘‘building and loan’’ or ‘‘savings and loan’’ or any combination of such words in corporate name
8-829	Collecting certain charges on personal loans by banks and trust companies
13-510	Illegal obligation of funds in county budget during emergency
16-230	Violation of ordinance regulating drainage, litter, and growth of grass and weeds
17-563	Violation of ordinance regulating drainage, litter, and growth of grass and weeds
18-312	Cities, villages, and their officers entering into compensation contracts contingent upon elections
21-1306	Unauthorized use of the word cooperative
21-1728	Unlawful use of the words ‘‘credit union’’ or representing oneself or conducting business as a credit union
23-808	Operating pool or billiard hall or bowling alley outside of municipality without a county license
23-813	Operating roadhouse, dance hall, carnival, show, amusement park, or other place of public amusement outside of municipality without a county license
23-817	Violation of law regulating places of amusement
23-1612	Audit of county offices, refusal to exhibit records
24-216	Clerk of Supreme Court, fees, neglect or fraud in report
28-725	Unauthorized release of child abuse or neglect information
28-1018	Selling puppy or kitten under 8 weeks old without its mother
28-1305	Putting carcass or putrid animal substance in a public place
28-1306	Railroads bringing unclean stock cars into state
28-1308	Watering livestock at private tank without permission
28-1347	Unauthorized access to or use of a computer, first offense
*28-1418	Smoking or other use of tobacco by minors
28-1427	Minor misrepresenting age to obtain tobacco
28-1472	Failure to submit to preliminary breath test for operation of aircraft while under influence of alcohol or drugs
28-1483	Sale of certain donated food
31-435	Neglect of duty by officers of drainage districts
32-228	Failure to serve as an election official in counties having an election commissioner
32-236	Failure to serve as an election official in counties that do not have an election commissioner
32-241	Taking personnel actions against employee serving as an election official
32-1523	Obstructing entrance to polling place
32-1524	Electioneering by election official
32-1524	Electioneering or soliciting at or near polling place
32-1525	Exit interviews with voters near polling place on election day
32-1527	Voter voting ballot, unlawful acts
32-1535	Unlawful removal of ballot from polling place
33-132	Failure or neglect to charge, keep current account of, report, or pay over fees by any officer
37-305	Violation of rules and regulations for camping areas
37-306	Violation of rules and regulations for fire safety
37-307	Violation of rules and regulations for animals on state property
37-308	Violation of rules and regulations for hunting, fishing, trapping, and use of weapons on state property
37-309	Violation of rules and regulations for water-related recreational activities on state property
37-310	Violation of rules and regulations for real and personal property on state property
37-311	Violation of rules and regulations for vendors on state property
37-313	Violation of rules and regulations for traffic on state property under Game and Parks Commission jurisdiction

37-321	Fishing violation in emergency created by drying up of waters
37-349	Use of state park name for commercial purposes
*37-428	Obtaining habitat stamps, aquatic habitat stamps, or migratory waterfowl stamps by false pretenses or misuse of stamps
37-433	Violation of provisions on habitat stamps or aquatic habitat stamps
*37-443	Entry by a motor vehicle to a park permit area without a valid park permit
37-464	Falsifying certificate for permit to hold fur after close of season
37-476	Violation of aquaculture provisions
37-504	Unlawfully taking, possessing, or destroying certain birds, eggs, or nests
37-523	Unlawful hunting or taking of wildlife within 200 yards of inhabited dwelling or livestock passage
37-527	Failure to display required amount of hunter orange material when hunting
37-541	Kill, injure, or detain carrier pigeons or removing identification therefrom
37-553	Violation by owner of dam to maintain water flow for fish
37-609	Resisting officer or employee of the Game and Parks Commission
37-610	Falsely representing oneself as officer or employee of the Game and Parks Commission
37-728	False statements about fishing on privately owned land
37-1270	Violation of State Boat Act when not otherwise specified
37-12,107	Destroy, deface, or remove any part of unattended or abandoned motorboat
39-221	Illegal advertising outside right-of-way on state highways
*39-301	Injuring or obstructing public roads
*39-303	Injuring or obstructing sidewalks or bridges
39-304	Injuring roads, bridges, gates, milestones, or other fixtures
39-305	Plowing up public highway
39-306	Willful neglect of duty by road overseer or other such officer
39-307	Building barbed wire fence which obstructs highway without guards
39-308	Failure of property owner to remove plant which obstructs view of roadway within 10 days after notice
*39-312	Illegal camping on highways, roadside areas, or parks unless designated as campsites or violating camping regulations
39-313	Hunting on freeway or private land without permission
39-808	Unlawful signs or advertising on bridges or culverts
39-1012	Illegal location of rural mail boxes
39-1801	Removing or interfering with barricades on county and township roads
39-1816	Illegal parking of vehicles on county road right-of-way
42-918	Unlawful disclosure of confidential information under Protection from Domestic Abuse Act
44-361.02	Insurance agent obtaining license or renewal to circumvent rebates
46-266	Owner allowing irrigation ditches to overflow on roads
46-282	Wasting artesian water
46-1666	Violation of Safety of Dams and Reservoirs Act or any application approval, approval to operate, order, rule, regulation, or requirement of the department under the act
47-206	Neglect of duty by municipal jailer
48-222	Unlawful cost to applicant for medical examination as condition of employment
48-237	Prohibited uses of social security numbers by employers
48-442	Violation involving high voltage lines
48-1227	Discriminatory wage practices based on sex, failing to keep or falsifying records, interfering with enforcement
48-2533	Knowing violation of the Conveyance Safety Act
49-211	Failure of election officers to make returns on adoption of constitutional amendment
49-14,103.04	Negligent violation of conflict of interest prohibitions
51-109	Illegal removal of books from State Library

53-197	Neglect of sheriffs or police officers to make complaints against violators of liquor laws
54-302	Driving off livestock belonging to another
*54-306	Driving cattle, horses, or sheep across private lands causing injury
54-7,104	Failure to take care of livestock during transport
54-1523	Misrepresentation of hogs as having had double inoculation against cholera
59-1503	Unlawful acts by retailers or wholesalers in sales of cigarettes
60-196	Failure to retain a true copy of an odometer statement for five years
*60-3,166	Dealer, prospective buyer, or finance company operating motor vehicle or trailer without registration, transporter plate, or manufacturer plates and failing to keep records
60-3,175	Violation of registration and use provisions relating to historical vehicles
60-4,164	Refusal of commercial driver to submit to preliminary breath test for driving under the influence of alcohol
60-690	Aiding or abetting a violation of the Nebraska Rules of the Road
60-699	Failure to report vehicle accident or give correct information
60-6,197.04	Refusal to submit to preliminary breath test for driving under the influence of alcohol
60-6,224	Failure to dim motor vehicle headlights
60-6,239	Failure to equip or display motor vehicles required to have clearance lights, flares, reflectors, or red flags
60-6,240	Willful removal of red flags or flares before driver of vehicle is ready to proceed
60-6,247	Operation of buses or trucks without power brakes, auxiliary brakes, or standard booster brake equipment
60-6,248	Selling hydraulic brake fluid that does not meet requirements
60-6,256	Objects placed or hung to obstruct or interfere with view of motor vehicle operator
60-6,258	Owning or operating a motor vehicle with illegal sunscreening or glazing material on windshield or windows
60-6,266	Sale of motor vehicle which does not comply with occupant protection system (seat belt) requirements
60-6,287	Operating a motor vehicle which is equipped to enable the driver to watch television while driving
60-6,319	Commercial dealer selling bicycle which fails to comply with requirements
60-6,373	Operation of diesel-powered motor vehicle in violation of controls on smoke emission and noise
60-1411.04	Unlawful advertising of motor vehicles
60-1808	Violation of laws relating to motor vehicle camper units
60-1908	Destroying, defacing, or removing parts of abandoned motor vehicles
61-211	Managers or operators of interstate ditches failing to install measuring devices and furnish daily gauge height reports
69-208	Violation of laws relating to pawnbrokers and dealers in secondhand goods
69-1005	Violation of requirements for sale at auction of commercial chicks and poultry
69-1007	Failure to keep records on sale of poultry
69-1008	False representation in sale of poultry
69-1102	Failing to comply with labeling requirements on binder twine
70-409	Violation of rate regulations by electric companies
70-624	Failure of chief executive officer to publish salaries of public power district officers
71-503	Physician failing to report existence of contagious disease, illness, or poisoning
71-506	Violation of prevention and testing provisions for contagious and infectious diseases
71-1006	Violation of laws relating to disposal of dead bodies
71-1571	Installation of 4 or more showers or bathtubs without scald prevention device

71-2511	Violation of restrictions on sale of poisons
71-3107	Violation of laws relating to recreation camps
71-4410	Violation of rabies control provisions
*71-5733	Smoking in place of employment or public place, first offense
71-5733	Proprietor violating Nebraska Clean Indoor Air Act, first offense
74-593	Using track motor cars on rail lines without headlights or rear lights
74-605	Failure of railroad to report or care for injured animals
74-1308	Failure of Railroad Transportation Safety District treasurer to file report or neglect of duties or refusal by district officials to allow inspection of records
*74-1340	Failure, neglect, or refusal to comply with order of Department of Roads regarding railroad crossings
75-429	Failure of railroad to maintain or operate switch stand lights and signals
76-247	Register of deeds giving certified copy of power of attorney which has been revoked without stating fact of revocation in certificate
76-2,122	Acting as real estate closing agent without license or without complying with law
77-2105	Failure to furnish information or reports for estate or generation-skipping transfer taxes
77-5016.08	Prohibited acts relating to subpoenas, testimony, and depositions in Tax Equalization and Review Commission proceedings
79-223	Violation of student immunization requirements
79-253	Violation regarding physical examinations of students
79-571	Disorderly conduct at school district meetings
79-581	Failure by secretary of Class I, II, III, or VI school district to publish claims and summary of proceedings
*79-606	Failure to remove equipment from and repaint school transportation vehicles sold for other purposes
79-607	Violation of traffic regulations or failure to include obligation to comply with traffic regulation in school district employment contract
79-608	Violations by a school bus driver involving licensing or hours of service
*79-899	Failure of school board to suspend or dismiss teacher for wearing religious garb on duty
79-949	Failure or refusal to furnish information to retirement board for school employees retirement
79-1084	Secretary of Class III school board failing or neglecting to publish budget documents
79-1086	Secretary of Class V school board failing or neglecting to publish budget documents
81-520	Failure to comply with order of State Fire Marshal to remove or abate fire hazards
81-522	Failure of city or county authorities to investigate and report fires
81-538	Violation of State Fire Marshal or fire abatement provisions when not otherwise specified
81-5,146	Violation of smoke detector provisions
81-5,163	Water-based fire protection system contractor failing to comply with requirements
81-649.02	Failure by hospital to make reports to cancer registry
81-1024	Personal use of state-owned motor vehicle
81-1551	Failure to place litter receptacles on premises in sufficient number
81-1552	Damaging or misusing litter receptacle
*82-124	Damage to property of Nebraska State Historical Society
82-126	Violating restrictions on visitation to state sites and monuments
83-356	Mistreatment of mentally ill persons
86-161	Failure of telecommunications company to file territorial maps
86-609	Unlawful telegraph dispatch activities
87-220	Engaging in business under a trade name without registering
88-549	Failure of warehouse licensee to send written notice to person storing grain of amount, location, and fees

CLASS W MISDEMEANOR

First Conviction:	**Maximum—sixty days imprisonment and five hundred dollars fine** **Mandatory minimum—seven days imprisonment and four hundred dollars fine**
Second Conviction:	**Maximum—six months imprisonment and five hundred dollars fine** **Mandatory minimum—thirty days imprisonment and five hundred dollars fine**
Third Conviction:	**Maximum—one year imprisonment and six hundred dollars fine** **Mandatory minimum—ninety days imprisonment and six hundred dollars fine**
60-690	Aiding or abetting a violation of the Nebraska Rules of the Road
*60-6,197.03	Operation of a motor vehicle while under the influence of alcoholic liquor or of any drug committed with less than .15 gram alcohol concentration
*60-6,197.03	Operation of a motor vehicle while under the influence of alcoholic liquor or of any drug committed with .15 alcohol concentration, first offense only
*60-6,197.03	Refusal to submit to chemical blood, breath, or urine test

UNCLASSIFIED MISDEMEANORS, see section 28-107

14-227	Failure to remit fines, penalties, and forfeitures to city treasurer —fine of not more than one thousand dollars —imprisonment of not more than six months
14-229	City officer or employee exerting influence regarding political views —fine of not more than one hundred dollars —imprisonment of not more than thirty days
14-415	Violation of building regulations —fine of not less than ten dollars nor more than one hundred dollars
15-215	Using unsafe building for the assembly of more than 12 persons —fine of not more than two hundred dollars
16-233	Using unsafe building for the assembly of more than 12 persons —fine of not more than two hundred dollars
16-706	Unauthorized use of city funds by city council member or city officer —fine of twenty-five dollars plus costs of prosecution
18-1914	Violation of plumbing ordinances or plumbing license requirements —fine of not more than fifty dollars and not less than five dollars per violation
18-1918	Installing or repairing sanitary plumbing without permit —fine of not less than fifty dollars nor more than five hundred dollars
18-2205	Violation involving community antenna television service or franchise ordinance —fine of not more than five hundred dollars
18-2315	Violation involving heating, ventilating, and air conditioning services —fine of not more than five hundred dollars —imprisonment of not more than six months —both
19-905	Remove, alter, or destroy posted notice prior to building zone and regulation hearing
19-913	Violation of zoning laws and ordinances and building regulations —fine of not more than one hundred dollars —imprisonment of not more than thirty days
19-1104	Failure of city or village clerk or treasurer to publish council proceedings or fiscal statement —fine of not more than twenty-five dollars and removal from office
20-124	Interference with freedom of speech and access to public accommodation —fine of not more than one hundred dollars —imprisonment of not more than six months —both

20-140	Equal Opportunity Commission officer or employee revealing unlawful discrimination complaint or investigation —fine of not more than one hundred dollars —imprisonment of not more than thirty days
23-2533	Willful violation of County Civil Service Act —fine of not more than five hundred dollars —imprisonment of not more than six months —both
25-2231	Constable acting outside of jurisdiction —fine of not less than ten nor more than one hundred dollars —imprisonment of not more than ten days
29-426	Failure to appear or comply with citation for traffic or other offense —fine of not more than five hundred dollars —imprisonment of not more than three months —both
31-134	Obstructing drainage ditch —fine of not less than ten dollars nor more than fifty dollars
31-221	Injuring or obstructing watercourse, drain, or ditch —fine of not less than twenty-five dollars nor more than one hundred dollars —imprisonment of not more than thirty days
31-226	Failure to clear watercourse, drain, or ditch after notice —fine of not more than ten dollars
31-366	Willfully obstruct, injure, or destroy ditch, drain, watercourse, or dike of drainage district —fine of not more than one hundred dollars
31-445	Obstruct ditch, drain, or watercourse or injure dike, levee, or other work of drainage district —fine of not more than one hundred dollars —imprisonment of not more than six months
31-507.01	Connection to sanitary sewer without permit —fine of not less than twenty-five dollars nor more than one hundred dollars
33-153	Failure to report and remit fees to county for taking acknowledgements, oaths, and affirmations —fine of not more than one hundred dollars
44-2504	Domestic insurer transacting unauthorized insurance business in reciprocal state —fine of not more than ten thousand dollars
54-1365	Violation of Nebraska Swine Brucellosis Act when not otherwise specified —fine not less than one hundred dollars nor more than five hundred dollars —imprisonment of not more than thirty days —both
55-112	Failure to return or illegal use of military property —fine of not more than fifty dollars
60-684	Refusal to sign traffic citation —fine of not more than five hundred dollars —imprisonment of not more than three months —both
69-111	Security interest in personal property, failure to account or produce for inspection —fine of not less than five dollars nor more than one hundred dollars —imprisonment of not more than thirty days
74-918	Failure by railroad to supply drinking water and toilet facilities —fine of not less than one hundred dollars nor more than five hundred dollars
75-130	Failure by witness to testify or comply with subpoena of Public Service Commission —fine of not more than five thousand dollars
76-215	Failure to furnish real estate transfer tax statement

	—fine of not less than ten dollars nor more than five hundred dollars
76-218	Violations involving acknowledging and recording instruments of conveyance —fine of not more than five hundred dollars —imprisonment of not more than one year
76-239.05	Failure to apply construction financing for labor and materials —fine of not less than one hundred dollars nor more than one thousand dollars —imprisonment of not more than six months —both
76-2,108	Defrauding another by making a dual contract for purchase of real property or inducing the extension of credit —fine of not less than one hundred dollars nor more than five hundred dollars —imprisonment of not less than five days nor more than thirty days —both
77-1250.02	Owner, lessee, or manager of aircraft hangar or land upon which is parked or located any aircraft report aircraft to the county assessor —fine of not more than fifty dollars
77-1313	Failure of county officer to assist county assessor in assessment of property —fine of not less than fifty dollars nor more than five hundred dollars
77-1613.02	County assessor willfully reducing or increasing valuation of property without approval of county board of equalization —fine of not less than twenty dollars nor more than one hundred dollars
77-1918	County officers failing to perform duties related to foreclosure —removal from office
77-2703	Seller fails or refuses to furnish certified statement regarding motor vehicle or motorboat transaction —fine of not less than twenty-five dollars nor more than one hundred dollars
77-2706	Giving a resale certificate to avoid sales tax
79-2,103	Soliciting membership in fraternity, society, or other association on school grounds —fine of not less than two dollars nor more than ten dollars
79-898	Teacher wearing any dress or garb indicating religious affiliation —fine of not more than one hundred dollars —imprisonment of not more than thirty days —both
81-171	Using state mailing room or postage metering machine for private mail —fine of not less than twenty dollars nor more than one hundred dollars
*83-114	Officer or employee interfering in an official Department of Health and Human Services investigation —fine of not less than ten dollars nor more than one hundred dollars
84-732	Governor or Attorney General knowingly failing or refusing to implement laws —fine of one hundred dollars —impeachment

*Sections noted with an asterisk have additional specified penalty provisions.