CHAPTER 49
LAW

Article.
8. Definitions, Construction, and Citation. 49-801.01.
14. Nebraska Political Accountability and Disclosure Act.
(a) General Provisions. 49-1401, 49-1405.
(d) Conflicts of Interest. 49-1499.01 to 49-14,101.03.

ARTICLE 8
DEFINITIONS, CONSTRUCTION, AND CITATION

Section
49-801.01. Internal Revenue Code; reference.

49-801.01 Internal Revenue Code; reference.

Except as provided by Article VIII, section 1B, of the Constitution of Nebraska and in sections 77-2701.01, 77-2714 to 77-27,123, 77-27,191, 77-4103, 77-4104, 77-4108, 77-5509, 77-5515, 77-5527 to 77-5529, 77-5539, 77-5717 to 77-5719, 77-5728, 77-5802, 77-5803, 77-5806, and 77-5903, any reference to the Internal Revenue Code refers to the Internal Revenue Code of 1986 as it exists on February 27, 2009.

Source: Laws 1995, LB 574, § 1; Laws 1996, LB 984, § 1; Laws 1997, LB 46, § 1; Laws 1998, LB 1015, § 2; Laws 1999, LB 33, § 1; Laws 2000, LB 944, § 1; Laws 2001, LB 122, § 1; Laws 2001, LB 620, § 45; Laws 2002, LB 989, § 8; Laws 2003, LB 281, § 1; Laws 2004, LB 1017, § 1; Laws 2005, LB 312, § 1; Laws 2005, LB 383, § 1; Laws 2006, LB 1003, § 2; Laws 2007, LB315, § 1; Laws 2008, LB896, § 1; Laws 2009, LB251, § 1.
Effective date February 27, 2009.

ARTICLE 14
NEBRASKA POLITICAL ACCOUNTABILITY AND DISCLOSURE ACT

(a) GENERAL PROVISIONS

Section
49-1401. Act, how cited.
49-1405. Ballot question, defined.

(d) CONFLICTS OF INTEREST

49-1499.01. Repealed. Laws 2009, LB 322, § 6.
49-1499.03. Political subdivision personnel; school board; discharge of official duties; potential conflict; actions required; nepotism; restrictions on supervision of family members.
49-1499.07. Executive branch; nepotism prohibited; restrictions on supervisors; legislative intent for legislative branch and judicial branch.
49-14,101.01. Financial gain; gift of travel or lodging; prohibited acts; violation; penalty; permissible activities and uses.
49-14,101.02. Public official or public employee; use of public resources or funds; prohibited acts; exceptions.

Section
49-14,101.03. Public official or public employee; incidental or de minimis use of public resources; permissible activities and uses.

(a) GENERAL PROVISIONS

49-1401 Act, how cited.

Sections 49-1401 to 49-14,141 shall be known and may be cited as the Nebraska Political Accountability and Disclosure Act.

Source: Laws 1976, LB 987, § 1; Laws 1981, LB 134, § 1; Laws 1986, LB 548, § 11; Laws 1987, LB 480, § 1; Laws 1989, LB 815, § 1; Laws 1991, LB 232, § 1; Laws 1994, LB 872, § 1; Laws 1994, LB 1243, § 2; Laws 1995, LB 28, § 3; Laws 1995, LB 399, § 1; Laws 1997, LB 49, § 1; Laws 1997, LB 420, § 15; Laws 1999, LB 581, § 1; Laws 2000, LB 438, § 1; Laws 2000, LB 1021, § 1; Laws 2001, LB 242, § 1; Laws 2002, LB 1003, § 34; Laws 2005, LB 242, § 2; Laws 2007, LB464, § 2; Laws 2007, LB527, § 1; Laws 2009, LB322, § 1; Laws 2009, LB626, § 1.
Effective date August 30, 2009.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB322, section 1, with LB626, section 1, to reflect all amendments.

49-1405 Ballot question, defined.

(1) Ballot question shall mean any question which is submitted or which is intended to be submitted to a popular vote at an election, including, but not limited to, a question submitted or intended to be submitted by way of initiative, referendum, recall, or judicial retention, whether or not it qualifies for the ballot.

(2) Ballot question shall also mean any question which has been submitted to a popular vote at an election as a result of legislative action or adoption of a resolution by a political subdivision to place an issue or issues on the ballot.

Source: Laws 1976, LB 987, § 5; Laws 1991, LB 534, § 1; Laws 1998, LB 632, § 2; Laws 2009, LB626, § 2.
Effective date August 30, 2009.

(d) CONFLICTS OF INTEREST

49-1499.01 Repealed. Laws 2009, LB 322, § 6.

49-1499.03 Political subdivision personnel; school board; discharge of official duties; potential conflict; actions required; nepotism; restrictions on supervision of family members.

(1)(a) An official of a political subdivision designated in section 49-1493 who would be required to take any action or make any decision in the discharge of his or her official duties that may cause financial benefit or detriment to him or her, a member of his or her immediate family, or a business with which he or she is associated, which is distinguishable from the effects of such action on the public generally or a broad segment of the public, shall take the following actions as soon as he or she is aware of such potential conflict or should reasonably be aware of such potential conflict, whichever is sooner:

(i) Prepare a written statement describing the matter requiring action or decision and the nature of the potential conflict; and

(ii) Deliver a copy of the statement to the commission and to the person in charge of keeping records for the political subdivision who shall enter the statement onto the public records of the subdivision.

(b) The official shall take such action as the commission shall advise or prescribe to remove himself or herself from influence over the action or decision on the matter.

(c) This subsection does not prevent such a person from making or participating in the making of a governmental decision to the extent that the individual's participation is legally required for the action or decision to be made. A person acting pursuant to this subdivision shall report the occurrence to the commission.

(2)(a) Any person holding an elective office of a city or village not designated in section 49-1493 and any person holding an elective office of a school district who would be required to take any action or make any decision in the discharge of his or her official duties that may cause financial benefit or detriment to him or her, a member of his or her immediate family, or a business with which he or she is associated, which is distinguishable from the effects of such action on the public generally or a broad segment of the public, shall take the following actions as soon as he or she is aware of such potential conflict or should reasonably be aware of such potential conflict, whichever is sooner:

(i) Prepare a written statement describing the matter requiring action or decision and the nature of the potential conflict;

(ii) Deliver a copy of the statement to the person in charge of keeping records for the city, village, or school district who shall enter the statement onto the public records of the city, village, or school district; and

(iii) Abstain from participating or voting on the matter in which the person holding elective office has a conflict of interest.

(b) The person holding elective office may apply to the commission for an opinion as to whether the person has a conflict of interest.

(3) Matters involving an interest in a contract are governed either by sections 49-14,102 and 49-14,103 or by sections 49-14,103.01 to 49-14,103.06. Matters involving the hiring of an immediate family member are governed by section 49-1499.04. Matters involving nepotism or the supervision of a family member by an official or employee in the executive branch of state government are governed by section 49-1499.07.

Source: Laws 2001, LB 242, § 14; Laws 2005, LB 242, § 42; Laws 2009, LB322, § 3.
Effective date August 30, 2009.

49-1499.07 Executive branch; nepotism prohibited; restrictions on supervisors; legislative intent for legislative branch and judicial branch.

(1) For purposes of this section:

(a) Family member means an individual who is the spouse, child, parent, brother, sister, grandchild, or grandparent, by blood, marriage, or adoption, of an official or employee in the executive branch of state government;

(b) Nepotism means the act of hiring, promoting, or advancing a family member in state government or recommending the hiring, promotion, or

advancement of a family member in state government, including initial appointment and transfer to other positions in state government; and

(c) Supervisor means an individual having authority, in the interest of the state, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline employees, responsibility to direct them or to adjust their grievances, or effectively to recommend any such action, if the exercise of such authority is not merely of a routine or clerical nature but requires the use of independent judgment.

(2) Except as authorized in subsection (5) of this section, an official or employee in the executive branch of state government shall not engage in nepotism.

(3) Except as authorized in subsection (5) of this section, an official or employee in the executive branch of state government shall not act as a supervisor to his or her family member.

(4) In addition to the other penalties authorized under the Nebraska Political Accountability and Disclosure Act, any person violating this section may be subject to disciplinary action.

(5)(a) The head of an agency may, upon a written showing of good cause, grant an exception to subsection (2) or (3) of this section. The written showing of good cause shall be filed with the commission and shall be considered a public record.

(b) An official or employee in the executive branch of state government who becomes a supervisor to his or her family member other than by means of nepotism shall notify the head of the agency within seven days of becoming aware of such situation and may continue to act as a supervisor until the head of the agency remedies the situation. The head of the agency shall act as soon as practicable.

(6) It is the intent of the Legislature that the legislative branch and the judicial branch of state government develop and implement internal policies prohibiting nepotism and the supervision of a family member.

Source: Laws 2009, LB322, § 2.
Effective date August 30, 2009.

49-14,101.01 Financial gain; gift of travel or lodging; prohibited acts; violation; penalty; permissible activities and uses.

(1) A public official or public employee shall not use or authorize the use of his or her public office or any confidential information received through the holding of a public office to obtain financial gain, other than compensation provided by law, for himself or herself, a member of his or her immediate family, or a business with which the individual is associated.

(2) A public official or public employee shall not use or authorize the use of personnel, resources, property, or funds under his or her official care and control other than in accordance with prescribed constitutional, statutory, and regulatory procedures or use such items, other than compensation provided by law, for personal financial gain.

(3) Unless otherwise restricted by an employment contract, a collective-bargaining agreement, or a written agreement or policy approved by a government body, a public official or public employee may use a telecommunication system, a cellular telephone, an electronic handheld device, or a computer

under the control of a government body for email, text messaging, a local call, or a long-distance call to a child at home, a teacher, a doctor, a day care center, a baby-sitter, a family member, or any other person to inform any such person of an unexpected schedule change or for other essential personal business. Any such communication shall be kept to a minimum and shall not interfere with the conduct of public business. A public official or public employee shall be responsible for payment or reimbursement of charges, if any, that directly result from any such communication. An agency or government body may establish procedures for reimbursement of charges pursuant to this subsection.

(4) A public official shall not accept a gift of travel or lodging or a gift of reimbursement for travel or lodging if the gift is made so that a member of the public official's immediate family can accompany the public official in the performance of his or her official duties.

(5) A member of the immediate family of a public official shall not accept a gift of travel or lodging or a gift of reimbursement for travel or lodging if the gift is made so that a member of the public official's immediate family can accompany the public official in the performance of his or her official duties.

(6) This section does not prohibit the Executive Board of the Legislative Council from adopting policies that allow a member of the Legislature to install and use with private funds a telephone line, telephone, and telefax machine in his or her public office for private purposes.

(7) Except as provided in section 23-3113, any person violating this section shall be guilty of a Class III misdemeanor, except that no vote by any member of the Legislature shall subject such member to any criminal sanction under this section.

Source: Laws 2001, LB 242, § 19; Laws 2002, LB 1086, § 4; Laws 2005, LB 242, § 44; Laws 2009, LB626, § 4.
Effective date August 30, 2009.

49-14,101.02 Public official or public employee; use of public resources or funds; prohibited acts; exceptions.

(1) For purposes of this section, public resources means personnel, property, resources, or funds under the official care and control of a public official or public employee.

(2) Except as otherwise provided in this section, a public official or public employee shall not use or authorize the use of public resources for the purpose of campaigning for or against the nomination or election of a candidate or the qualification, passage, or defeat of a ballot question.

(3) This section does not prohibit a public official or public employee from making government facilities available to a person for campaign purposes if the identity of the candidate or the support for or opposition to the ballot question is not a factor in making the government facility available or a factor in determining the cost or conditions of use.

(4) This section does not prohibit a governing body from discussing and voting upon a resolution supporting or opposing a ballot question or a public corporation organized under Chapter 70 from otherwise supporting or opposing a ballot question concerning the sale or purchase of its assets.

(5) This section does not prohibit a public official or a public employee under the direct supervision of a public official from responding to specific inquiries

by the press or the public as to his or her opinion regarding a ballot question or from providing information in response to a request for information.

(6) This section does not prohibit a member of the Legislature from making use of public resources in expressing his or her opinion regarding a candidate or a ballot question or from communicating that opinion. A member is not authorized by this section to utilize mass mailings or other mass communications at public expense for the purpose of campaigning for or against the nomination or election of a candidate. A member is not authorized by this section to utilize mass mailings at public expense for the purpose of qualifying, supporting, or opposing a ballot question.

(7) This subsection applies to public officials other than members of the Legislature provided for in subsection (6) of this section. This section does not prohibit, in the normal course of his or her duties, a public official or a public employee under the direct supervision of a public official from using public resources to research and prepare materials to assist the government body for which the individual is a public official or public employee in determining the effect of the ballot question on the government body. This section does not authorize mass mailings, mass duplication, or other mass communications at public expense for the purpose of qualifying, supporting, or opposing a ballot question. Mass communications shall not include placing public records demonstrating the consequences of the passage or defeat of a ballot question affecting the government body for which the individual is a public official or public employee on existing web sites of such government body.

(8) Nothing in this section prohibits a public official from campaigning for or against the qualification, passage, or defeat of a ballot question or the nomination or election of a candidate when no public resources are used.

(9) Nothing in this section prohibits a public employee from campaigning for or against the qualification, passage, or defeat of a ballot question or the nomination or election of a candidate when no public resources are used. Except as otherwise provided in this section, a public employee shall not engage in campaign activity for or against the qualification, passage, or defeat of a ballot question or the nomination or election of a candidate while on government work time or when otherwise engaged in his or her official duties.

(10) This section does not prohibit an employee of the Legislature from using public resources consistent with this section for the purpose of researching or campaigning for or against the qualification, passage, or defeat of a ballot question if the employee is under the direction and supervision of a member of the Legislature.

(11) Nothing in this section prohibits a public official or public employee from identifying himself or herself by his or her official title.

Source: Laws 2001, LB 242, § 20; Laws 2005, LB 242, § 45; Laws 2009, LB626, § 5.
Effective date August 30, 2009.

49-14,101.03 Public official or public employee; incidental or de minimis use of public resources; permissible activities and uses.

(1) Any use of public resources by a public official or public employee which is incidental or de minimis shall not constitute a violation of section 49-14,101.01 or 49-14,101.02.

(2) For purposes of sections 49-14,101.01 and 49-14,101.02, a resource of government, including a vehicle, shall not be considered a public resource and personal use shall not be prohibited if (a) the use of the resource for personal purposes is part of the public official's or public employee's compensation provided in an employment contract or a written policy approved by a government body and (b) the personal use of the resource as compensation is reported in accordance with the Internal Revenue Code of 1986, as amended, and taxes, if any, are paid. If authorized by the contract or policy, the resource may be used whether or not the public official or public employee is engaged in the duties of his or her public office or public employment.

(3) Use of a government vehicle by a public official or public employee to travel to a designated location or the home of the public official or public employee is permissible when the primary purpose of the travel serves a government purpose and the use is pursuant to a written policy approved by a government body.

(4) Pursuant to a collective-bargaining agreement, a public facility may be used by a bargaining unit to meet regarding activities of the union or bargaining unit. This section shall not authorize the use of public resources for the purpose of campaigning for or against the nomination or election of a candidate or the qualification, passage, or defeat of a ballot question.

(5) Nothing in the Nebraska Political Accountability and Disclosure Act prohibits a public official or public employee from using his or her personal cellular telephone, electronic handheld device, or computer to access a wireless network to which access is provided to the public by a government body.

Source: Laws 2009, LB626, § 3.
Effective date August 30, 2009.

CHAPTER 50
LEGISLATURE

Article.
4. Legislative Council. 50-416, 50-421.
5. Statewide Strategic Plan for Biotechnology. 50-501.
14. Legislature's Planning Committee. 50-1401 to 50-1404.

ARTICLE 4
LEGISLATIVE COUNCIL

Section
50-416. Legislative Research; Director of Research.
50-421. Office of Legislative Audit; Legislative Auditor.

50-416 Legislative Research; Director of Research.

The office of Legislative Research is established within the Legislative Council. The office shall provide nonpartisan public policy and legal research for members of the Legislature and their staffs and maintain a legislative reference library for the use of members of the Legislature and their staffs. The Director of Research shall be responsible for hiring, firing, and supervising the research office staff.

Source: Laws 2009, LB620, § 2.
Effective date August 30, 2009.

50-421 Office of Legislative Audit; Legislative Auditor.

The office of Legislative Audit is established within the Legislative Council. The office shall conduct performance audits. The Legislative Auditor shall be responsible for hiring, firing, and supervising the performance audit staff.

Source: Laws 2006, LB 956, § 2; Laws 2009, LB620, § 1.
Effective date August 30, 2009.

ARTICLE 5
STATEWIDE STRATEGIC PLAN FOR BIOTECHNOLOGY

Section
50-501. Natural Resources Committee of the Legislature; development of statewide strategic plan for biotechnology; contents; Biotechnology Development Cash Fund; created; use; investment.

50-501 Natural Resources Committee of the Legislature; development of statewide strategic plan for biotechnology; contents; Biotechnology Development Cash Fund; created; use; investment.

(1) The Legislature recognizes the importance of biotechnology and the role that biotechnology plays in the economic well-being of the State of Nebraska. The Natural Resources Committee of the Legislature shall be responsible for the development of a statewide strategic plan for biotechnology in Nebraska. The plan shall include a baseline review and assessment of the potential in the

biotechnology economy in Nebraska and a strategic plan for the state's efforts in creating wealth and jobs in the biotechnology economy. The plan shall address strategies for developing the biotechnology economy and shall include, but not be limited to, research, testing, agricultural feedstock and chemicals, drugs and other pharmaceuticals, medical materials, medical laboratories, and advanced biofuels. The plan shall estimate the wealth and the number of jobs that may be generated from expanding the biotechnology economy.

(2) The Natural Resources Committee of the Legislature, in consultation with the Executive Board of the Legislature, shall commission a nonprofit corporation to provide research, analysis, and recommendations to the committee for the development of the plan. The nonprofit corporation shall be incorporated pursuant to the Nebraska Nonprofit Corporation Act, shall be organized exclusively for nonprofit purposes within the meaning of section 501(c)(6) of the Internal Revenue Code as defined in section 49-801.01, shall be engaged in activities to facilitate and promote the growth of life sciences within Nebraska, shall be dedicated to the development and growth of the biotechnology economy, and shall agree to remit one hundred thousand dollars to the State Treasurer for credit to the Biotechnology Development Cash Fund for the research required by this section. The nonprofit corporation shall retain such consultation services as required for assistance in providing research, analysis, and recommendations. The nonprofit corporation shall present its research, analysis, and recommendations to the committee by June 30, 2010.

(3) The Natural Resources Committee shall prepare and present to the Legislature a statewide strategic plan for biotechnology during the One Hundred Second Legislature, First Session, for consideration by the Legislature. The committee shall prepare annual updates to the plan for consideration by the Legislature.

(4) The Biotechnology Development Cash Fund is created. The Natural Resources Committee shall use money in the fund to commission the nonprofit corporation and provide access to resources necessary for developing the plan. The fund may receive gifts, bequests, grants, or other contributions or donations from public or private entities. Within five days after the State Treasurer receives one hundred thousand dollars from the nonprofit corporation for credit to the fund, the State Treasurer shall transfer one hundred thousand dollars from the General Fund to the Biotechnology Development Cash Fund. It is the intent of the Legislature to appropriate two hundred thousand dollars to the fund for fiscal year 2009-10. 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.

(5) For purposes of this section:

(a) Biotechnology means the technological application that uses biological systems, living organisms, or derivatives of biological systems or living organisms to make or modify products or processes for specific use; and

(b) Biotechnology economy means economic activity derived from scientific and research activity focused on understanding mechanisms and processes at the genetic and molecular levels and the application of the mechanisms and processes to industrial processes.

Source: Laws 2009, LB246, § 1.
Effective date August 30, 2009.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska Nonprofit Corporation Act, see section 21-1901.
Nebraska State Funds Investment Act, see section 72-1260.

ARTICLE 14
LEGISLATURE'S PLANNING COMMITTEE

Section
50-1401. Legislative findings and declarations.
50-1402. Legislature's Planning Committee; established; members; staff.
50-1403. Legislature's Planning Committee; duties.
50-1404. Legislature's Planning Committee; powers.

50-1401 Legislative findings and declarations.

The Legislature finds and declares that:

(1) State government has significant challenges to face. An ever-changing global economy, an aging population, outmigration of educated young people, and constantly expanding needs for services, among other issues, require that the Legislature consider the long-term trends and factors affecting the welfare of Nebraskans and the long-term implications of the decisions made by the members of the Legislature;

(2) It is necessary for the Legislature to identify emerging trends, assets, and challenges of the state;

(3) It is vital for Nebraska to have continuity in policy;

(4) It is necessary to establish a process of long-term state planning within the Legislature; and

(5) It is the duty of the Legislature to assess the long-range needs of Nebraska and to adopt legislation which meets those needs.

Source: Laws 2009, LB653, § 1.
Effective date May 14, 2009.

50-1402 Legislature's Planning Committee; established; members; staff.

The Legislature's Planning Committee is hereby established as a special legislative committee to exercise the authority and perform the duties provided for in this section. The committee shall be comprised of the Speaker of the Legislature, the chairperson of the Executive Board of the Legislative Council, the chairperson of the Appropriations Committee of the Legislature, and six other members of the Legislature to be chosen by the Executive Board of the Legislative Council. The executive board shall ensure that the Legislature's Planning Committee includes adequate geographic representation. The chairperson and vice-chairperson of the committee shall be elected by majority vote of the committee. The committee shall be subject to all rules prescribed by the Legislature. The initial members of the committee shall be appointed as soon as possible after May 14, 2009, and thereafter the committee shall be appointed at the beginning of each regular legislative session and shall meet as needed. The committee shall have staff support from the various legislative divisions and staff.

Source: Laws 2009, LB653, § 2.
Effective date May 14, 2009.

50-1403 Legislature's Planning Committee; duties.

The Legislature's Planning Committee shall:

(1) Collect and analyze data about Nebraska, including, but not limited to, demographics, workforce, education, wages, wealth, tax structure, revenue, natural resources, assets, challenges, trends, and growth and efficiency of government;

(2) Identify long-term issues significant to the state;

(3) Set goals and benchmarks;

(4) Issue a yearly report of its findings; and

(5) Propose legislation.

Source: Laws 2009, LB653, § 3.
Effective date May 14, 2009.

50-1404 Legislature's Planning Committee; powers.

In order to fulfill its duties, the Legislature's Planning Committee may:

(1) Hold public hearings;

(2) Obtain data and information from state agencies, the University of Nebraska, and private entities that contract with the state;

(3) Contract for assistance, including consultants, with the approval of the Executive Board of the Legislative Council; and

(4) Exercise any other authority or powers as granted from time to time by the executive board.

Source: Laws 2009, LB653, § 4.
Effective date May 14, 2009.

CHAPTER 53
LIQUORS

Article.
1. Nebraska Liquor Control Act.
   (a) General Provisions. 53-101, 53-103.
   (d) Licenses; Issuance and Revocation. 53-124 to 53-131.
   (i) Prohibited Acts. 53-177.
   (k) Prosecution and Enforcement. 53-1,120.01.

ARTICLE 1
NEBRASKA LIQUOR CONTROL ACT

(a) GENERAL PROVISIONS

Section
53-101. Act, how cited.
53-103. Terms, defined.

(d) LICENSES; ISSUANCE AND REVOCATION

53-124. Annual license fees; where paid.
53-124.15. Community college culinary education program; catering license.
53-131. Retail, craft brewery, and microdistillery licenses; application; fees; notice of application to city, village, or county.

(i) PROHIBITED ACTS

53-177. Sale at retail; restrictions as to locality.

(k) PROSECUTION AND ENFORCEMENT

53-1,120.01. County resolution or city ordinance prohibiting smoking; not applicable to cigar bars.

(a) GENERAL PROVISIONS

53-101 Act, how cited.

Sections 53-101 to 53-1,122 shall be known and may be cited as the Nebraska Liquor Control Act.

Source: Laws 1935, c. 116, § 1, p. 373; C.S.Supp.,1941, § 53-301; R.S. 1943, § 53-101; Laws 1988, LB 490, § 3; Laws 1988, LB 901, § 1; Laws 1988, LB 1089, § 1; Laws 1989, LB 70, § 1; Laws 1989, LB 441, § 1; Laws 1989, LB 781, § 1; Laws 1991, LB 344, § 2; Laws 1991, LB 582, § 1; Laws 1993, LB 183, § 1; Laws 1993, LB 332, § 1; Laws 1994, LB 1292, § 1; Laws 2000, LB 973, § 1; Laws 2001, LB 114, § 1; Laws 2004, LB 485, § 2; Laws 2006, LB 845, § 1; Laws 2007, LB549, § 1; Laws 2007, LB578, § 1; Laws 2009, LB232, § 1; Laws 2009, LB355, § 1.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB232, section 1, with LB355, section 1, to reflect all amendments.

Note: Changes made by LB232 became effective August 30, 2009. LB355 had an operative date of June 1, 2009, and became effective August 30, 2009.

53-103 Terms, defined.

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

(1) Alcohol means the product of distillation of any fermented liquid, whether rectified or diluted, whatever the origin thereof, and includes synthetic ethyl alcohol and alcohol processed or sold in a gaseous form. Alcohol does not include denatured alcohol or wood alcohol;

(2) Spirits means any beverage which contains alcohol obtained by distillation, mixed with water or other substance in solution, and includes brandy, rum, whiskey, gin, or other spirituous liquors and such liquors when rectified, blended, or otherwise mixed with alcohol or other substances;

(3) Wine means any alcoholic beverage obtained by the fermentation of the natural contents of fruits or vegetables, containing sugar, including such beverages when fortified by the addition of alcohol or spirits;

(4) Beer means a beverage obtained by alcoholic fermentation of an infusion or concoction of barley or other grain, malt, and hops in water and includes, but is not limited to, beer, ale, stout, lager beer, porter, and near beer;

(5) Alcoholic liquor includes alcohol, spirits, wine, beer, and any liquid or solid, patented or not, containing alcohol, spirits, wine, or beer and capable of being consumed as a beverage by a human being. Alcoholic liquor also includes confections or candy with alcohol content of more than one-half of one percent alcohol. The act does not apply to (a) alcohol used in the manufacture of denatured alcohol produced in accordance with acts of Congress and regulations adopted and promulgated pursuant to such acts, (b) flavoring extracts, syrups, medicinal, mechanical, scientific, culinary, or toilet preparations, or food products unfit for beverage purposes, but the act applies to alcoholic liquor used in the manufacture, preparation, or compounding of such products or confections or candy that contains more than one-half of one percent alcohol, or (c) wine intended for use and used by any church or religious organization for sacramental purposes;

(6) Near beer means beer containing less than one-half of one percent of alcohol by volume;

(7) Original package means any bottle, flask, jug, can, cask, barrel, keg, hogshead, or other receptacle or container used, corked or capped, sealed, and labeled by the manufacturer of alcoholic liquor to contain and to convey any alcoholic liquor;

(8) Manufacturer means every brewer, fermenter, distiller, rectifier, winemaker, blender, processor, bottler, or person who fills or refills an original package and others engaged in brewing, fermenting, distilling, rectifying, or bottling alcoholic liquor, including a wholly owned affiliate or duly authorized agent for a manufacturer;

(9) Nonbeverage user means every manufacturer of any of the products set forth and described in subsection (4) of section 53-160, when such product contains alcoholic liquor, and all laboratories, hospitals, and sanatoria using alcoholic liquor for nonbeverage purposes;

(10) Manufacture means to distill, rectify, ferment, brew, make, mix, concoct, process, blend, bottle, or fill an original package with any alcoholic liquor and includes blending but does not include the mixing or other preparation of drinks for serving by those persons authorized and permitted in the act to serve drinks for consumption on the premises where sold;

(11) Wholesaler means a person importing or causing to be imported into the state or purchasing or causing to be purchased within the state alcoholic liquor for sale or resale to retailers licensed under the act, whether the business of the wholesaler is conducted under the terms of a franchise or any other form of an agreement with a manufacturer or manufacturers, or who has caused alcoholic liquor to be imported into the state or purchased in the state from a manufacturer or manufacturers and was licensed to conduct such a business by the commission on May 1, 1970, or has been so licensed since that date. Wholesaler does not include any retailer licensed to sell alcoholic liquor for consumption off the premises who sells alcoholic liquor other than beer or wine to another retailer pursuant to section 53-175, except that any such retailer shall obtain the required federal wholesaler's basic permit and federal wholesale liquor dealer's special tax stamp. Wholesaler includes a distributor, distributorship, and jobber;

(12) Person means any natural person, trustee, corporation, partnership, or limited liability company;

(13) Retailer means a person who sells or offers for sale alcoholic liquor for use or consumption and not for resale in any form except as provided in section 53-175;

(14) Sell at retail and sale at retail means sale for use or consumption and not for resale in any form except as provided in section 53-175;

(15) Commission means the Nebraska Liquor Control Commission;

(16) Sale means any transfer, exchange, or barter in any manner or by any means for a consideration and includes any sale made by any person, whether principal, proprietor, agent, servant, or employee;

(17) To sell means to solicit or receive an order for, to keep or expose for sale, or to keep with intent to sell;

(18) Restaurant means any public place (a) which is kept, used, maintained, advertised, and held out to the public as a place where meals are served and where meals are actually and regularly served, (b) which has no sleeping accommodations, and (c) which has adequate and sanitary kitchen and dining room equipment and capacity and a sufficient number and kind of employees to prepare, cook, and serve suitable food for its guests;

(19) Club means a corporation (a) which is organized under the laws of this state, not for pecuniary profit, solely for the promotion of some common object other than the sale or consumption of alcoholic liquor, (b) which is kept, used, and maintained by its members through the payment of annual dues, (c) which owns, hires, or leases a building or space in a building suitable and adequate for the reasonable and comfortable use and accommodation of its members and their guests, and (d) which has suitable and adequate kitchen and dining room space and equipment and a sufficient number of servants and employees for cooking, preparing, and serving food and meals for its members and their guests. The affairs and management of such club shall be conducted by a board of directors, executive committee, or similar body chosen by the members at their annual meeting, and no member, officer, agent, or employee of the club shall be paid or shall directly or indirectly receive, in the form of salary or other compensation, any profits from the distribution or sale of alcoholic liquor to the club or the members of the club or its guests introduced by members other than any salary fixed and voted at any annual meeting by the members or by the governing body of the club out of the general revenue of the club;

(20) Hotel means any building or other structure (a) which is kept, used, maintained, advertised, and held out to the public to be a place where food is actually served and consumed and sleeping accommodations are offered for adequate pay to travelers and guests, whether transient, permanent, or residential, (b) in which twenty-five or more rooms are used for the sleeping accommodations of such guests, and (c) which has one or more public dining rooms where meals are served to such guests, such sleeping accommodations and dining rooms being conducted in the same buildings in connection therewith and such building or buildings or structure or structures being provided with adequate and sanitary kitchen and dining room equipment and capacity;

(21) Nonprofit corporation means any corporation organized under the laws of this state, not for profit, which has been exempted from the payment of federal income taxes;

(22) Minor means any person, male or female, under twenty-one years of age, regardless of marital status;

(23) Brand means alcoholic liquor identified as the product of a specific manufacturer;

(24) Franchise or agreement, with reference to the relationship between a manufacturer and wholesaler, includes one or more of the following: (a) A commercial relationship of a definite duration or continuing indefinite duration which is not required to be in writing; (b) a relationship by which the wholesaler is granted the right to offer and sell the manufacturer's brands by the manufacturer; (c) a relationship by which the franchise, as an independent business, constitutes a component of the manufacturer's distribution system; (d) a relationship by which the operation of the wholesaler's business is substantially associated with the manufacturer's brand, advertising, or other commercial symbol designating the manufacturer; and (e) a relationship by which the operation of the wholesaler's business is substantially reliant on the manufacturer for the continued supply of beer;

(25) Territory or sales territory means the wholesaler's area of sales responsibility for the brand or brands of the manufacturer;

(26) Suspend means to cause a temporary interruption of all rights and privileges of a license;

(27) Cancel means to discontinue all rights and privileges of a license;

(28) Revoke means to permanently void and recall all rights and privileges of a license;

(29) Generic label means a label which is not protected by a registered trademark, either in whole or in part, or to which no person has acquired a right pursuant to state or federal statutory or common law;

(30) Private label means a label which the purchasing wholesaler or retailer has protected, in whole or in part, by a trademark registration or which the purchasing wholesaler or retailer has otherwise protected pursuant to state or federal statutory or common law;

(31) Farm winery means any enterprise which produces and sells wines produced from grapes, other fruit, or other suitable agricultural products of which at least seventy-five percent of the finished product is grown in this state or which meets the requirements of section 53-123.13;

(32) Campus, as it pertains to the southern boundary of the main campus of the University of Nebraska-Lincoln, means the south right-of-way line of R

Street and abandoned R Street from 10th to 17th streets and, as it pertains to the western boundary of the main campus of the University of Nebraska-Lincoln, means the east right-of-way line of 10th Street from R Street to Holdrege Street (Salt Creek Roadway);

(33) Brewpub means any restaurant or hotel which produces on its premises a maximum of ten thousand barrels of beer per year;

(34) Manager means a person appointed by a corporation to oversee the daily operation of the business licensed in Nebraska. A manager shall meet all the requirements of the act as though he or she were the applicant, except for residency and citizenship;

(35) Shipping license means a license granted pursuant to section 53-123.15;

(36) Sampling means consumption on the premises of a retail licensee of not more than five samples of one fluid ounce or less of alcoholic liquor by the same person in a twenty-four-hour period;

(37) Microbrewery means any small brewery producing a maximum of ten thousand barrels of beer per year;

(38) Craft brewery means a brewpub or a microbrewery;

(39) Local governing body means (a) the city council or village board of trustees of a city or village within which the licensed premises are located or (b) if the licensed premises are not within the corporate limits of a city or village, the county board of the county within which the licensed premises are located;

(40) Consume means knowingly and intentionally drinking or otherwise ingesting alcoholic liquor;

(41) Microdistillery means a distillery located in Nebraska that is licensed to distill liquor on the premises of the distillery licensee and produces ten thousand or fewer gallons of liquor annually; and

(42) Cigar bar means an establishment operated by a holder of a Class C liquor license which:

(a) Does not sell food;

(b) In addition to selling alcohol, annually receives ten percent or more of its gross revenue from the sale of cigars and other tobacco products and tobacco-related products, except from the sale of cigarettes as defined in section 69-2702. A cigar bar shall not discount alcohol if sold in combination with cigars or other tobacco products and tobacco-related products;

(c) Has a walk-in humidor on the premises; and

(d) Does not permit the smoking of cigarettes.

Source: Laws 1935, c. 116, § 2, p. 374; C.S.Supp.,1941, § 53-302; R.S. 1943, § 53-103; Laws 1961, c. 258, § 1, p. 757; Laws 1963, c. 310, § 1, p. 919; Laws 1963, Spec. Sess., c. 4, § 1, p. 66; Laws 1963, Spec. Sess., c. 5, § 1, p. 71; Laws 1965, c. 319, § 1, p. 904; Laws 1965, c. 318, § 2, p. 886; Laws 1969, c. 298, § 1, p. 1072; Laws 1971, LB 234, § 2; Laws 1971, LB 752, § 1; Laws 1972, LB 1086, § 2; Laws 1973, LB 111, § 1; Laws 1980, LB 221, § 2; Laws 1980, LB 848, § 1; Laws 1981, LB 483, § 1; Laws 1983, LB 213, § 2; Laws 1984, LB 56, § 1; Laws 1985, LB 279, § 2; Laws 1985, LB 183, § 1; Laws 1986, LB 871, § 1; Laws 1986, LB 911, § 2; Laws 1987, LB 468, § 1; Laws 1988, LB 490, § 4; Laws 1988, LB 901, § 2; Laws 1988, LB 1089, § 2; Laws 1989, LB 441,

§ 2; Laws 1989, LB 154, § 1; Laws 1991, LB 344, § 5; Laws 1993, LB 121, § 317; Laws 1994, LB 859, § 2; Laws 1994, LB 1313, § 2; Laws 1996, LB 750, § 1; Laws 1996, LB 1090, § 1; Laws 1999, LB 267, § 2; Laws 2001, LB 114, § 2; Laws 2001, LB 278, § 1; Laws 2003, LB 536, § 2; Laws 2004, LB 485, § 3; Laws 2006, LB 562, § 1; Laws 2007, LB549, § 2; Laws 2008, LB1103, § 1; Laws 2009, LB137, § 1; Laws 2009, LB355, § 2.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB137, section 1, with LB355, section 2, to reflect all amendments.

Note: Changes made by LB137 became effective August 30, 2009. LB355 had an operative date of June 1, 2009, and became effective August 30, 2009.

(d) LICENSES; ISSUANCE AND REVOCATION

53-124 Annual license fees; where paid.

At the time application is made to the commission for a license of any type, the applicant shall pay the fee provided in this section and, if the applicant is an individual, provide the applicant's social security number. The fees for annual licenses finally issued by the commission shall be as follows:

(1)(a) For a license to manufacture alcohol and spirits.....$1,000.00;

(b) For a license to operate a microdistillery.....$250.00;

(2) For a license to manufacture beer and wine or to operate a farm winery or craft brewery:

(a) Manufacture of beer, excluding beer produced by a craft brewery:

(i) 1 to 100 barrel daily capacity, or any part thereof.....$100.00

(ii) 100 to 150 barrel daily capacity.....200.00

(iii) 150 to 200 barrel daily capacity.....350.00

(iv) 200 to 300 barrel daily capacity.....500.00

(v) 300 to 400 barrel daily capacity.....650.00

(vi) 400 to 500 barrel daily capacity.....700.00

(vii) 500 barrel daily capacity, or more.....800.00;

(b) Operation of a craft brewery.....$250.00;

(c) Manufacture of wines.....$250.00;

(d) Operation of a farm winery.....$250.00.

For purposes of subdivision (2)(a) of this section, daily capacity shall mean the average daily barrel production for the previous twelve months of manufacturing operation. If no such basis for comparison exists, the manufacturing licensee shall pay in advance for the first year's operation a fee of five hundred dollars;

(3) Alcoholic liquor wholesale license, for the first and each additional wholesale place of business operated in this state by the same licensee and wholesaling alcoholic liquor, except beer and wines produced from farm wineries.....$750.00;

(4) Beer wholesale license, for the first and each additional wholesale place of business operated in this state by the same licensee and wholesaling beer only.....$500.00;

(5) For a retail license:

(a) Class A: Beer only except for craft breweries, for consumption on the premises, the sum of one hundred dollars;

(b) Class B: Beer only except for craft breweries, for consumption off the premises, sales in the original packages only, the sum of one hundred dollars;

(c) Class C: Alcoholic liquor, for consumption on the premises and off the premises, sales in original packages only, the sum of three hundred dollars, except for farm winery, microdistillery, or craft brewery sales outlets. If the applicant is making application to operate a cigar bar, the initial, nonrefundable application fee shall be one thousand dollars, the annual fee thereafter shall be as specified in this subdivision, and the application shall meet the requirements of section 53-131. If a Class C license is held by a nonprofit corporation, it shall be restricted to consumption on the premises only. A Class C license may have a sampling designation restricting consumption on the premises to sampling, but such designation shall not affect sales for consumption off the premises under such license;

(d) Class D: Alcoholic liquor, including beer, for consumption off the premises, sales in the original packages only, except as provided in subsection (2) of section 53-123.04, the sum of two hundred dollars, except for farm winery, microdistillery, or craft brewery sales outlets; and

(e) Class I: Alcoholic liquor, for consumption on the premises, the sum of two hundred fifty dollars, except for farm winery, microdistillery, or craft brewery sales outlets.

All applicable license fees shall be paid by the applicant or licensee directly to the city or village treasurer in the case of premises located inside the corporate limits of a city or village and directly to the county treasurer in the case of premises located outside the corporate limits of a city or village;

(6) For a railroad license.....$100.00 and $1.00 for each duplicate;

(7) For a boat license.....$50.00;

(8) For a nonbeverage user's license:

Class 1.....$5.00

Class 2.....25.00

Class 3.....50.00

Class 4.....100.00

Class 5.....250.00;

(9) For an airline license.....$100.00 and $1.00 for each duplicate;

(10) For a shipping license, except a shipping license issued pursuant to subsection (4) of section 53-123.15.....$200.00; and

(11) For a shipping license issued pursuant to subsection (4) of section 53-123.15.....$500.00.

The license year, unless otherwise provided in the Nebraska Liquor Control Act, shall commence on May 1 of each year and shall end on the following April 30, except that the license year for a Class C license shall commence on November 1 of each year and shall end on the following October 31. During the license year, no license shall be issued for a sum less than the amount of the annual license fee as fixed in this section, regardless of the time when the application for such license has been made, except that (a) when there is a purchase of an existing licensed business and a new license of the same class is

issued or (b) upon the issuance of a new license for a location which has not been previously licensed, the license fee and occupation taxes shall be prorated on a quarterly basis as of the date of issuance.

Source: Laws 1935, c. 116, § 26, p. 391; C.S.Supp.,1941, § 53-326; R.S.1943, § 53-124; Laws 1955, c. 202, § 1, p. 576; Laws 1959, c. 249, § 2, p. 861; Laws 1961, c. 258, § 2, p. 761; Laws 1963, c. 309, § 2, p. 913; Laws 1963, c. 310, § 7, p. 927; Laws 1963, Spec. Sess., c. 5, § 3, p. 76; Laws 1965, c. 318, § 6, p. 893; Laws 1967, c. 332, § 6, p. 882; Laws 1967, c. 336, § 1, p. 897; Laws 1973, LB 111, § 4; Laws 1974, LB 681, § 5; Laws 1975, LB 414, § 1; Laws 1977, LB 237, § 1; Laws 1978, LB 386, § 4; Laws 1983, LB 133, § 2; Laws 1983, LB 213, § 3; Laws 1984, LB 947, § 1; Laws 1985, LB 279, § 8; Laws 1988, LB 1089, § 11; Laws 1989, LB 154, § 3; Laws 1989, LB 781, § 6; Laws 1991, LB 344, § 26; Laws 1993, LB 183, § 9; Laws 1993, LB 53, § 3; Laws 1994, LB 1313, § 3; Laws 1996, LB 750, § 6; Laws 1997, LB 752, § 131; Laws 2001, LB 278, § 4; Laws 2001, LB 671, § 2; Laws 2004, LB 485, § 15; Laws 2007, LB549, § 7; Laws 2009, LB355, § 3.

Note: Laws 2009, LB355, section 7, had an operative date of June 1, 2009. LB355 became effective August 30, 2009.

53-124.15 Community college culinary education program; catering license.

A community college which offers a culinary education program may obtain a catering license under this section upon applying for and receiving a Class I license under the Nebraska Liquor Control Act. The catering license shall be issued for the same period and may be renewed in the same manner as the Class I license.

A community college holding a catering license and a Class I license under the act may sell alcoholic beverages only (1) at events held by such culinary education program on the campus of the community college or (2) at events catered by such culinary education program as part of the requirements of such program.

Source: Laws 2009, LB232, § 2.
Effective date August 30, 2009.

53-131 Retail, craft brewery, and microdistillery licenses; application; fees; notice of application to city, village, or county.

(1) Any person desiring to obtain a new license to sell alcoholic liquor at retail, a craft brewery license, or a microdistillery license shall file with the commission:

(a) An application in triplicate original upon forms the commission prescribes, including the information required by subsection (3) of this section for an application to operate a cigar bar;

(b) The license fee if under section 53-124 such fee is payable to the commission, which fee shall be returned to the applicant if the application is denied, except that if the applicant is making application to operate a cigar bar, the initial application fee is nonrefundable as provided in subdivision (5)(c) of section 53-124; and

(c) The state registration fee in the sum of forty-five dollars.

(2) The commission shall notify, by registered or certified mail, return receipt requested with postage prepaid, (a) the clerk of the city or village in which such license is sought or (b) if the license sought is not sought within a city or village, the county clerk of the county in which such license is sought, of the receipt of the application and shall enclose one copy of the application with the notice. No such license shall be issued or denied by the commission until the expiration of the time allowed for the receipt of a recommendation of denial or an objection requiring a hearing under subdivision (1)(a) or (b) of section 53-133. During the period of forty-five days after the date of receiving such application from the commission, the local governing body of such city, village, or county may make and submit to the commission recommendations relative to the granting or refusal to grant such license to the applicant.

(3) For an application to operate a cigar bar, the application shall include proof of the cigar bar's annual gross revenue as requested by the commission and such other information as requested by the commission to establish the intent to operate as a cigar bar. The commission may adopt and promulgate rules and regulations to regulate cigar bars.

Source: Laws 1935, c. 116, § 82, p. 417; C.S.Supp.,1941, § 53-382; R.S.1943, § 53-131; Laws 1955, c. 203, § 1, p. 580; Laws 1959, c. 249, § 6, p. 866; Laws 1976, LB 413, § 1; Laws 1980, LB 848, § 7; Laws 1982, LB 928, § 42; Laws 1983, LB 213, § 12; Laws 1984, LB 947, § 2; Laws 1986, LB 911, § 3; Laws 1988, LB 550, § 1; Laws 1988, LB 1089, § 13; Laws 1989, LB 781, § 9; Laws 1991, LB 202, § 4; Laws 1991, LB 344, § 34; Laws 1993, LB 183, § 11; Laws 1996, LB 750, § 9; Laws 1999, LB 267, § 8; Laws 2000, LB 973, § 6; Laws 2001, LB 278, § 7; Laws 2004, LB 485, § 20; Laws 2007, LB549, § 11; Laws 2009, LB355, § 4.

Note: Laws 2009, LB355, section 7, had an operative date of June 1, 2009. LB355 became effective August 30, 2009.

(i) PROHIBITED ACTS

53-177 Sale at retail; restrictions as to locality.

(1) No license shall be issued for the sale at retail of any alcoholic liquor within one hundred and fifty feet of any church, school, hospital, or home for aged or indigent persons or for veterans, their wives or children. This prohibition does not apply (a) to any location within such distance of one hundred and fifty feet for which a license to sell alcoholic liquor at retail has been granted by the Nebraska Liquor Control Commission for two years continuously prior to making of application for license and (b) to hotels offering restaurant service, to regularly organized clubs, or to restaurants, food shops, or other places where sale of alcoholic liquor is not the principal business carried on, if such place of business so exempted was established for such purposes prior to May 24, 1935.

(2) No alcoholic liquor, other than beer, shall be sold for consumption on the premises within three hundred feet from the campus of any college or university in the state, except that this section:

(a) Does not prohibit a nonpublic college or university from contracting with an individual or corporation holding a license to sell alcoholic liquor at retail for the purpose of selling alcoholic liquor at retail on the campus of such college or university at events sanctioned by such college or university but does

prohibit the sale of alcoholic liquor at retail by such licensee on the campus of such nonpublic college or university at student activities or events; and

(b) Does not prohibit sales of alcoholic liquor by a community college culinary education program pursuant to section 53-124.15.

Source: Laws 1935, c. 116, § 35, p. 399; C.S.Supp.,1941, § 53-335; R.S.1943, § 53-177; Laws 1947, c. 189, § 2, p. 626; Laws 1965, c. 322, § 1, p. 914; Laws 1999, LB 267, § 13; Laws 2009, LB232, § 3.
Effective date August 30, 2009.

(k) PROSECUTION AND ENFORCEMENT

53-1,120.01 County resolution or city ordinance prohibiting smoking; not applicable to cigar bars.

No county resolution or city ordinance that prohibits smoking in indoor areas shall apply to cigar bars.

Source: Laws 2009, LB355, § 5.

Note: Laws 2009, LB355, section 7, had an operative date of June 1, 2009. LB355 became effective August 30, 2009.

CHAPTER 54
LIVESTOCK

ARTICLE 1

LIVESTOCK BRAND ACT

54-1,100 Recorded brand; transfer; lien or security interest; notice; effect; fee; effect.

A recorded brand is the property of the person causing such record to be made and is subject to sale, assignment, transfer, devise, and descent as personal property. Any instrument of writing evidencing the sale, assignment, or transfer of a recorded brand shall be effective upon its recording with the Nebraska Brand Committee. No such instrument shall be accepted for recording if the brand committee has been duly notified of the existence of a lien or security interest against livestock owned or thereafter acquired by the owner of such brand by the holder of such lien or security interest. Written notification from the holder of such lien or security interest that the lien or security interest has been satisfied or consent from the holder of such lien or security interest shall be required in order for the brand committee to accept for recording an instrument selling, assigning, or transferring such recorded brand. The fee for recording such an instrument shall be established by the brand committee and shall not be more than forty dollars. Such instrument shall give notice to all third persons of the matter recorded in the instrument and shall be acknowledged by a notary public or any other officer qualified under law to administer oaths.

Source: Laws 1999, LB 778, § 31; Laws 2002, LB 589, § 4; Laws 2009, LB142, § 1.
Effective date August 30, 2009.

ARTICLE 6
DOGS AND CATS

(a) DOGS

Section
54-601. Dogs; personal property; owner liable for damages; exceptions.

(b) DANGEROUS DOGS

54-617. Dangerous dogs; terms, defined.
54-620. Dangerous dogs; confiscation; when; costs.
54-622. Dangerous dogs; violation; penalty.
54-622.01. Dangerous dogs; serious bodily injury; penalty; defense.
54-623. Dangerous dogs; violation; conviction; effect.
54-623.01. County; designate animal control authority.
54-624. Dangerous dogs; local laws or ordinances.

(c) COMMERCIAL DOG AND CAT OPERATOR INSPECTION ACT

54-625. Act, how cited.
54-626. Terms, defined.
54-627. License requirements; fees; renewal; premises available for inspection.
54-627.01. Licensees; maintain written veterinary care plan or written emergency veterinary care plan.
54-628. Inspection program; department; powers.
54-628.01. Department; stop-movement order; issuance; contents; hearing; department; powers; costs; reinspection; hearing.
54-629. Rules and regulations.
54-632. Notice or order; service requirements; hearing; appeal.
54-634.01. Prohibited acts.
54-640. Commercial breeder; duties.

(d) DOG AND CAT PURCHASE PROTECTION ACT

54-644. Act, how cited.
54-645. Terms, defined.
54-646. Seller; written disclosure statement; contents; receipt; notice of purchaser's rights and responsibilities; health certificate; retention of records.
54-647. Recourse to remedies; purchaser; duties; notice to seller; remedies.
54-648. Denial of refund, reimbursement of fees, or replacement; conditions.
54-649. Purchaser; file action; seller's rights; limit of recovery.
54-650. Other rights and remedies not limited; act; how construed.

(a) DOGS

54-601 Dogs; personal property; owner liable for damages; exceptions.

(1) Dogs are hereby declared to be personal property for all intents and purposes, and, except as provided in subsection (2) of this section, the owner or owners of any dog or dogs shall be liable for any and all damages that may accrue (a) to any person, other than a trespasser, by reason of having been bitten by any such dog or dogs and (b) to any person, firm, or corporation by reason of such dog or dogs killing, wounding, injuring, worrying, or chasing any person or persons or any sheep or other domestic animals belonging to such person, firm, or corporation. Such damage may be recovered in any court having jurisdiction of the amount claimed.

(2)(a) A governmental agency or its employees using a dog in military or police work shall not be liable under subsection (1) of this section to a party to, participant in, or person reasonably suspected to be a party to or participant in the act that prompted the use of the dog in the military or police work if the officers of the governmental agency were complying with a written policy on

the necessary and appropriate use of a dog for military or police work adopted by the governmental agency and if the damage occurred while the dog was responding to a harassing or provoking act or the damage was the result of a reasonable use of force while the dog or dogs were assisting an employee of the agency in any of the following:

(i) The apprehension or holding of a suspect if the employee has a reasonable suspicion of the suspect's involvement in criminal activity;

(ii) The investigation of a crime or possible crime;

(iii) The execution of a warrant; or

(iv) The defense of a peace officer or another person other than the suspect.

(b) For purposes of this subsection, harassing or provoking act means knowingly and intentionally attempting to interfere with, interfering with, teasing or harassing such dog in order to distract, or agitating or harming such dog.

Source: Laws 1877, § 1, p. 156; Laws 1899, c. 4, § 1, p. 54; R.S.1913, § 172; C.S.1922, § 169; C.S.1929, § 54-601; R.S.1943, § 54-601; Laws 1947, c. 192, § 1, p. 629; Laws 1961, c. 268, § 1, p. 786; Laws 1992, LB 1011, § 1; Laws 2009, LB347, § 1.
Effective date August 30, 2009.

(b) DANGEROUS DOGS

54-617 Dangerous dogs; terms, defined.

For purposes of sections 54-617 to 54-624:

(1) Animal control authority means an entity authorized to enforce the animal control laws of a county, city, or village or this state and includes any local law enforcement agency or other agency designated by a county, city, or village to enforce the animal control laws of such county, city, or village;

(2) Animal control officer means any individual employed, appointed, or authorized by an animal control authority for the purpose of aiding in the enforcement of sections 54-617 to 54-624 or any other law or ordinance relating to the licensure of animals, control of animals, or seizure and impoundment of animals and includes any state or local law enforcement officer or other employee whose duties in whole or in part include assignments that involve the seizure and impoundment of any animal;

(3)(a) Dangerous dog means a dog that, according to the records of an animal control authority: (i) Has killed a human being; (ii) has inflicted injury on a human being that requires medical treatment; (iii) has killed a domestic animal without provocation; or (iv) has been previously determined to be a potentially dangerous dog by an animal control authority, the owner has received notice from an animal control authority or an animal control officer of such determination, and the dog inflicts an injury on a human being that does not require medical treatment, injures a domestic animal, or threatens the safety of humans or domestic animals.

(b)(i) A dog shall not be defined as a dangerous dog under subdivision (3)(a)(ii) of this section, and the owner shall not be guilty under section 54-622.01, if the individual was tormenting, abusing, or assaulting the dog at the time of the injury or has, in the past, been observed or reported to have tormented, abused, or assaulted the dog.

(ii) A dog shall not be defined as a dangerous dog under subdivision (3)(a)(iv) of this section, and the owner shall not be guilty under section 54-622.01, if the injury, damage, or threat was sustained by an individual who, at the time, was committing a willful trespass as defined in section 20-203, 28-520, or 28-521, was committing any other tort upon the property of the owner of the dog, was tormenting, abusing, or assaulting the dog, or has, in the past, been observed or reported to have tormented, abused, or assaulted the dog, or was committing or attempting to commit a crime.

(iii) A dog shall not be defined as a dangerous dog under subdivision (3)(a) of this section if the dog is a police animal as defined in section 28-1008;

(4) Domestic animal means a cat, a dog, or livestock. Livestock includes buffalo, deer, antelope, fowl, and any other animal in any zoo, wildlife park, refuge, wildlife area, or nature center intended to be on exhibit;

(5) Medical treatment means treatment administered by a physician or other licensed health care professional that results in sutures or surgery or treatment for one or more broken bones;

(6) Owner means any person, firm, corporation, organization, political subdivision, or department possessing, harboring, keeping, or having control or custody of a dog; and

(7) Potentially dangerous dog means (a) any dog that when unprovoked (i) inflicts an injury on a human being that does not require medical treatment, (ii) injures a domestic animal, or (iii) chases or approaches a person upon streets, sidewalks, or any public grounds in a menacing fashion or apparent attitude of attack or (b) any specific dog with a known propensity, tendency, or disposition to attack when unprovoked, to cause injury, or to threaten the safety of humans or domestic animals.

Source: Laws 1989, LB 208, § 1; Laws 2008, LB1055, § 16; Laws 2009, LB494, § 8.
Effective date August 30, 2009.

54-620 Dangerous dogs; confiscation; when; costs.

Any dangerous dog may be immediately confiscated by an animal control officer if the owner is in violation of sections 54-617 to 54-624. The owner shall be responsible for the reasonable costs incurred by the animal control authority for the care of a dangerous dog confiscated by an animal control officer or for the destruction of any dangerous dog if the action by the animal control authority is pursuant to law and if the owner violated sections 54-617 to 54-624.

Source: Laws 1989, LB 208, § 4; Laws 2008, LB1055, § 19; Laws 2009, LB494, § 9.
Effective date August 30, 2009.

54-622 Dangerous dogs; violation; penalty.

Except as provided in section 54-622.01, any owner who violates sections 54-617 to 54-621 shall be guilty of a Class IV misdemeanor.

Source: Laws 1989, LB 208, § 6; Laws 2009, LB494, § 10.
Effective date August 30, 2009.

54-622.01 Dangerous dogs; serious bodily injury; penalty; defense.

(1) Any owner whose dangerous dog inflicts on a human being a serious bodily injury as defined in section 28-109 is guilty of a Class I misdemeanor for the first offense and a Class IV felony for a second or subsequent offense, whether or not the same dangerous dog is involved.

(2) It is a defense to a violation of subsection (1) of this section that the dangerous dog was, at the time of the infliction of the serious bodily injury, in the custody of or under the direct control of a person other than the owner or the owner's immediate family.

Source: Laws 2009, LB494, § 13.
Effective date August 30, 2009.

54-623 Dangerous dogs; violation; conviction; effect.

(1) Any owner convicted of a violation of sections 54-617 to 54-624 shall not own a dangerous dog within ten years after such conviction. Any owner violating this subsection shall be guilty of a Class IIIA misdemeanor, and the dog shall be treated as provided in subsection (2) of this section.

(2) Except as provided in section 54-622.01, if a dangerous dog of an owner with a prior conviction under sections 54-617 to 54-624 attacks or bites a human being or domestic animal, the owner shall be guilty of a Class IIIA misdemeanor. In addition, the dangerous dog shall be immediately confiscated by an animal control authority, placed in quarantine for the proper length of time, and thereafter destroyed in an expeditious and humane manner.

Source: Laws 1989, LB 208, § 7; Laws 2008, LB1055, § 20; Laws 2009, LB494, § 11.
Effective date August 30, 2009.

54-623.01 County; designate animal control authority.

Each county shall designate an animal control authority that shall be responsible for enforcing sections 54-617 to 54-624 and the laws of such county regarding dangerous dogs.

Source: Laws 2008, LB1055, § 22; Laws 2009, LB494, § 12.
Effective date August 30, 2009.

54-624 Dangerous dogs; local laws or ordinances.

Nothing in sections 54-617 to 54-623.01 shall be construed to restrict or prohibit any governing board of any county, city, or village from establishing and enforcing laws or ordinances at least as stringent as the provisions of sections 54-617 to 54-623.01.

Source: Laws 1989, LB 208, § 8; Laws 2008, LB1055, § 21; Laws 2009, LB494, § 14.
Effective date August 30, 2009.

(c) COMMERCIAL DOG AND CAT OPERATOR INSPECTION ACT

54-625 Act, how cited.

Sections 54-625 to 54-643 shall be known and may be cited as the Commercial Dog and Cat Operator Inspection Act.

Source: Laws 2000, LB 825, § 1; Laws 2003, LB 274, § 1; Laws 2006, LB 856, § 13; Laws 2007, LB12, § 1; Laws 2009, LB241, § 1.
Operative date August 30, 2009.

54-626 Terms, defined.

For purposes of the Commercial Dog and Cat Operator Inspection Act:

(1) Animal control facility means a facility operated by or under contract with the state or any political subdivision of the state for the purpose of impounding or harboring seized, stray, homeless, abandoned, or unwanted animals;

(2) Animal shelter means a facility used to house or contain dogs or cats and owned, operated, or maintained by an incorporated humane society, animal welfare society, society for the prevention of cruelty to animals, or other nonprofit organization devoted to the welfare, protection, and humane treatment of such animals;

(3) Boarding kennel means a facility which is primarily used to house or contain dogs or cats owned by persons other than the operator of such facility. The primary function of a boarding kennel is to temporarily harbor dogs or cats when the owner of the dogs or cats is unable to do so or to provide training, grooming, or other nonveterinary service for consideration before returning the dogs or cats to the owner. A facility which provides such training, grooming, or other nonveterinary service is not a boarding kennel for the purposes of the act unless dogs or cats owned by persons other than the operator of such facility are housed at such facility overnight. Veterinary clinics, animal control facilities, and nonprofit animal shelters are not boarding kennels for the purposes of the act;

(4) Cat means any animal which is wholly or in part of the species Felis domesticus;

(5) Commercial breeder means any one of the following:

(a) A person who sells, exchanges, leases, or in any way transfers or offers to sell, exchange, lease, or transfer thirty-one or more dogs or cats in a twelve-month period beginning on April 1 of each year;

(b) A person engaged in the business of breeding dogs or cats who owns or harbors four or more dogs or cats, intended for breeding, in a twelve-month period beginning on April 1 of each year;

(c) A person whose dogs or cats produce a total of four or more litters within a twelve-month period beginning on April 1 of each year; or

(d) A person who knowingly sells, exchanges, or leases dogs or cats for later retail sale or brokered trading;

(6) Dealer means any person who is not a commercial breeder or a pet shop but is engaged in the business of buying for resale or selling or exchanging dogs or cats as a principal or agent or who claims to be so engaged. A person who purchases, sells, exchanges, or leases thirty or fewer dogs or cats in a twelve-month period is not a dealer;

(7) Department means the Bureau of Animal Industry of the Department of Agriculture with the State Veterinarian in charge, subordinate only to the director;

(8) Director means the Director of Agriculture or his or her designated employee;

(9) Dog means any animal which is wholly or in part of the species Canis familiaris;

(10) Housing facility means any room, building, or areas used to contain a primary enclosure;

(11) Inspector means any person who is employed by the department and who is authorized to perform inspections pursuant to the act;

(12) Licensee means a person who has qualified for and received a license from the department pursuant to the act;

(13) Pet animal means an animal kept as a household pet for the purpose of companionship, which includes, but is not limited to, dogs, cats, birds, fish, rabbits, rodents, amphibians, and reptiles;

(14) Pet shop means a retail establishment which sells pet animals and related supplies;

(15) Premises means all public or private buildings, kennels, pens, and cages used by a facility and the public or private ground upon which a facility is located if such buildings, kennels, pens, cages, or ground are used by the owner or operator of such facility in the usual course of business;

(16) Primary enclosure means any structure used to immediately restrict a dog or cat to a limited amount of space, such as a room, pen, cage, or compartment;

(17) Secretary of Agriculture means the Secretary of Agriculture of the United States Department of Agriculture;

(18) Stop-movement order means a directive preventing the movement or removal of any dog or cat from the premises; and

(19) Unaltered means any male or female dog or cat which has not been neutered or spayed or otherwise rendered incapable of reproduction.

Source: Laws 2000, LB 825, § 2; Laws 2003, LB 233, § 1; Laws 2003, LB 274, § 2; Laws 2004, LB 1002, § 1; Laws 2009, LB241, § 2. Operative date August 30, 2009.

54-627 License requirements; fees; renewal; premises available for inspection.

(1) A person shall not operate as a commercial breeder, a dealer, a boarding kennel, an animal control facility, or an animal shelter unless the person obtains the appropriate license as a commercial breeder, dealer, boarding kennel, animal control facility, or animal shelter. A person shall not operate as a pet shop unless the person obtains a license as a pet shop. A pet shop shall only be subject to the Commercial Dog and Cat Operator Inspection Act and the rules and regulations adopted and promulgated pursuant thereto in any area or areas of the establishment used for the keeping and selling of pet animals. If a facility listed in this subsection is not located at the owner's residence, the name and address of the owner shall be posted on the premises.

(2) An applicant for a license shall submit an application for the appropriate license to the department, on a form prescribed by the department, together with the annual license fee. Such fee is nonreturnable. Upon receipt of the application and annual license fee and upon completion of a qualifying inspection if required pursuant to section 54-630 for an initial license applicant or if a qualifying inspection is deemed appropriate by the department before a license is issued for any other applicant, the appropriate license may be issued by the department. Such license shall not be transferable to another person or location.

(3)(a) Except as otherwise provided in this subsection, the annual license fee shall be determined according to the following fee schedule based upon the daily average number of dogs or cats housed by the licensee over the previous annual licensure period:

(i) Ten or fewer dogs or cats, one hundred fifty dollars;

(ii) Eleven to fifty dogs or cats, two hundred dollars; and

(iii) More than fifty dogs or cats, two hundred fifty dollars.

(b) The initial license fee for any person required to be licensed pursuant to the act shall be one hundred twenty-five dollars.

(c) The annual license fee for a licensee that does not house dogs or cats shall be one hundred fifty dollars.

(d) The fees charged under this subsection may be increased or decreased by the director after a public hearing is held outlining the reason for any proposed change in the fee. The maximum fee shall not exceed three hundred fifty dollars.

(4) A license to operate as a commercial breeder, a license to operate as a dealer, a license to operate as a boarding kennel, or a license to operate as a pet shop shall be renewed by filing with the department at least thirty days prior to April 1 of each year a renewal application and the annual license fee. A license to operate as an animal control facility or animal shelter shall be renewed by filing with the department at least thirty days prior to October 1 of each year a renewal application and the annual license fee. Failure to renew a license prior to the expiration of the license shall result in an additional fee of twenty dollars required upon application to renew such license.

(5) A licensee under this section shall make its premises available for inspection pursuant to section 54-628 during normal business hours.

(6) The state or any political subdivision of the state which contracts out its animal control duties to a facility not operated by the state or any political subdivision of the state may be exempted from the licensing requirements of this section if such facility is licensed as an animal control facility or animal shelter for the full term of the contract with the state or its political subdivision.

Source: Laws 2000, LB 825, § 3; Laws 2003, LB 233, § 2; Laws 2003, LB 274, § 3; Laws 2004, LB 1002, § 2; Laws 2006, LB 856, § 14; Laws 2007, LB12, § 2; Laws 2009, LB241, § 3.
Operative date August 30, 2009.

54-627.01 Licensees; maintain written veterinary care plan or written emergency veterinary care plan.

A dealer or pet shop licensed under section 54-627 shall maintain a written veterinary care plan developed in conjunction with the attending veterinarian for the dealer or pet shop. An animal control facility, an animal shelter, or a boarding kennel licensed under section 54-627 shall maintain a written emergency veterinary care plan.

Source: Laws 2009, LB241, § 4.
Operative date August 30, 2009.

54-628 Inspection program; department; powers.

(1) The department shall inspect all licensees at least once in a twenty-four-month period to determine whether the licensee is in compliance with the Commercial Dog and Cat Operator Inspection Act. Any additional inspector or other field personnel employed by the department to carry out inspections pursuant to the act that are funded through General Fund appropriations to the Bureau of Animal Industry shall be assigned to the Bureau of Animal Industry and shall be available for temporary reassignment as needed to other activities and functions of the Bureau of Animal Industry in the event of a livestock disease emergency or any other threat to livestock or public health. When an inspection produces evidence of a violation of the act or the rules and regulations of the department, a copy of a written report of the inspection and violations shown thereon, prepared by the inspector, shall be given to the applicant or licensee, together with written notice to comply within the time limit established by the department and set out in such notice.

(2) If deemed necessary under the act or any rule or regulation adopted and promulgated pursuant to the act, the department may, for purposes of inspection, enter the premises of any applicant or licensee during normal business hours and in a reasonable manner, including all premises in or upon which dogs or cats are housed, sold, exchanged, or leased or are suspected of being housed, sold, exchanged, or leased. For purposes of this subsection, premises includes all buildings, vehicles, equipment, cages, kennels, containers, and pens and all records on such premises. The department shall not be subject to any action for trespass or damages resulting from compliance with this subsection. Pursuant to an inspection under this subsection, the department may:

(a) Enter the premises of any applicant for a license under the act to determine if the applicant meets the requirements for licensure under the act;

(b) Access all premises and examine and copy all records pertaining to compliance with the act and the rules or regulations adopted and promulgated under the act. The department shall have authority to gather evidence, including, but not limited to, photographs;

(c) Inspect or reinspect any vehicle or carrier transporting or holding dogs or cats that is in the state to determine compliance with the act or any rules or regulations adopted and promulgated under the act;

(d) Obtain an inspection warrant in the manner prescribed in sections 29-830 to 29-835 if any person refuses to allow the department to conduct an inspection pursuant to this section; or

(e) Issue and enforce a written stop-movement order pursuant to section 54-628.01.

(3) For purposes of this section, the private residence of any applicant or licensee shall be available for purposes of inspection only if dogs or cats are housed in a primary enclosure as defined in 9 C.F.R. 1.1 within the residence, including a room in such residence, and only such portion of the residence that is used as a primary enclosure shall be open to an inspection pursuant to this section.

Source: Laws 2000, LB 825, § 4; Laws 2007, LB12, § 3; Laws 2009, LB241, § 5.
Operative date August 30, 2009.

54-628.01 Department; stop-movement order; issuance; contents; hearing; department; powers; costs; reinspection; hearing.

(1) The department may issue a stop-movement order if the department has reasonable cause to believe that there exists noncompliance with the Commercial Dog and Cat Operator Inspection Act or any rule or regulation adopted and promulgated pursuant to the act, including, but not limited to, reasonable cause to believe unreasonable sanitation or housing conditions exist.

(2) Such stop-movement order may require the violator to maintain the dogs or cats subject to the order at the existing location or other department-approved premises until such time as the department has issued a written release from the stop-movement order. The stop-movement order shall clearly advise the violator that he or she may request in writing an immediate hearing before the director within two business days after receiving the order. The order issued pursuant to this section shall be final unless modified or rescinded by the director pursuant to section 54-632 at a hearing requested under this subsection.

(3) Pursuant to the stop-movement order, the department shall have the authority to enter the premises to inspect and determine if the dogs or cats subject to the order or the facilities used to house or transport such dogs or cats are kept and maintained in compliance with the requirements of the act and the rules and regulations adopted and promulgated pursuant to the act. The department shall not be liable for any costs incurred by the violator or any personnel of the violator due to such departmental action or in enforcing the stop-movement order. The department shall be reimbursed by the violator for the actual costs incurred by the department in issuing and enforcing any stop-movement order.

(4) A stop-movement order shall include:

(a) A description of the nature of the violation;

(b) The action necessary to bring the violator into compliance with the act and the rules and regulations adopted and promulgated pursuant to the act; and

(c) The name, address, and telephone number of the violator who owns or houses the dogs or cats subject to the order.

(5) Before receipt of a written release, the person to whom the stop-movement order was issued shall:

(a) Provide the department with an inventory of all dogs or cats on the premises at the time of the issuance of the order;

(b) Provide the department with the identification tag number, the tattoo number, the microchip number, or any other approved method of identification for each individual dog or cat;

(c) Notify the department within forty-eight hours of the death or euthanasia of any dog or cat subject to the order. Such notification shall include the dog's or cat's individual identification tag number, tattoo number, microchip number, or other approved identification;

(d) Notify the department within forty-eight hours of any dog or cat giving birth after the issuance of the order, including the size of the litter; and

(e) Maintain on the premises any dog or cat subject to the order, except that a dog or cat under one year of age under contract to an individual prior to the issuance of the order may be delivered to the individual pursuant to the contractual obligation. The violator shall provide to the department information identifying the dog or cat and the name, address, and telephone number of the

individual purchasing the dog or cat. The department may contact the purchaser to ascertain the date of the purchase agreement to ensure that the dog or cat was sold prior to the stop-movement order and to determine that he or she did purchase such dog or cat. No additional dogs or cats shall be transferred onto the premises without written approval of the department.

(6) The department shall reinspect the premises to determine compliance within ten business days after the initial inspection that resulted in the stop-movement order. At the time of reinspection pursuant to this subsection, if noncompliant conditions continue to exist, further reinspections shall be at the discretion of the department. The violator may request an immediate hearing with the director pursuant to any findings under this subsection.

Source: Laws 2009, LB241, § 6.
Operative date August 30, 2009.

54-629 Rules and regulations.

The department shall adopt and promulgate rules and regulations to carry out the Commercial Dog and Cat Operator Inspection Act. The rules and regulations may include, but are not limited to, factors to be considered when the department imposes an administrative fine, provisions governing record-keeping, veterinary care plans, emergency veterinary care plans, and other requirements for persons required to have a license, and any other matter deemed necessary by the department to carry out the act. The department shall use as a guideline for the humane handling, care, treatment, and transportation of dogs and cats the standards of the Animal and Plant Health Inspection Service of the United States Department of Agriculture as set out in 9 C.F.R. 3.1 to 3.19.

Source: Laws 2000, LB 825, § 5; Laws 2007, LB12, § 4; Laws 2009, LB241, § 7.
Operative date August 30, 2009.

54-632 Notice or order; service requirements; hearing; appeal.

(1) Any notice or order provided for in the Commercial Dog and Cat Operator Inspection Act shall be properly served when it is personally served on the licensee or violator or on the person authorized by the licensee to receive notices and orders of the department or when it is sent by certified or registered mail, return receipt requested, to the last-known address of the licensee or violator or the person authorized by the licensee to receive such notices and orders. A copy of the notice and the order shall be filed in the records of the department.

(2) A notice to comply with the conditions set out in the order of the director provided in section 54-631 shall set forth the acts or omissions with which the licensee is charged.

(3) A notice of the licensee's right to a hearing provided for in sections 54-630 and 54-631 shall set forth the time and place of the hearing except as otherwise provided in section 54-631. A notice of the licensee's right to such hearing shall include notice that such right to a hearing may be waived pursuant to subsection (6) of this section. A notice of the licensee's right to a hearing shall include notice to the licensee that the license may be subject to sanctions as provided in section 54-631.

(4) A request for a hearing under subsection (2) of section 54-628.01 shall request that the director set forth the time and place of the hearing. The director shall consider the interests of the violator in establishing the time and place of the hearing. Within three business days after receipt by the director of the hearing request, the director shall set forth the time and place of the hearing on the stop-movement order. A notice of the violator's right to such hearing shall include notice that such right to a hearing may be waived pursuant to subsection (6) of this section.

(5) The hearings provided for in the act shall be conducted by the director at the time and place he or she designates. The director shall make a final finding based on the complete hearing record and issue an order. If the director has suspended a license pursuant to subsection (4) of section 54-631, the director shall sustain, modify, or rescind the order after the hearing. If the department has issued a stop-movement order under section 54-628.01, the director may sustain, modify, or rescind the order after the hearing. All hearings shall be in accordance with the Administrative Procedure Act.

(6) A licensee or violator waives the right to a hearing if such licensee or violator does not attend the hearing at the time and place set forth in the notice described in subsection (3) or (4) of this section, without requesting that the director, at least two days before the designated time, change the time and place for the hearing, except that before an order of the director becomes final, the director may designate a different time and place for the hearing if the licensee or violator shows the director that the licensee or violator had a justifiable reason for not attending the hearing and not timely requesting a change of the time and place for such hearing. If the licensee or violator waives the right to a hearing, the director shall make a final finding based upon the available information and issue an order. If the director has suspended a license pursuant to subsection (4) of section 54-631, the director may sustain, modify, or rescind the order after the hearing. If the department has issued a stop-movement order under section 54-628.01, the director may sustain, modify, or rescind the order after the hearing.

(7) Any person aggrieved by the finding of the director has ten days after the entry of the director's order to request a new hearing if such person can show that a mistake of fact has been made which affected the director's determination. Any order of the director becomes final upon the expiration of ten days after its entry if no request for a new hearing is made.

Source: Laws 2000, LB 825, § 8; Laws 2007, LB12, § 7; Laws 2009, LB241, § 8.
Operative date August 30, 2009.

Cross References

Administrative Procedure Act, see section 84-920.

54-634.01 Prohibited acts.

It shall be a violation of the Commercial Dog and Cat Operator Inspection Act for any person to (1) deny access to any officer, agent, employee, or appointee of the department or offer any resistance to, thwart, or hinder such persons by misrepresentation or concealment, (2) violate a stop-movement order issued under section 54-628.01, (3) fail to disclose all locations housing

dogs or cats owned or controlled by such person, or (4) fail to pay any administrative fine levied pursuant to section 54-633.

Source: Laws 2009, LB241, § 9.
Operative date August 30, 2009.

54-640 Commercial breeder; duties.

A commercial breeder shall:

(1) Maintain housing facilities and primary enclosures in a sanitary condition;

(2) Enable all dogs and cats to remain dry and clean;

(3) Provide shelter and protection from extreme temperatures and weather conditions that may be uncomfortable or hazardous to the dogs and cats;

(4) Provide sufficient shade to shelter all the dogs and cats housed in the primary enclosure at one time;

(5) Provide dogs and cats with easy and convenient access to adequate amounts of clean food and water;

(6) Provide adequate space appropriate to the age, size, weight, and breed of dog or cat. For purposes of this subdivision, adequate space means sufficient space to allow each dog and cat to turn about freely, to stand, sit, and lie in a comfortable, normal position, and to walk in a normal manner without the head of such animal touching the top of the cage which shall be at least six inches above the head of the tallest animal when the animal is standing;

(7) Provide dogs with adequate socialization and exercise. For the purpose of this subdivision, adequate socialization means physical contact with other dogs and with human beings, other than being fed, and adequate exercise means providing the opportunity for exercise at least two times per day outside of a cage or similar small enclosure except during inclement weather that may be hazardous to dogs;

(8) Assure that a handler's hands are washed before and after handling each infectious or contagious dog or cat;

(9) Maintain a written veterinary care plan developed in conjunction with an attending veterinarian; and

(10) Provide veterinary care without delay when necessary.

Source: Laws 2003, LB 274, § 7; Laws 2009, LB241, § 10.
Operative date August 30, 2009.

(d) DOG AND CAT PURCHASE PROTECTION ACT

54-644 Act, how cited.

Sections 54-644 to 54-650 shall be known and may be cited as the Dog and Cat Purchase Protection Act.

Source: Laws 2009, LB241, § 11.
Operative date January 1, 2010.

54-645 Terms, defined.

For purposes of the Dog and Cat Purchase Protection Act:

(1) Casual breeder means any person, other than a commercial breeder as defined in section 54-626, who offers for sale, sells, trades, or receives consideration for one or more pet animals from a litter produced by a female dog or cat owned by such casual breeder;

(2) Clinical symptom means indication of an illness or dysfunction that is apparent to a veterinarian based on the veterinarian's observation, examination, or testing of an animal or on a review of the animal's medical records;

(3) Health certificate means the official small animal certificate of veterinary inspection of the Bureau of Animal Industry of the Department of Agriculture;

(4) Pet animal means a dog, wholly or in part of the species Canis familiaris, or a cat, wholly or in part of the species Felis domesticus, that is under fifteen months of age;

(5) Purchaser means the final owner of a pet animal purchased from a seller. Purchaser does not include a person who purchases a pet animal for resale;

(6) Seller means a casual breeder or any commercial establishment, including a commercial breeder, dealer, or pet shop as such terms are defined in section 54-626, that engages in a business of selling pet animals to a purchaser. A seller does not include an animal control facility or animal shelter as defined in section 54-626 or any animal adoption activity that an animal control facility or animal shelter conducts offsite at any pet store or other commercial establishment; and

(7)(a) Serious health problem means a congenital or hereditary defect or contagious disease that causes severe illness or death of the pet animal.

(b) Serious health problem does not include (i) parvovirus if the diagnosis of parvovirus is made after the seven-business-day requirement in subsection (1) of section 54-647 or (ii) any other contagious disease that causes severe illness or death after ten calendar days after delivery of the pet animal to the purchaser.

Source: Laws 2009, LB241, § 12.
Operative date January 1, 2010.

54-646 Seller; written disclosure statement; contents; receipt; notice of purchaser's rights and responsibilities; health certificate; retention of records.

(1) A seller shall deliver to the purchaser at the time of sale of a pet animal a written disclosure statement containing the following information regarding the pet animal:

(a) The name, address, and license number of any commercial breeder or dealer as such terms are defined in section 54-626 or, if applicable, the United States Department of Agriculture license number of the breeder or any broker who has had possession of the animal prior to the seller's possession;

(b) The date of the pet animal's birth, if known, the state in which the pet animal was born, if known, and the date the seller received the pet animal;

(c) The sex and color of the pet animal, any other identifying marks apparent upon the pet animal, and the breed of the pet animal, if known, or a statement that the breed of the pet animal is unknown or the pet animal is of mixed breed;

(d) The pet animal's individual identifying tag, tattoo, microchip number, or collar number;

(e) The names and registration numbers of the sire and dam and the litter number, if applicable and if known;

(f) A record of any vaccination, worming treatment, or medication administered to the pet animal while in the possession of the seller and, if known, any such vaccination, treatment, or medication administered to the pet animal prior to the date the seller received the pet animal; and

(g) The date or dates of any examination of the pet animal by a licensed veterinarian while in the possession of the seller.

(2) The seller may include any of the following with the written disclosure statement required by subsection (1) of this section:

(a) A statement that a veterinarian examined the pet animal and, at the time of the examination, the pet animal had no apparent or clinical symptoms of a serious health problem that would adversely affect the health of the pet animal at the time of sale or that is likely to adversely affect the health of the pet animal in the future; and

(b) A record of any serious health problem that adversely affects the pet animal at the time of sale or that is likely to adversely affect the health of the pet animal in the future.

(3) The written disclosure statement made pursuant to this section shall be signed by the seller certifying the accuracy of the written disclosure statement and by the purchaser acknowledging receipt of the written disclosure statement. In addition to information required to be given to a purchaser under this section, at the time of sale the seller shall provide the purchaser with written notice of the existence of the purchaser's rights and responsibilities under the Dog and Cat Purchase Protection Act or a legible copy of the act.

(4) If the pet animal is sold to a purchaser who resides outside of the state or intends that the pet animal will be relocated or permanently domiciled outside of the state, the seller shall provide the purchaser with a health certificate signed by a licensed veterinarian who has examined the pet animal and is authorized to certify such certificate.

(5) The seller shall maintain a copy of any written disclosure statements made and any other records on the health, status, or disposition of each pet animal for at least one year after the date of sale to a purchaser.

Source: Laws 2009, LB241, § 13.
Operative date January 1, 2010.

54-647 Recourse to remedies; purchaser; duties; notice to seller; remedies.

(1) In order to have recourse to the remedies available to purchasers under this section, a purchaser shall have the pet animal examined by a licensed veterinarian within seven business days after delivery of the pet animal to the purchaser. The pet animal shall be declared unfit for sale and the purchaser may obtain one of the remedies listed in subsection (2) or (3) of this section if (a) during such examination, the veterinarian diagnoses the pet animal with a serious health problem that the veterinarian believes existed at the time of delivery of the pet animal to the purchaser or (b) within fifteen months after the date of birth of the pet animal, a veterinarian diagnoses the pet animal with a serious health problem or states in writing that the pet animal has died from a serious health problem that the veterinarian believes existed at the time of delivery of the pet animal to the purchaser.

(2) If a pet animal is diagnosed with a serious health problem under subsection (1) of this section, the purchaser shall notify the seller within two business days after the diagnosis and provide the seller with the name and telephone number of the veterinarian or a copy of the veterinarian's report. After such notification, the purchaser may obtain one of the following remedies from the seller:

(a) A refund of the full purchase price of the pet animal upon return of such pet animal to the seller;

(b) An exchange for a pet animal of the purchaser's choice of equivalent value, if such pet animal is available, upon return of the pet animal, if alive, to the seller; or

(c) Reimbursement for reasonable veterinary fees, not to exceed the full purchase price of the pet animal.

(3) If a pet animal dies from a serious health problem as determined under subsection (1) of this section, the purchaser shall notify the seller within two business days after receipt of the written statement of the veterinarian by the purchaser and shall provide the seller with a copy of such written statement. After receipt of the written statement by the seller, the purchaser may obtain one of the following remedies from the seller:

(a) A refund of the full purchase price of the pet animal; or

(b) A pet animal of the purchaser's choice of equivalent value, if such pet animal is available, and reimbursement for reasonable veterinary fees not to exceed one-half of the full purchase price of the pet animal.

(4) For purposes of this section, veterinary fees shall be deemed reasonable if the service is appropriate for the diagnosis and treatment of the serious health problem and the cost of the service is comparable to similar services provided by licensed veterinarians in close proximity to the treating veterinarian.

Source: Laws 2009, LB241, § 14.
Operative date January 1, 2010.

54-648 Denial of refund, reimbursement of fees, or replacement; conditions.

No refund or reimbursement of fees or replacement of a pet animal under section 54-647 shall be required if one or more of the following conditions exist:

(1) The serious health problem or death of the pet animal resulted from maltreatment, neglect, or injury occurring after delivery of the pet animal to the purchaser;

(2) Any written disclosure statements provided by a seller pursuant to subsection (2) of section 54-646 disclosed the serious health problem for which the purchaser is seeking a remedy; or

(3) The purchaser failed to follow through with preventative care, including, but not limited to, vaccinations, deworming treatment, or medication, recommended by a licensed veterinarian examining the pet animal.

Source: Laws 2009, LB241, § 15.
Operative date January 1, 2010.

54-649 Purchaser; file action; seller's rights; limit of recovery.

(1) If a seller does not comply with a demand for remedy by a purchaser under section 54-647, the purchaser may file an action in a court of competent jurisdiction.

(2) If a seller contests a demand for remedy by a purchaser under section 54-647, the seller may require the purchaser to produce the pet animal for examination or autopsy by a licensed veterinarian designated by the seller. The seller shall pay for all costs associated with such examination or autopsy. The seller shall have a right of recovery against the purchaser if the seller is not obligated to provide the remedy sought.

(3) The prevailing party in a proceeding under this section shall be limited to a recovery of actual costs and no more than five hundred dollars in reasonable attorney's fees.

Source: Laws 2009, LB241, § 16.
Operative date January 1, 2010.

54-650 Other rights and remedies not limited; act; how construed.

Nothing in the Dog and Cat Purchase Protection Act shall limit any rights and remedies otherwise available under the laws of this state. Any agreement or contract entered into by a seller and a purchaser waiving any rights under the act is void. Nothing in the Dog and Cat Purchase Protection Act shall be construed to limit a seller to offering only those warranties, express or implied, required by the act.

Source: Laws 2009, LB241, § 17.
Operative date January 1, 2010.

ARTICLE 7

PROTECTION OF HEALTH

(d) GENERAL PROVISIONS

Section
54-744. Dead animals; carcasses; manner of disposition.

(e) ANTHRAX

54-754. Repealed. Laws 2009, LB 99, § 21.
54-755. Repealed. Laws 2009, LB 99, § 21.
54-756. Repealed. Laws 2009, LB 99, § 21.
54-757. Repealed. Laws 2009, LB 99, § 21.
54-758. Repealed. Laws 2009, LB 99, § 21.
54-759. Repealed. Laws 2009, LB 99, § 21.
54-760. Repealed. Laws 2009, LB 99, § 21.
54-761. Repealed. Laws 2009, LB 99, § 21.
54-762. Repealed. Laws 2009, LB 99, § 21.
54-763. Repealed. Laws 2009, LB 99, § 21.
54-764. Act, how cited.
54-765. Purpose of act.
54-766. Terms, defined.
54-767. Act; administration and enforcement; department; powers and duties; prohibited acts; rules and regulations.
54-768. Anthrax; report of cases required.
54-769. Harbor, sell, or dispose of animal; prohibited acts.
54-770. State Veterinarian; quarantine; duties; prohibited acts.
54-771. Herd plan; contents; prohibited acts; penalty.
54-772. Testing, vaccination, and treatment of affected herd; prohibited acts.
54-773. Sale and use of anthrax vaccine; procedures.
54-774. Affected herd with death loss; owner or custodian; duties.

(d) GENERAL PROVISIONS

54-744 Dead animals; carcasses; manner of disposition.

(1) Except as set out in subsections (2) and (3) of this section and section 54-776, it is the duty of the owner or custodian of any dead animal to cause such animal, within thirty-six hours after receiving knowledge of the death of such animal, to be buried at least four feet below the surface of the ground or to be completely burned on the premises where such animal dies unless the animal is disposed of to a duly licensed rendering establishment in this state. Such animal shall not be moved or transported from the premises where such animal has died except by the authorized agents and employees of the rendering establishment to which such carcass is disposed.

(2) Livestock carcasses up to six hundred pounds may be incorporated into a composting facility on the premises where the livestock died and shall remain in such compost facility until completely composted before spreading on land. Any person incorporating livestock carcasses into a composting facility shall follow the operating procedures as set forth in the Journal of the American Veterinary Medical Association, Volume 210, No. 8. Not less than one copy of such journal, or portion thereof, shall be filed for use and examination by the public in the offices of the Clerk of the Legislature and the Secretary of State. The Department of Agriculture shall regulate the composting of livestock carcasses and shall adopt and promulgate rules and regulations governing the same, which rules and regulations may incorporate or may modify the operating procedures set forth in this subsection.

(3) An animal carcass or carcass part may be transported by the owner or the owner's agent to a veterinary clinic or veterinary diagnostic laboratory for purposes of performing diagnostic procedures.

(4) Carcasses disposed of in compliance with this section or section 54-744.01 are exempt from the requirements for disposal of solid waste under the Integrated Solid Waste Management Act.

Source: Laws 1927, c. 12, art. VIII, § 3, p. 92; C.S.1929, § 54-940; R.S.1943, § 54-744; Laws 1993, LB 267, § 9; Laws 1999, LB 870, § 4; Laws 2001, LB 438, § 8; Laws 2009, LB99, § 19. Effective date February 27, 2009.

Cross References

Integrated Solid Waste Management Act, see section 13-2001.

(e) ANTHRAX

54-754 Repealed. Laws 2009, LB 99, § 21.

54-755 Repealed. Laws 2009, LB 99, § 21.

54-756 Repealed. Laws 2009, LB 99, § 21.

54-757 Repealed. Laws 2009, LB 99, § 21.

54-758 Repealed. Laws 2009, LB 99, § 21.

54-759 Repealed. Laws 2009, LB 99, § 21.

54-760 Repealed. Laws 2009, LB 99, § 21.

54-761 Repealed. Laws 2009, LB 99, § 21.

54-762 Repealed. Laws 2009, LB 99, § 21.

54-763 Repealed. Laws 2009, LB 99, § 21.

54-764 Act, how cited.

Sections 54-764 to 54-781 shall be known and may be cited as the Anthrax Control Act.

Source: Laws 2009, LB99, § 1.
Effective date February 27, 2009.

54-765 Purpose of act.

The purpose of the Anthrax Control Act is to prevent, suppress, and control anthrax to protect the health of livestock within Nebraska.

Source: Laws 2009, LB99, § 2.
Effective date February 27, 2009.

54-766 Terms, defined.

For purposes of the Anthrax Control Act:

(1) Accredited veterinarian means a veterinarian approved by the Administrator of the Animal and Plant Health Inspection Service of the United States Department of Agriculture in accordance with the provisions of 9 C.F.R. part 161, as such regulation existed on January 1, 2009;

(2) Affected herd means a herd which contains an animal infected with or exposed to anthrax;

(3) Affected premises means the land on which is located an animal infected with or exposed to anthrax and includes the buildings, holding facilities, and equipment located on such land;

(4) Animal means all vertebrate members of the animal kingdom except humans, fish, amphibians, reptiles, and wild animals at large;

(5) Approved laboratory means a laboratory designated by the department in rules and regulations;

(6) Department means the Department of Agriculture;

(7) Exposed means an animal or herd having or suspected of having contact (a) with animals infected with anthrax spores or organisms or (b) with premises which contain anthrax spores or organisms;

(8) Herd means (a) any group of livestock maintained on common ground for any purpose or (b) two or more groups of livestock under common ownership or supervision geographically separated but which have an interchange of livestock without regard to whether the livestock are infected or exposed;

(9) Herd plan means a written disease management plan that is designed by the herd owner or custodian in conjunction with the State Veterinarian to control and eradicate anthrax from an infected herd;

(10) Livestock means cattle, bison, swine, sheep, goats, equines, and domesticated cervine animals;

(11) Quarantine means the restriction imposed by the department (a) on the movement of an affected herd, (b) on the movement of an animal or a group of animals infected with or exposed to anthrax, (c) on the use of an affected premises, or (d) on the use of land where anthrax spores have been found and includes restriction of the buildings, holding facilities, and equipment upon such land; and

(12) State Veterinarian means the veterinarian appointed pursuant to section 81-202.01 or his or her designee.

Source: Laws 2009, LB99, § 3.
Effective date February 27, 2009.

54-767 Act; administration and enforcement; department; powers and duties; prohibited acts; rules and regulations.

The Anthrax Control Act shall be administered and enforced by the department. In administering and enforcing the act:

(1) The department may cooperate and may contract with any person, including any local, state, or national organizations, public or private, for the performance of activities required or authorized pursuant to the act;

(2) The department may employ all general powers provided in sections 54-701 to 54-705 and 54-742 to 54-753 in administering the act;

(3) For purposes of access for (a) inspections, (b) tests, including the taking of samples, (c) treatments, or (d) carrying out and enforcing quarantines, agents and employees of the department shall have the right to enter upon any premises where livestock that are infected with or are suspected to be infected with anthrax are located. It shall be unlawful for any person to interfere in any way with or obstruct an agent or employee of the department from entering upon such premises for the purposes stated in this subdivision or to interfere in any way with the department in such work;

(4) The department may delegate to appropriate personnel any of the responsibilities in this section for the proper administration of the act;

(5) The department may adopt and promulgate rules and regulations to aid in implementing the act. The rules and regulations may include, but are not limited to, establishing procedures for testing, vaccination, quarantine, cleaning and disinfection of affected premises, carcass disposal, designation of approved laboratories to confirm the presence of anthrax, submission of specimen samples, and diagnosis and confirmation of anthrax;

(6) The department may provide state funds to or on behalf of herd owners for certain activities or any portion thereof in connection with the implementation of the act if funds for any activities or any portion thereof have been appropriated and are available. The department may develop statewide priorities for the expenditure of state funds available for anthrax control activities; and

(7) Unless the Legislature appropriates funds to the department specifically for such purposes, the department shall not pay for (a) costs of gathering, confining, and restraining animals for vaccination or other anthrax control activities, (b) costs of providing necessary facilities and assistance, (c) indemnity for any animal destroyed as a result of being affected with anthrax, or (d) costs for carcass disposal and any disinfection or cleaning.

Source: Laws 2009, LB99, § 4.
Effective date February 27, 2009.

54-768 Anthrax; report of cases required.

Any person who discovers, suspects, or has reason to believe that an animal belonging to him, her, or another person or which he or she has in his or her possession or custody is exhibiting signs consistent with anthrax shall immediately report such fact, belief, or suspicion to the State Veterinarian.

Source: Laws 2009, LB99, § 5.
Effective date February 27, 2009.

54-769 Harbor, sell, or dispose of animal; prohibited acts.

It shall be unlawful for any person to knowingly harbor, sell, or otherwise dispose of any animal, or carcass part thereof, that has been or is exposed to or infected with anthrax, except as otherwise provided in the Anthrax Control Act and any rules and regulations adopted and promulgated thereunder.

Source: Laws 2009, LB99, § 6.
Effective date February 27, 2009.

54-770 State Veterinarian; quarantine; duties; prohibited acts.

The State Veterinarian shall immediately quarantine, at the expense of the owner or custodian, any affected herd and the affected premises. An animal or animals under quarantine may be relocated as directed by the State Veterinarian to avoid or lessen exposure to pathogenic agents. Quarantine restrictions imposed by the State Veterinarian as applied to the movement and disposition of an individual animal or a group of animals within an affected herd may vary as appropriate according to risk of exposure to pathogenic agents. It shall be unlawful for any person to remove an animal which has been placed under quarantine pursuant to the Anthrax Control Act from the place of quarantine until such quarantine is released by the State Veterinarian. An affected premises or any portion thereof which has been placed under quarantine shall remain under quarantine until released by the State Veterinarian.

Source: Laws 2009, LB99, § 7.
Effective date February 27, 2009.

54-771 Herd plan; contents; prohibited acts; penalty.

The herd owner or custodian, in cooperation with the department, shall develop a herd plan which may include (a) the vaccination, treatment, and testing of an infected herd, (b) cleaning and disinfection of premises of an infected herd, and (c) carcass disposal. A herd owner or custodian of an

infected herd who fails to develop a herd plan or who fails to follow the herd plan is guilty of a Class I misdemeanor.

Source: Laws 2009, LB99, § 8.
Effective date February 27, 2009.

54-772 Testing, vaccination, and treatment of affected herd; prohibited acts.

It is unlawful for any person to prevent the testing, vaccination, and treatment of an affected herd. The owner or custodian of a herd ordered to be tested, vaccinated, or treated shall confine such herd in a suitable place determined by the department and shall furnish the necessary assistance and facilities for restraining the livestock as requested by the State Veterinarian.

Source: Laws 2009, LB99, § 9.
Effective date February 27, 2009.

54-773 Sale and use of anthrax vaccine; procedures.

The sale and use of anthrax vaccine shall be in accordance with the following procedures:

(1) The department may restrict the sale and use of anthrax vaccine;

(2) Only anthrax vaccines which are licensed and approved by the United States Department of Agriculture, Animal and Plant Health Inspection Service, Veterinary Services shall be used for the vaccination of livestock, and such vaccines shall be distributed by an accredited veterinarian licensed to practice in Nebraska;

(3) Records of all anthrax vaccine sales and purchases shall be retained by the prescribing or administering veterinarian for a period of five years. Such records shall be available for examination by the Department of Agriculture or its authorized representative during normal business hours. If requested by the department, a report of sales and purchases of anthrax vaccine shall be submitted to the department;

(4) An exposed herd may be vaccinated as deemed appropriate by the State Veterinarian;

(5) Infected herds shall be vaccinated, and such vaccine shall only be administered by an accredited veterinarian licensed to practice in Nebraska or by a designee of the department; and

(6) Herd owners or custodians of nonaffected herds may purchase anthrax vaccine from an accredited veterinarian.

Source: Laws 2009, LB99, § 10.
Effective date February 27, 2009.

54-774 Affected herd with death loss; owner or custodian; duties.

For an affected herd that has experienced any death loss, the owner or custodian of the herd shall be responsible to have samples submitted to an approved laboratory for confirmation of anthrax.

Source: Laws 2009, LB99, § 11.
Effective date February 27, 2009.

54-775 Animal or animal carcass; transport and use; prohibited acts.

If an animal has, or is suspected to have, died of anthrax, it is unlawful to:

(1) Transport such animal or animal carcass, except as directed and approved by the department;

(2) Use the flesh or organs of such animal or animal carcass for food for livestock or human consumption; or

(3) Remove the skin or hide of such animal or animal carcass.

Source: Laws 2009, LB99, § 12.
Effective date February 27, 2009.

54-776 Disposition of infected animal carcass; limitations; department; powers.

(1) The disposition of any infected animal carcass shall be carried out under the direction of the department. It shall be the duty of the owner or custodian of an animal that has died of anthrax to bury or burn the carcass on the premises where the carcass is found, unless directed otherwise by the department. If such carcass is buried, no portion of the carcass shall be interred closer than six feet from the surface of the ground.

(2) The department may direct the owner or custodian of an infected herd to treat the herd and to clean and disinfect the premises in accordance with the herd plan.

Source: Laws 2009, LB99, § 13.
Effective date February 27, 2009.

54-777 Confirmation of anthrax; approved laboratory.

A confirmation of anthrax shall only be made by an approved laboratory.

Source: Laws 2009, LB99, § 14.
Effective date February 27, 2009.

54-778 Responsibility for costs; department; powers and duties; prohibited acts; penalty; Anthrax Control Act Cash Fund; created; use; investment.

(1) The owner or custodian of an affected herd or affected premises shall be responsible to pay for costs related to: (a) The quarantine, testing, or vaccination of an affected herd; (b) the disinfection or cleaning of the premises of an affected herd; and (c) any other costs associated with the control of anthrax in such herd.

(2) The department may assess and collect payment for services provided and expenses incurred pursuant to its responsibilities under the Anthrax Control Act.

(3) Any person failing to carry out the responsibilities set out in the act and any rules and regulations adopted and promulgated thereunder shall be guilty of a Class I misdemeanor. Whenever any person fails to carry out such responsibilities under the act, the department may perform such functions. Upon completion of any required anthrax control activities, the department shall determine its actual costs incurred in handling the affected herd and affected premises and conducting the testing and notify the herd owner or custodian in writing. The herd owner or custodian shall reimburse the department its actual costs within fifteen days following the date of the notice. Any person failing to reimburse the department shall be assessed a late fee of up to twenty-five percent of the amount due for each thirty days of nonpayment to reimburse the department for its costs of collecting the amount due.

(4) Any costs and fees assessed and collected pursuant to this section shall be remitted to the State Treasurer for credit to the Anthrax Control Act Cash Fund.

(5) The Anthrax Control Act Cash Fund is created. The fund shall consist of money appropriated by the Legislature and gifts, grants, costs, or charges from any source, including federal, state, public, and private sources. The fund shall be used to carry out the Anthrax Control 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 2009, LB99, § 15.
Effective date February 27, 2009.

Cross References

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

54-779 Enforcement powers; Attorney General or county attorney; duties.

(1) To obtain compliance with the Anthrax Control Act, the department may apply for a temporary restraining order, a temporary or permanent injunction, or a mandatory injunction against any person violating or threatening to violate the act or any rules or regulations adopted and promulgated thereunder. The district court of the county where the violation is occurring or is about to occur has jurisdiction to grant such relief upon good cause shown. Relief may be granted notwithstanding the existence of any other remedy at law and shall be granted without bond.

(2) The Attorney General or the county attorney of the county where violations of the act or any rules or regulations adopted and promulgated thereunder are occurring or about to occur shall, when notified of such violation or threatened violation, cause appropriate proceedings under subsection (1) of this section to be instituted and pursued without delay and shall prosecute violations under sections 54-771, 54-778, and 54-781 without delay.

Source: Laws 2009, LB99, § 16.
Effective date February 27, 2009.

54-780 Department; liability for costs.

The department is not liable for actual or incidental costs incurred by any person due to departmental actions in enforcing the Anthrax Control Act unless such costs are clearly unreasonable or result from the gross or willful negligence of the department or its employees or agents.

Source: Laws 2009, LB99, § 17.
Effective date February 27, 2009.

54-781 Violations; penalty.

Any person violating the Anthrax Control Act or any rules or regulations adopted and promulgated thereunder for which no penalty is otherwise provided is guilty of a Class I misdemeanor.

Source: Laws 2009, LB99, § 18.
Effective date February 27, 2009.

ARTICLE 23
DOMESTICATED CERVINE ANIMAL ACT

Section
54-2313. Luring or enticement of wildlife prohibited.

54-2313 Luring or enticement of wildlife prohibited.

The luring or enticement of wildlife into a permitted domesticated cervine animal facility for the purpose of containing such wildlife is cause for permit suspension under section 54-2310 and shall be considered a violation of section 37-479. Any permitholder under the Domesticated Cervine Animal Act who lures or entices wildlife into such a facility is responsible for any and all expenses incurred by the commission to remove such wildlife from the facility.

Source: Laws 1999, LB 404, § 12; Laws 2009, LB105, § 38.
Effective date August 30, 2009.

ARTICLE 24
LIVESTOCK WASTE MANAGEMENT ACT

Section
54-2417. Terms, defined.
54-2422. Inspection and construction and operating permit requirements; exemptions.
54-2431. Applications; rejection; when; disciplinary actions; grounds.
54-2435. Council; rules and regulations.

54-2417 Terms, defined.

For purposes of the Livestock Waste Management Act:

(1) Animal feeding operation means a location where beef cattle, dairy cattle, horses, swine, sheep, poultry, or other livestock have been, are, or will be stabled or confined and fed or maintained for a total of forty-five days or more in any twelve-month period and crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the location. Two or more animal feeding operations under common ownership are deemed to be a single animal feeding operation if they are adjacent to each other or if they utilize a common area or system for the disposal of livestock waste. Animal feeding operation does not include aquaculture as defined in section 2-3804.01;

(2) Best management practices means schedules of activities, prohibitions, maintenance procedures, and other management practices found to be the most effective methods based on the best available technology achievable for specific sites to prevent or reduce the discharge of pollutants to waters of the state and control odor where appropriate. Best management practices also includes operating procedures and practices to control site runoff, spillage, leaks, sludge or waste disposal, or drainage from raw material storage;

(3) Construct means the initiation of physical onsite activities;

(4) Construction and operating permit means the state permit to construct and operate a livestock waste control facility, including conditions imposed on the livestock waste control facility and the associated animal feeding operation;

(5) Construction approval means an approval issued prior to December 1, 2006, by the department allowing construction of a livestock waste control facility;

(6) Council means the Environmental Quality Council;

(7) Department means the Department of Environmental Quality;

(8) Discharge means the spilling, leaking, pumping, pouring, emitting, emptying, or dumping of pollutants into any waters of the state or in a place which will likely reach waters of the state;

(9) Existing livestock waste control facility means a livestock waste control facility in existence prior to April 15, 1998, that does not hold a permit and which has requested an inspection prior to January 1, 2000;

(10) Livestock waste control facility means any structure or combination of structures utilized to control livestock waste at an animal feeding operation until it can be used, recycled, or disposed of in an environmentally acceptable manner. Such structures include, but are not limited to, diversion terraces, holding ponds, debris basins, liquid manure storage pits, lagoons, and other such devices utilized to control livestock waste;

(11) Major modification means an expansion or increase to the lot area or feeding area; change in the location of the animal feeding operation; change in the methods of waste treatment, waste storage, or land application of waste; increase in the number of animals; change in animal species; or change in the size or location of the livestock waste control facility;

(12) National Pollutant Discharge Elimination System permit means either a general permit or an individual permit issued by the department pursuant to subsection (11) of section 81-1505. A general permit authorizes categories of disposal practices or livestock waste control facilities and covers a geographic area corresponding to existing geographic or political boundaries, though it may exclude specified areas from coverage. General permits are limited to the same or similar types of animal feeding operations or livestock waste control facilities which require the same or similar monitoring and, in the opinion of the Director of Environmental Quality, are more appropriately controlled under a general permit than under an individual permit;

(13) New animal feeding operation means an animal feeding operation constructed after July 16, 2004;

(14) New livestock waste control facility means any livestock waste control facility for which a construction permit, an operating permit, a National Pollutant Discharge Elimination System permit, a construction approval, or a construction and operating permit, or an application therefor, is submitted on or after April 15, 1998;

(15) Operating permit means a permit issued prior to December 1, 2006, by the department after the completion of the livestock waste control facility in accordance with the construction approval and the submittal of a completed certification form to the department;

(16) Person has the same meaning as in section 81-1502; and

(17) Waters of the state has the same meaning as in section 81-1502.

Source: Laws 1998, LB 1209, § 2; Laws 1999, LB 870, § 5; R.S.Supp.,2002, § 54-2402; Laws 2004, LB 916, § 6; Laws 2006, LB 975, § 2; Laws 2009, LB56, § 1.
Effective date August 30, 2009.

54-2422 Inspection and construction and operating permit requirements; exemptions.

Animal feeding operations with animal capacity that is less than three hundred cattle, two hundred mature dairy cattle, seven hundred fifty swine weighing fifty-five pounds or more per head, three thousand swine weighing less than fifty-five pounds per head, one thousand five hundred ducks with liquid manure handling system, ten thousand ducks without liquid manure handling system, nine thousand chickens with liquid manure handling system, thirty-seven thousand five hundred chickens without liquid manure handling system, twenty-five thousand laying hens without liquid manure handling system, sixteen thousand five hundred turkeys, three thousand sheep, or one hundred fifty horses are exempt from the inspection and construction and operating permit requirements of the Environmental Protection Act, the Livestock Waste Management Act, and the rules and regulations adopted and promulgated by the council pursuant to such acts, unless the animal feeding operation has intentionally or negligently discharged pollutants to waters of the state or the department has determined that a discharge is more likely than not to occur.

Source: Laws 2004, LB 916, § 11; Laws 2006, LB 975, § 5; Laws 2009, LB56, § 2.
Effective date August 30, 2009.

Cross References

Environmental Protection Act, see section 81-1532.

54-2431 Applications; rejection; when; disciplinary actions; grounds.

(1) For purposes of this section:

(a) Applicant means the person who has applied for a National Pollutant Discharge Elimination System permit, a construction and operating permit, or a major modification of a National Pollutant Discharge Elimination System permit or construction and operating permit, but does not include any other person who is a relative, partner, member, shareholder, resident, parent company, subsidiary, or other affiliate of the applicant;

(b) Discharge violation means a discharge, found by the department after investigation, notice, and hearing, to have been caused intentionally or negligently by the applicant or permitholder; and

(c) Permitholder means the person who has received a National Pollutant Discharge Elimination System permit, a construction and operating permit, or a major modification of a National Pollutant Discharge Elimination System permit or construction and operating permit, but does not include any other person who is a relative, partner, member, shareholder, resident, parent company, subsidiary, or other affiliate of the permitholder.

(2) Notwithstanding the rules and regulations adopted and promulgated under subdivision (1)(e) of section 54-2435, the department may reject an application for a new National Pollutant Discharge Elimination System permit, an application for a new construction and operating permit, or an application for a major modification of a National Pollutant Discharge Elimination System permit or a construction and operating permit, and the department may revoke or suspend a National Pollutant Discharge Elimination System permit or construction and operating permit, upon a finding pursuant to subsection (3) of

this section that the applicant or permitholder is unsuited to perform the obligations of a permitholder.

(3) The applicant or permitholder shall be determined unsuited to perform the obligations of a permitholder if the department finds, upon an investigation and hearing, that within the past five years the applicant or permitholder:

(a) Has committed three separate and distinct discharge violations at the same animal feeding operation in Nebraska owned or operated by the applicant or permitholder; or

(b) Has a criminal conviction for a violation of section 81-1506 or a felony criminal conviction for violation of the environmental law in any jurisdiction.

Source: Laws 2004, LB 916, § 20; Laws 2006, LB 975, § 12; Laws 2009, LB56, § 3.
Effective date August 30, 2009.

54-2435 Council; rules and regulations.

(1) The council shall adopt and promulgate rules and regulations for animal feeding operations under the Environmental Protection Act and the Livestock Waste Management Act which provide for:

(a) Requirements for animal feeding operations which shall include:

(i) Location restrictions and setbacks to protect waters of the state;

(ii) Applications and inspection requests;

(iii) Identification of ownership;

(iv) Numbers, size, and types of animals;

(v) Type of waste control facility;

(vi) Design, construction, operation, and maintenance;

(vii) Monitoring of surface or ground water which may be necessary as determined by the department where a significant risk to waters of the state exists;

(viii) Nutrient management, a nutrient management plan to be submitted with the application for a National Pollutant Discharge Elimination System permit or a construction and operating permit, and a description of the types of changes made to the nutrient management plan required to be updated pursuant to section 54-2426;

(ix) Closure and corrective action;

(x) Best management practices; and

(xi) Other such requirements deemed necessary to protect waters of the state;

(b) A National Pollutant Discharge Elimination System permit process for animal feeding operations;

(c) National Pollutant Discharge Elimination System permit issuance, denial, renewal, revocation, suspension, reinstatement, termination, or transfer;

(d) Training requirements for permitholders;

(e) Construction and operating permit issuance, denial, revocation, suspension, reinstatement, termination, or transfer;

(f) Construction and operating permit and National Pollutant Discharge Elimination System permit major modification issuance, denial, revocation, or termination;

(g) Public notice and hearing requirements;

(h) Requirements for existing livestock waste control facilities;

(i) Requirements for adequate area and proper methods and rates for land application of waste and nutrients such as nitrogen and phosphorus;

(j) Requirements for record keeping and reporting;

(k) A fee schedule pursuant to sections 54-2423 and 54-2428;

(l) Procedures for collection of fees pursuant to this section and sections 54-2423 and 54-2428;

(m) Procedures for exemptions as provided for in the requirements of the Environmental Protection Act and the Livestock Waste Management Act; and

(n) Procedures governing proceedings to determine discharge violations under section 54-2431.

(2) Rules and regulations adopted and promulgated under this section may be based upon the size of the animal feeding operation and the form of waste management and may include more stringent requirements for larger animal feeding operations and waste control technologies that are more likely to cause adverse impacts.

(3) The council may adopt and promulgate any other rules and regulations necessary to carry out the purposes of the Environmental Protection Act and the Livestock Waste Management Act.

(4) Rules and regulations adopted pursuant to this section shall be no less stringent than the federal Clean Water Act, 33 U.S.C. 1251 et seq.

(5) If a conflict arises between the authority of the council under the Environmental Protection Act and the authority of the council under the Livestock Waste Management Act, the authority of the council under the Livestock Waste Management Act shall control.

Source: Laws 1998, LB 1209, § 13; Laws 1999, LB 870, § 14; R.S.Supp.,2002, § 54-2413; Laws 2004, LB 916, § 24; Laws 2006, LB 975, § 15; Laws 2009, LB56, § 4.
Effective date August 30, 2009.

Cross References

Environmental Protection Act, see section 81-1532.

CHAPTER 57
MINERALS, OIL, AND GAS

Article.
7. Oil and Gas Severance Tax. 57-705.

ARTICLE 7
OIL AND GAS SEVERANCE TAX

Section
57-705. Tax; remittance; Severance Tax Fund; Severance Tax Administration Fund; created; use.

57-705 Tax; remittance; Severance Tax Fund; Severance Tax Administration Fund; created; use.

(1) All severance taxes levied by Chapter 57, article 7, shall be paid to the Tax Commissioner. He or she shall remit all such money received to the State Treasurer. All such money received by the State Treasurer shall be credited to a fund to be known as the Severance Tax Fund. An amount equal to one percent of the gross severance tax receipts, excluding those receipts from tax derived from oil and natural gas severed from school lands, credited to the fund shall be credited by the State Treasurer, upon the first day of each month, and shall inure to the Severance Tax Administration Fund to be used for the expenses of administering Chapter 57, article 7. The balance of the Severance Tax Fund received from school lands shall be credited by the State Treasurer, upon the first day of each month, and shall inure to the permanent school fund.

(2) Of the balance of the Severance Tax Fund received from other than school lands (a) the Legislature may transfer an amount to be determined by the Legislature through the appropriations process up to three hundred thousand dollars for each year to the State Energy Office Cash Fund, (b) the Legislature may transfer an amount to be determined by the Legislature through the appropriations process up to thirty thousand dollars for each year to the Public Service Commission for administration of the Municipal Rate Negotiations Revolving Loan Fund, and (c) the remainder shall be credited and inure to the permanent school fund.

(3) The State Treasurer shall transfer two hundred fifty thousand dollars from the Severance Tax Administration Fund to the Department of Revenue Enforcement Fund on July 1, 2009, or as soon thereafter as administratively possible. The State Treasurer shall transfer two hundred fifty thousand dollars from the Severance Tax Administration Fund to the Department of Revenue Enforcement Fund on July 1, 2010, or as soon thereafter as administratively possible.

Source: Laws 1955, c. 219, § 5, p. 612; Laws 1959, c. 261, § 1, p. 899; Laws 1967, c. 351, § 3, p. 933; Laws 1981, LB 257, § 2; Laws 1982, LB 799, § 1; Laws 1983, LB 228, § 4; Laws 1983, LB 607, § 2; Laws 1985, LB 126, § 1; Laws 1986, LB 258, § 10; Laws 1989, LB 727, § 2; Laws 1993, LB 5, § 2; Laws 1993, LB 364,

§ 20; Laws 1993, LB 670, § 1; Laws 2000, LB 1369, § 1; Laws 2003, LB 790, § 58; Laws 2009, LB316, § 15.
Effective date May 20, 2009.

CHAPTER 58
MONEY AND FINANCING

Article.
3. Small Business Development. 58-301 to 58-326.

ARTICLE 3
SMALL BUSINESS DEVELOPMENT

Section
58-301. Repealed. Laws 2009, LB 154, § 27.
58-302. Repealed. Laws 2009, LB 154, § 27.
58-303. Repealed. Laws 2009, LB 154, § 27.
58-304. Repealed. Laws 2009, LB 154, § 27.
58-305. Repealed. Laws 2009, LB 154, § 27.
58-306. Repealed. Laws 2009, LB 154, § 27.
58-307. Repealed. Laws 2009, LB 154, § 27.
58-308. Repealed. Laws 2009, LB 154, § 27.
58-309. Repealed. Laws 2009, LB 154, § 27.
58-310. Repealed. Laws 2009, LB 154, § 27.
58-311. Repealed. Laws 2009, LB 154, § 27.
58-312. Repealed. Laws 2009, LB 154, § 27.
58-313. Repealed. Laws 2009, LB 154, § 27.
58-314. Repealed. Laws 2009, LB 154, § 27.
58-315. Repealed. Laws 2009, LB 154, § 27.
58-316. Repealed. Laws 2009, LB 154, § 27.
58-317. Repealed. Laws 2009, LB 154, § 27.
58-318. Repealed. Laws 2009, LB 154, § 27.
58-319. Repealed. Laws 2009, LB 154, § 27.
58-320. Repealed. Laws 2009, LB 154, § 27.
58-321. Repealed. Laws 2009, LB 154, § 27.
58-322. Repealed. Laws 2009, LB 154, § 27.
58-323. Repealed. Laws 2009, LB 154, § 27.
58-324. Repealed. Laws 2009, LB 154, § 27.
58-325. Repealed. Laws 2009, LB 154, § 27.
58-326. Small Business Development Authority; dissolved; disposition of assets; Small Business Investment Fund; transfer.

58-301 Repealed. Laws 2009, LB 154, § 27.

58-302 Repealed. Laws 2009, LB 154, § 27.

58-303 Repealed. Laws 2009, LB 154, § 27.

58-304 Repealed. Laws 2009, LB 154, § 27.

58-305 Repealed. Laws 2009, LB 154, § 27.

58-306 Repealed. Laws 2009, LB 154, § 27.

58-307 Repealed. Laws 2009, LB 154, § 27.

58-308 Repealed. Laws 2009, LB 154, § 27.

58-309 Repealed. Laws 2009, LB 154, § 27.

58-310 Repealed. Laws 2009, LB 154, § 27.

58-311 Repealed. Laws 2009, LB 154, § 27.

58-312 Repealed. Laws 2009, LB 154, § 27.

58-313 Repealed. Laws 2009, LB 154, § 27.

58-314 Repealed. Laws 2009, LB 154, § 27.

58-315 Repealed. Laws 2009, LB 154, § 27.

58-316 Repealed. Laws 2009, LB 154, § 27.

58-317 Repealed. Laws 2009, LB 154, § 27.

58-318 Repealed. Laws 2009, LB 154, § 27.

58-319 Repealed. Laws 2009, LB 154, § 27.

58-320 Repealed. Laws 2009, LB 154, § 27.

58-321 Repealed. Laws 2009, LB 154, § 27.

58-322 Repealed. Laws 2009, LB 154, § 27.

58-323 Repealed. Laws 2009, LB 154, § 27.

58-324 Repealed. Laws 2009, LB 154, § 27.

58-325 Repealed. Laws 2009, LB 154, § 27.

58-326 Small Business Development Authority; dissolved; disposition of assets; Small Business Investment Fund; transfer.

(1) The Small Business Development Authority, created pursuant to section 58-309, as such section existed prior to August 30, 2009, is hereby dissolved. Any assets of the authority remaining upon such dissolution which are pledged to outstanding indebtedness of the authority shall, upon the consent of the holders of the respective indebtedness, be immediately transferred, free and clear, to the holder of such indebtedness in satisfaction of such indebtedness.

(2) The State Treasurer shall transfer any money in the Small Business Investment Fund on August 30, 2009, to the General Fund. Any remaining assets or obligations of the authority shall rest in the Department of Economic Development.

Source: Laws 2009, LB154, § 12.
Effective date August 30, 2009.

CHAPTER 60
MOTOR VEHICLES

Article.
1. Motor Vehicle Certificate of Title Act. 60-101 to 60-168.01.
3. Motor Vehicle Registration. 60-301 to 60-3,222.
4. Motor Vehicle Operators' Licenses.
   (e) General Provisions. 60-462.01, 60-462.02.
   (f) Provisions Applicable to All Operators' Licenses. 60-480.01 to 60-498.02.
   (g) Provisions Applicable to Operation of Motor Vehicles Other than Commercial. 60-4,115, 60-4,118.06.
   (h) Provisions Applicable to Operation of Commercial Motor Vehicles. 60-4,141.01 to 60-4,168.01.
6. Nebraska Rules of the Road.
   (a) General Provisions. 60-601, 60-658.
   (c) Penalty and Enforcement Provisions. 60-682.01.
   (i) Pedestrians. 60-6,157.
   (o) Alcohol and Drug Violations. 60-6,197.01 to 60-6,211.10.
   (u) Occupant Protection Systems. 60-6,265, 60-6,267.
   (ii) Emergency Vehicle or Road Assistance Vehicle. 60-6,378.
14. Motor Vehicle Industry Licensing. 60-1401.02.
19. Abandoned Motor Vehicles. 60-1901.
21. Minibikes or Motorcycles.
   (b) Motorcycle Safety Education. 60-2132.

ARTICLE 1

MOTOR VEHICLE CERTIFICATE OF TITLE ACT

Section
60-101. Act, how cited.
60-111. Designated county official, defined.
60-140. Acquisition of vehicle; proof of ownership; effect.
60-144. Certificate of title; issuance; filing; application; form.
60-147. Mobile home or cabin trailer; application; contents; mobile home transfer statement.
60-152. Certificate of title; issuance; delivery of copies; seal; county clerk or designated official; powers and duties.
60-162.01. County treasurer; assume powers and duties of county clerk; when.
60-164. Department; implement electronic title and lien system for vehicles; liens on motor vehicles; when valid; notation on certificate; inventory, exception; priority; adjustment to rental price; how construed; notation of cancellation; failure to deliver certificate; damages; release.
60-165. Security interest in all-terrain vehicle or minibike; perfection; priority; notation of lien; when.
60-165.01. Printed certificate of title; when issued.
60-166. New certificate of title; issued when; proof required; processing of application.
60-168.01. Certificate of title; failure to note required brand or lien; notice to holder of title; corrected certificate of title; failure of holder to deliver certificate; effect.

60-101 Act, how cited.

Sections 60-101 to 60-197 shall be known and may be cited as the Motor Vehicle Certificate of Title Act.

Source: Laws 2005, LB 276, § 1; Laws 2006, LB 663, § 1; Laws 2006, LB 1061, § 6; Laws 2007, LB286, § 1; Laws 2009, LB49, § 5; Laws 2009, LB202, § 10.
Effective date August 30, 2009.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB49, section 5, with LB202, section 10, to reflect all amendments.

60-111 Designated county official, defined.

Until the implementation date designated under section 23-186 by the director, designated county official means the county official, other than the county clerk, designated by a county board to provide services pursuant to section 23-186. On and after the implementation date designated under section 23-186 by the director, designated county official means the county treasurer.

Source: Laws 2005, LB 276, § 11; Laws 2009, LB49, § 6.
Effective date August 30, 2009.

60-140 Acquisition of vehicle; proof of ownership; effect.

Except as provided in section 60-164, no person acquiring a vehicle from the owner thereof, whether such owner is a manufacturer, importer, dealer, or entity or person, shall acquire any right, title, claim, or interest in or to such vehicle until the acquiring person has had delivered to him or her physical possession of such vehicle and (1) a certificate of title or a duly executed manufacturer's or importer's certificate with such assignments as are necessary to show title in the purchaser, (2) a written instrument as required by section 60-1417, or (3) an affidavit and notarized bill of sale as provided in section 60-142.01. No waiver or estoppel shall operate in favor of such person against a person having physical possession of such vehicle and such documentation. No court shall recognize the right, title, claim, or interest of any person in or to a vehicle, for which a certificate of title has been issued in Nebraska, sold, disposed of, mortgaged, or encumbered, unless there is compliance with this section. Beginning on the implementation date of the electronic title and lien system designated by the director pursuant to section 60-164, an electronic certificate of title record shall be evidence of an owner's right, title, claim, or interest in a vehicle.

Source: Laws 2005, LB 276, § 40; Laws 2006, LB 663, § 4; Laws 2009, LB202, § 11.
Effective date August 30, 2009.

60-144 Certificate of title; issuance; filing; application; form.

(1)(a) Except as provided in subdivisions (b), (c), and (d) of this subsection, the county clerk or designated county official shall be responsible for issuing and filing certificates of title for vehicles, and each county shall issue and file such certificates of title using the vehicle titling and registration computer system prescribed by the department. Application for a certificate of title shall be made upon a form prescribed by the department. All applications shall be accompanied by the appropriate fee or fees.

(b) The department shall issue and file certificates of title for Nebraska-based fleet vehicles. Application for a certificate of title shall be made upon a form

prescribed by the department. All applications shall be accompanied by the appropriate fee or fees.

(c) The department shall issue and file certificates of title for state-owned vehicles. Application for a certificate of title shall be made upon a form prescribed by the department. All applications shall be accompanied by the appropriate fee or fees.

(d) The department shall issue certificates of title pursuant to section 60-142.06. Application for a certificate of title shall be made upon a form prescribed by the department. All applications shall be accompanied by the appropriate fee or fees.

(2) If the owner of an all-terrain vehicle or a minibike resides in Nebraska, the application shall be filed with the county clerk or designated county official of the county in which the owner resides.

(3)(a) Except as otherwise provided in subdivision (b) of this subsection, if a vehicle, other than an all-terrain vehicle or a minibike, has situs in Nebraska, the application shall be filed with the county clerk or designated county official of the county in which the vehicle has situs.

(b) If a motor vehicle dealer licensed under Chapter 60, article 14, applies for a certificate of title for a vehicle, the application may be filed with the county clerk or designated county official of any county.

(4) If the owner of a vehicle is a nonresident, the application shall be filed in the county in which the transaction is consummated.

(5) The application shall be filed within thirty days after the delivery of the vehicle.

(6) All applicants registering a vehicle pursuant to section 60-3,198 shall file the application for a certificate of title with the Division of Motor Carrier Services of the department. The division shall deliver the certificate to the applicant if there are no liens on the vehicle. If there are any liens on the vehicle, the division shall deliver or mail the certificate of title to the holder of the first lien on the day of issuance. All certificates of title issued by the division shall be issued in the manner prescribed for the county clerk or designated county official in section 60-152.

Source: Laws 2005, LB 276, § 44; Laws 2006, LB 663, § 13; Laws 2006, LB 765, § 3; Laws 2009, LB202, § 12.
Effective date August 30, 2009.

60-147 Mobile home or cabin trailer; application; contents; mobile home transfer statement.

(1) An application for a certificate of title for a mobile home or cabin trailer shall be accompanied by a certificate that states that sales or use tax has been paid on the purchase of the mobile home or cabin trailer or that the transfer of title was exempt from sales and use taxes. The county clerk or designated county official shall issue a certificate of title for a mobile home or cabin trailer but shall not deliver the certificate of title unless the certificate required under this subsection accompanies the application for certificate of title for the mobile home or cabin trailer, except that the failure of the application to be accompanied by such certificate shall not prevent the notation of a lien on the certificate of title to the mobile home or cabin trailer pursuant to section 60-164.

(2) An application for a certificate of title to a mobile home shall be accompanied by a mobile home transfer statement prescribed by the Tax Commissioner. The mobile home transfer statement shall be filed by the applicant with the county clerk or designated county official of the county of application for title. The county clerk or designated county official shall issue a certificate of title to a mobile home but shall not deliver the certificate of title unless the mobile home transfer statement accompanies the application for title, except that the failure to provide the mobile home transfer statement shall not prevent the notation of a lien on the certificate of title to the mobile home pursuant to section 60-164 and delivery to the holder of the first lien.

Source: Laws 2005, LB 276, § 47; Laws 2007, LB166, § 1; Laws 2007, LB334, § 9; Laws 2009, LB202, § 13.
Effective date August 30, 2009.

60-152 Certificate of title; issuance; delivery of copies; seal; county clerk or designated official; powers and duties.

(1) The county clerk or designated county official shall issue a certificate of title for a vehicle in duplicate and retain one copy in his or her office. An electronic copy, in a form prescribed by the department, shall be transmitted on the day of issuance to the department. The county clerk or designated county official shall sign and affix the appropriate seal to the original certificate of title and, if there are no liens on the vehicle, deliver the certificate to the applicant. If there are one or more liens on the vehicle, the certificate of title shall be handled as provided in section 60-164 or 60-165.

(2) The county clerks or county treasurers of the various counties shall adopt a circular seal with the words County Clerk of ..... (insert name) County or County Treasurer of ..... (insert name) County thereon. Such seal shall be used by the county clerk or county treasurer or the deputy or legal authorized agent of such officer, without charge to the applicant, on any certificate of title, application for certificate of title, duplicate copy, assignment or reassignment, power of attorney, statement, or affidavit pertaining to the issuance of a Nebraska certificate of title. The designated county official or the deputy or legal authorized agent of such officer shall use the seal of the county, without charge to the applicant, on any such document.

(3) The department shall prescribe a uniform method of numbering certificates of title.

(4) The county clerk or designated county official shall (a) file all certificates of title according to rules and regulations adopted and promulgated by the department, (b) maintain in the office indices for such certificates of title, (c) be authorized to destroy all previous records five years after a subsequent transfer has been made on a vehicle, and (d) be authorized to destroy all certificates of title and all supporting records and documents which have been on file for a period of five years or more from the date of filing the certificate or a notation of lien, whichever occurs later.

Source: Laws 2005, LB 276, § 52; Laws 2007, LB286, § 12; Laws 2009, LB202, § 14.
Effective date August 30, 2009.

60-162.01 County treasurer; assume powers and duties of county clerk; when.

On and after the implementation date designated under section 23-186 by the director, the county treasurer shall have all of the powers and duties of the county clerk as specified under the Motor Vehicle Certificate of Title Act.

Source: Laws 2009, LB49, § 7.
Effective date August 30, 2009.

60-164 Department; implement electronic title and lien system for vehicles; liens on motor vehicles; when valid; notation on certificate; inventory, exception; priority; adjustment to rental price; how construed; notation of cancellation; failure to deliver certificate; damages; release.

(1) The department shall implement an electronic title and lien system for vehicles no later than January 1, 2011. The director shall designate the date for the implementation of the system. Beginning on the implementation date, the holder of a security interest, trust receipt, conditional sales contract, or similar instrument regarding a vehicle may file a lien electronically as prescribed by the department. Beginning on the implementation date, upon receipt of an application for a certificate of title for a vehicle, any lien filed electronically shall become part of the electronic certificate of title record created by the county clerk, designated county official, or department maintained on the electronic title and lien system. Beginning on the implementation date, if an application for a certificate of title indicates that there is a lien or encumbrance on a vehicle or if a lien or notice of lien has been filed electronically, the department shall retain an electronic certificate of title record and shall note and cancel such liens electronically on the system. The department shall provide access to the electronic certificate of title records for motor vehicle dealers and lienholders who participate in the system by a method determined by the director.

(2) Except as provided in section 60-165, the provisions of article 9, Uniform Commercial Code, shall never be construed to apply to or to permit or require the deposit, filing, or other record whatsoever of a security agreement, conveyance intended to operate as a mortgage, trust receipt, conditional sales contract, or similar instrument or any copy of the same covering a vehicle. Any mortgage, conveyance intended to operate as a security agreement as provided by article 9, Uniform Commercial Code, trust receipt, conditional sales contract, or other similar instrument covering a vehicle, if such instrument is accompanied by delivery of such manufacturer's or importer's certificate and followed by actual and continued possession of the same by the holder of such instrument or, in the case of a certificate of title, if a notation of the same has been made electronically as prescribed in subsection (1) of this section or by the county clerk, designated county official, or department on the face of the certificate of title or on the electronic certificate of title record, shall be valid as against the creditors of the debtor, whether armed with process or not, and subsequent purchasers, secured parties, and other lienholders or claimants but otherwise shall not be valid against them, except that during any period in which a vehicle is inventory, as defined in section 9-102, Uniform Commercial Code, held for sale by a person or corporation that is required to be licensed as provided in Chapter 60, article 14, and is in the business of selling such vehicles, the filing provisions of article 9, Uniform Commercial Code, as applied to inventory, shall apply to a security interest in such vehicle created by such person or corporation as debtor without the notation of lien on the certificate of title. A buyer of a vehicle at retail from a dealer required to be

licensed as provided in Chapter 60, article 14, shall take such vehicle free of any security interest. A purchase-money security interest, as defined in section 9-103, Uniform Commercial Code, in a vehicle is perfected against the rights of judicial lien creditors and execution creditors on and after the date the purchase-money security interest attaches.

(3) Subject to subsections (1) and (2) of this section, all liens, security agreements, and encumbrances noted upon a certificate of title or an electronic certificate of title record and all liens noted electronically as prescribed in subsection (1) of this section shall take priority according to the order of time in which the same are noted by the county clerk, designated county official, or department. Exposure for sale of any vehicle by the owner thereof with the knowledge or with the knowledge and consent of the holder of any lien, security agreement, or encumbrance on such vehicle shall not render the same void or ineffective as against the creditors of such owner or holder of subsequent liens, security agreements, or encumbrances upon such vehicle.

(4) The holder of a security agreement, trust receipt, conditional sales contract, or similar instrument, upon presentation of such instrument to the department, or to any county clerk or designated county official, together with the certificate of title and the fee prescribed for notation of lien, may have a notation of such lien made on the face of such certificate of title. The owner of a vehicle may present a valid out-of-state certificate of title issued to such owner for such vehicle with a notation of lien on such certificate of title and the prescribed fee to the county clerk, designated county official, or department and have the notation of lien made on the new certificate of title issued pursuant to section 60-144 without presenting a copy of the lien instrument. The county clerk or designated county official or the department shall enter the notation and the date thereof over the signature of the person making the notation and the seal of the office. If noted by a county clerk or designated county official, he or she shall on that day notify the department which shall note the lien on its records. The county clerk or designated county official or the department shall also indicate by appropriate notation and on such instrument itself the fact that such lien has been noted on the certificate of title.

(5) A transaction does not create a sale or a security interest in a vehicle, other than an all-terrain vehicle or a minibike, merely because it provides that the rental price is permitted or required to be adjusted under the agreement either upward or downward by reference to the amount realized upon sale or other disposition of the vehicle.

(6) The county clerk or designated county official or the department, upon receipt of a lien instrument duly signed by the owner in the manner prescribed by law governing such lien instruments together with the fee prescribed for notation of lien, shall notify the first lienholder to deliver to the county clerk or designated county official or the department, within fifteen days after the date of notice, the certificate of title to permit notation of such other lien and, after notation of such other lien, the county clerk or designated county official or the department shall deliver the certificate of title to the first lienholder. The holder of a certificate of title who refuses to deliver a certificate of title to the county clerk or designated county official or the department for the purpose of showing such other lien on such certificate of title within fifteen days after the date of notice shall be liable for damages to such other lienholder for the amount of damages such other lienholder suffered by reason of the holder of

the certificate of title refusing to permit the showing of such lien on the certificate of title.

(7) Beginning on the implementation date of the electronic title and lien system, upon receipt of a subsequent lien instrument duly signed by the owner in the manner prescribed by law governing such lien instruments or a notice of lien filed electronically, together with an application for notation of the subsequent lien, the fee prescribed in section 60-154, and, if a printed certificate of title exists, the presentation of the certificate of title, the county clerk, designated county official, or department shall make notation of such other lien. If the certificate of title is not an electronic certificate of title record, the county clerk, designated county official, or department, upon receipt of a lien instrument duly signed by the owner in the manner prescribed by law governing such lien instruments together with the fee prescribed for notation of lien, shall notify the first lienholder to deliver to the county clerk, designated county official, or department, within fifteen days after the date of notice, the certificate of title to permit notation of such other lien. After such notation of lien, the lien shall become part of the electronic certificate of title record created by the county clerk, designated county official, or department which is maintained on the electronic title and lien system. The holder of a certificate of title who refuses to deliver a certificate of title to the county clerk, designated county official, or department for the purpose of noting such other lien on such certificate of title within fifteen days after the date when notified to do so shall be liable for damages to such other lienholder for the amount of damages such other lienholder suffered by reason of the holder of the certificate of title refusing to permit the noting of such lien on the certificate of title.

(8) When a lien is discharged, the holder shall, within fifteen days after payment is received, note a cancellation of the lien on the certificate of title over his, her, or its signature and deliver the certificate of title to the county clerk or designated county official or the department, which shall note the cancellation of the lien on the face of the certificate of title and on the records of such office. If delivered to a county clerk or designated county official, he or she shall on that day notify the department which shall note the cancellation on its records. The county clerk or designated county official or the department shall then return the certificate of title to the owner or as otherwise directed by the owner. The cancellation of lien shall be noted on the certificate of title without charge. For an electronic certificate of title record, the lienholder shall, within fifteen days after payment is received when such lien is discharged, notify the department electronically or provide written notice of such lien release, in a manner prescribed by the department, to the county clerk, designated county official, or department. The department shall note the cancellation of lien and, if no other liens exist, issue the certificate of title to the owner or as otherwise directed by the owner or lienholder. If the holder of the title cannot locate a lienholder, a lien may be discharged ten years after the date of filing by presenting proof that thirty days have passed since the mailing of a written notice by certified mail, return receipt requested, to the last-known address of the lienholder.

Source: Laws 2005, LB 276, § 64; Laws 2007, LB286, § 14; Laws 2008, LB756, § 3; Laws 2008, LB953, § 3; Laws 2009, LB202, § 15. Effective date August 30, 2009.

60-165 Security interest in all-terrain vehicle or minibike; perfection; priority; notation of lien; when.

(1) Any security interest in an all-terrain vehicle or minibike perfected pursuant to article 9, Uniform Commercial Code, before, on, or after January 1, 2004, shall continue to be perfected until (a) the financing statement perfecting such security interest is terminated or lapses in the absence of the filing of a continuation statement pursuant to article 9, Uniform Commercial Code, or (b) an all-terrain vehicle or minibike certificate of title is issued and a notation of lien is made as provided in section 60-164.

(2) Any lien noted on the face of an all-terrain vehicle or minibike certificate of title or on an electronic certificate of title record pursuant to subsection (1), (3), or (4) of this section, on behalf of the holder of a security interest in the all-terrain vehicle or minibike which was previously perfected pursuant to article 9, Uniform Commercial Code, shall have priority as of the date such security interest was originally perfected.

(3) The holder of a certificate of title for an all-terrain vehicle or minibike shall, upon request, surrender the certificate of title to a holder of a previously perfected security interest in the all-terrain vehicle or minibike to permit notation of a lien on the certificate of title or on an electronic certificate of title record and shall do such other acts as may be required to permit such notation.

(4) If the owner of an all-terrain vehicle or minibike subject to a security interest perfected pursuant to article 9, Uniform Commercial Code, fails or refuses to obtain a certificate of title after January 1, 2004, the security interest holder may obtain a certificate of title in the name of the owner of the all-terrain vehicle or minibike following the procedures of section 60-144 and may have a lien noted on the certificate of title or on an electronic certificate of title record pursuant to section 60-164.

(5) The assignment, release, or satisfaction of a security interest in an all-terrain vehicle or minibike shall be governed by the laws under which it was perfected.

Source: Laws 2005, LB 276, § 65; Laws 2009, LB202, § 16.
Effective date August 30, 2009.

60-165.01 Printed certificate of title; when issued.

Beginning on the implementation date of the electronic title and lien system designated by the director pursuant to section 60-164, a lienholder, at the owner's request, may request the issuance of a printed certificate of title if the owner of the vehicle relocates to another state or country or if requested for any other purpose approved by the department. Upon proof by the owner that a lienholder has not provided the requested certificate of title within fifteen days after the owner's request, the department may issue to the owner a printed certificate of title with all liens duly noted.

Source: Laws 2009, LB202, § 17.
Effective date August 30, 2009.

60-166 New certificate of title; issued when; proof required; processing of application.

(1) In the event of (a) the transfer of ownership of a vehicle by operation of law as upon inheritance, devise, or bequest, order in bankruptcy, insolvency,

replevin, or execution sale or as provided in sections 30-24,125, 52-601.01 to 52-605, 60-1901 to 60-1911, and 60-2401 to 60-2411, (b) the engine of a vehicle being replaced by another engine, (c) a vehicle being sold to satisfy storage or repair charges, or (d) repossession being had upon default in performance of the terms of a chattel mortgage, trust receipt, conditional sales contract, or other like agreement, the county clerk or designated county official of any county or the department, if the last certificate of title was issued by the department, upon the surrender of the prior certificate of title or the manufacturer's or importer's certificate, or when that is not possible, upon presentation of satisfactory proof of ownership and right of possession to such vehicle, and upon payment of the appropriate fee and the presentation of an application for certificate of title, may issue to the applicant a certificate of title thereto. If the prior certificate of title issued for such vehicle provided for joint ownership with right of survivorship, a new certificate of title shall be issued to a subsequent purchaser upon the assignment of the prior certificate of title by the surviving owner and presentation of satisfactory proof of death of the deceased owner. Only an affidavit by the person or agent of the person to whom possession of such vehicle has so passed, setting forth facts entitling him or her to such possession and ownership, together with a copy of the journal entry, court order, or instrument upon which such claim of possession and ownership is founded, shall be considered satisfactory proof of ownership and right of possession, except that if the applicant cannot produce such proof of ownership, he or she may submit to the department such evidence as he or she may have, and the department may thereupon, if it finds the evidence sufficient, issue the certificate of title or authorize the county clerk or designated county official to issue a certificate of title, as the case may be.

(2) If from the records in the office of the county clerk or designated county official or the department there appear to be any liens on such vehicle, such certificate of title shall comply with section 60-164 or 60-165 regarding such liens unless the application is accompanied by proper evidence of their satisfaction or extinction.

Source: Laws 2005, LB 276, § 66; Laws 2007, LB286, § 15; Laws 2009, LB202, § 18.
Effective date August 30, 2009.

60-168.01 Certificate of title; failure to note required brand or lien; notice to holder of title; corrected certificate of title; failure of holder to deliver certificate; effect.

The department, upon receipt of clear and convincing evidence of a failure to note a required brand or failure to note a lien on a certificate of title, shall notify the holder of such certificate of title to deliver to the county clerk or designated county official or the department, within fifteen days after the date on the notice, such certificate of title to permit the noting of such brand or lien. After notation, the county clerk or designated county official or the department shall deliver the corrected certificate of title to the holder as provided by section 60-152. If a holder fails to deliver a certificate of title to the county clerk or designated county official or to the department, within fifteen days after the date on the notice for the purpose of noting such brand or lien on the certificate

of title, the department shall cancel the certificate of title. This section does not apply when noting a lien in accordance with subsection (6) of section 60-164.

Source: Laws 2007, LB286, § 17; Laws 2009, LB202, § 19.
Effective date August 30, 2009.

ARTICLE 3

MOTOR VEHICLE REGISTRATION

Section

60-301 Act, how cited.

Sections 60-301 to 60-3,222 shall be known and may be cited as the Motor Vehicle Registration Act.

Source: Laws 2005, LB 274, § 1; Laws 2006, LB 663, § 21; Laws 2007, LB286, § 20; Laws 2007, LB349, § 1; Laws 2007, LB570, § 1; Laws 2008, LB756, § 5; Laws 2009, LB110, § 1; Laws 2009, LB129, § 1.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB110, section 1, with LB129, section 1, to reflect all amendments.

Note: Changes made by LB129 became effective August 30, 2009. Changes made by LB110 became operative January 1, 2010.

60-320 Designated county official, defined.

Until the implementation date designated under section 23-186 by the director, designated county official means the county official, other than the county treasurer, designated by a county board to provide services pursuant to section 23-186. On and after the implementation date designated under section 23-186 by the director, designated county official means the county treasurer.

Source: Laws 2005, LB 274, § 20; Laws 2009, LB49, § 8.
Effective date August 30, 2009.

60-395 Refund or credit of fees; when authorized.

(1) Except as otherwise provided in subsection (2) of this section and sections 60-3,121, 60-3,122.02, and 60-3,128, the registration shall expire and the registered owner or lessee may, by returning the registration certificate, the license plates, and, when appropriate, the validation decals and by either making application on a form prescribed by the department to the county treasurer or designated county official of the occurrence of an event described in subdivisions (a) through (e) of this subsection or, in the case of a change in situs, displaying to the county treasurer or designated county official the registration certificate of such other state as evidence of a change in situs, receive a refund of that part of the unused fees and taxes on motor vehicles or trailers based on the number of unexpired months remaining in the registration period from the date of any of the following events:

(a) Upon transfer of ownership of any motor vehicle or trailer;

(b) In case of loss of possession because of fire, theft, dismantlement, or junking;

(c) When a salvage branded certificate of title is issued;

(d) Whenever a type or class of motor vehicle or trailer previously registered is subsequently declared by legislative act or court decision to be illegal or ineligible to be operated or towed on the public roads and no longer subject to registration fees, the motor vehicle tax imposed in section 60-3,185, and the motor vehicle fee imposed in section 60-3,190;

(e) Upon a trade-in or surrender of a motor vehicle under a lease; or

(f) In case of a change in the situs of a motor vehicle or trailer to a location outside of this state.

(2) If the date of the event falls within the same calendar month in which the motor vehicle or trailer is acquired, no refund shall be allowed for such month.

(3) If the transferor or lessee acquires another motor vehicle at the time of the transfer, trade-in, or surrender, the transferor or lessee shall have the credit provided for in this section applied toward payment of the motor vehicle fees and taxes then owing. Otherwise, the transferor or lessee shall file a claim for refund with the county treasurer or designated county official upon an application form prescribed by the department.

(4) The registered owner or lessee shall make a claim for refund or credit of the fees and taxes for the unexpired months in the registration period within sixty days after the date of the event or shall be deemed to have forfeited his or her right to such refund or credit.

(5) For purposes of this section, the date of the event shall be: (a) In the case of a transfer or loss, the date of the transfer or loss; (b) in the case of a change in the situs, the date of registration in another state; (c) in the case of a trade-in or surrender under a lease, the date of trade-in or surrender; (d) in the case of a legislative act, the effective date of the act; and (e) in the case of a court decision, the date the decision is rendered.

(6) Application for registration or for reassignment of license plates and, when appropriate, validation decals to another motor vehicle or trailer shall be made within thirty days of the date of purchase.

(7) If a motor vehicle or trailer was reported stolen under section 60-178, a refund under this section shall not be reduced for a lost plate charge and a

credit under this section may be reduced for a lost plate charge but the applicant shall not be required to pay the plate fee for new plates.

(8) The county treasurer or designated county official shall refund the motor vehicle fee and registration fee from the fees which have not been transferred to the State Treasurer. The county treasurer shall make payment to the claimant from the undistributed motor vehicle taxes of the taxing unit where the tax money was originally distributed. No refund of less than two dollars shall be paid.

Source: Laws 2005, LB 274, § 95; Laws 2007, LB286, § 35; Laws 2007, LB570, § 5; Laws 2009, LB175, § 1.
Effective date August 30, 2009.

60-3,104 Types of license plates.

The department shall issue the following types of license plates:

(1) Amateur radio station license plates issued pursuant to section 60-3,126;

(2) Apportionable vehicle license plates issued pursuant to section 60-3,203;

(3) Boat dealer license plates issued pursuant to section 60-379;

(4) Bus license plates issued pursuant to section 60-3,144;

(5) Commercial motor vehicle license plates issued pursuant to section 60-3,147;

(6) Dealer or manufacturer license plates issued pursuant to sections 60-3,114 and 60-3,115;

(7) Disabled veteran license plates issued pursuant to section 60-3,124;

(8) Farm trailer license plates issued pursuant to section 60-3,151;

(9) Farm truck license plates issued pursuant to section 60-3,146;

(10) Farm trucks with a gross weight of over sixteen tons license plates issued pursuant to section 60-3,146;

(11) Fertilizer trailer license plates issued pursuant to section 60-3,151;

(12) Film vehicle license plates issued pursuant to section 60-383;

(13) Gold Star Family license plates issued pursuant to sections 60-3,122.01 and 60-3,122.02;

(14) Handicapped or disabled person license plates issued pursuant to section 60-3,113;

(15) Historical vehicle license plates issued pursuant to sections 60-3,130 to 60-3,134;

(16) Local truck license plates issued pursuant to section 60-3,145;

(17) Motor vehicle license plates for motor vehicles owned or operated by the state, counties, municipalities, or school districts issued pursuant to section 60-3,105;

(18) Motor vehicles exempt pursuant to section 60-3,107;

(19) Motorcycle license plates issued pursuant to section 60-3,100;

(20) Nebraska Cornhusker Spirit Plates issued pursuant to sections 60-3,127 to 60-3,129;

(21) Nonresident owner thirty-day license plates issued pursuant to section 60-382;

(22) Passenger car having a seating capacity of ten persons or less and not used for hire issued pursuant to section 60-3,143;

(23) Passenger car having a seating capacity of ten persons or less and used for hire issued pursuant to section 60-3,143;

(24) Pearl Harbor license plates issued pursuant to section 60-3,122;

(25) Personal-use dealer license plates issued pursuant to section 60-3,116;

(26) Personalized message license plates for motor vehicles and cabin trailers, except commercial motor vehicles registered for over ten tons gross weight, issued pursuant to sections 60-3,118 to 60-3,121;

(27) Prisoner-of-war license plates issued pursuant to section 60-3,123;

(28) Purple Heart license plates issued pursuant to section 60-3,125;

(29) Recreational vehicle license plates issued pursuant to section 60-3,151;

(30) Repossession license plates issued pursuant to section 60-375;

(31) Specialty license plates issued pursuant to sections 60-3,104.01 and 60-3,104.02;

(32) Trailer license plates issued for trailers owned or operated by the state, counties, municipalities, or school districts issued pursuant to section 60-3,106;

(33) Trailer license plates issued pursuant to section 60-3,100;

(34) Trailers exempt pursuant to section 60-3,108;

(35) Transporter license plates issued pursuant to section 60-378;

(36) Trucks or combinations of trucks, truck-tractors, or trailers which are not for hire and engaged in soil and water conservation work and used for the purpose of transporting pipe and equipment exclusively used by such contractors for soil and water conservation construction license plates issued pursuant to section 60-3,149;

(37) Utility trailer license plates issued pursuant to section 60-3,151; and

(38) Well-boring apparatus and well-servicing equipment license plates issued pursuant to section 60-3,109.

Source: Laws 2005, LB 274, § 104; Laws 2006, LB 663, § 23; Laws 2007, LB286, § 37; Laws 2007, LB570, § 7; Laws 2009, LB110, § 2. Operative date January 1, 2010.

60-3,104.01 Specialty license plates; application; fee; delivery; transfer; credit allowed; fee.

(1) Beginning January 1, 2010, a person may apply for specialty license plates in lieu of regular license plates on an application prescribed and provided by the department pursuant to section 60-3,104.02 for any motor vehicle, trailer, semitrailer, or cabin trailer, except for motor vehicles or trailers registered under section 60-3,198. An applicant receiving a specialty license plate for a farm truck with a gross weight of over sixteen tons or for a commercial motor vehicle registered for a gross weight of five tons or over shall affix the appropriate tonnage decal to the plate. The department shall make forms available for such applications. Each application for initial issuance or renewal of specialty license plates shall be accompanied by a fee of seventy dollars. Fees collected pursuant to this subsection shall be remitted to the State Treasurer. The State Treasurer shall credit fifteen percent of the fee for initial issuance and

renewal of specialty license plates to the Department of Motor Vehicles Cash Fund and eighty-five percent of the fee to the Highway Trust Fund.

(2) When the department receives an application for specialty license plates, it shall deliver the plates to the county treasurer or designated county official of the county in which the motor vehicle, trailer, semitrailer, or cabin trailer is registered. The county treasurer or designated county official shall issue specialty license plates in lieu of regular license plates when the applicant complies with the other provisions of law for registration of the motor vehicle, trailer, semitrailer, or cabin trailer. If specialty license plates are lost, stolen, or mutilated, the licensee shall be issued replacement license plates pursuant to section 60-3,157.

(3)(a) The owner of a motor vehicle, trailer, semitrailer, or cabin trailer bearing specialty license plates may make application to the county treasurer or designated county official to have such specialty license plates transferred to a motor vehicle, trailer, semitrailer, or cabin trailer other than the motor vehicle, trailer, semitrailer, or cabin trailer for which such plates were originally purchased if such motor vehicle, trailer, semitrailer, or cabin trailer is owned by the owner of the specialty license plates.

(b) The owner may have the unused portion of the specialty license plate fee credited to the other motor vehicle, trailer, semitrailer, or cabin trailer which will bear the specialty license plates at the rate of eight and one-third percent per month for each full month left in the registration period.

(c) Application for such transfer shall be accompanied by a fee of three dollars. Fees collected pursuant to this subsection shall be remitted to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund.

Source: Laws 2009, LB110, § 3.
Operative date January 1, 2010.

60-3,104.02 Specialty license plates; organization; requirements; design of plates.

(1) On or before January 1, 2011, the department shall begin issuing specialty license plates for any organization which certifies that it meets the requirements of this section. The department shall work with the organization to design the plates.

(2) The department shall make applications available pursuant to section 60-3,104.01 for each type of specialty license plate when it is designed. The department shall not manufacture specialty license plates for an organization until the department has received five hundred prepaid applications for specialty license plates designed for that organization. The department may revoke the approval for an organization's specialty license plate if the total number of registered vehicles that obtained such plate is less than five hundred within three years after receiving approval.

(3) In order to have specialty license plates designed and manufactured, an organization shall furnish the department with the following:

(a) A copy of its articles of incorporation and, if the organization consists of a group of nonprofit corporations, a copy for each organization;

(b) A copy of its charter or bylaws and, if the organization consists of a group of nonprofit corporations, a copy for each organization;

(c) Any Internal Revenue Service rulings of the organization's nonprofit tax-exempt status and, if the organization consists of a group of nonprofit corporations, a copy for each organization;

(d) A copy of a certificate of existence on file with the Secretary of State under the Nebraska Nonprofit Corporation Act;

(e) Five hundred prepaid applications for the speciality license plates; and

(f) A completed application for the issuance of the plates on a form provided by the department certifying that the organization meets the following requirements:

(i) The organization is a nonprofit corporation or a group of nonprofit corporations with a common purpose;

(ii) The primary activity or purpose of the organization serves the community, contributes to the welfare of others, and is not offensive or discriminatory in its purpose, nature, activity, or name;

(iii) The name and purpose of the organization does not promote any specific product or brand name that is on a product provided for sale;

(iv) The organization is authorized to use any name, logo, or graphic design suggested for the design of the plates;

(v) No infringement or violation of any property right will result from such use of such name, logo, or graphic design; and

(vi) The organization will hold harmless the State of Nebraska and its employees and agents for any liability which may result from any infringement or violation of a property right based on the use of such name, logo, or graphic design.

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

Source: Laws 2009, LB110, § 4.
Operative date January 1, 2010.

Cross References

Nebraska Nonprofit Corporation Act, see section 21-1901.

60-3,119 Personalized message license plates; application; renewal; fee.

(1) Application for personalized message license plates shall be made to the department. The department shall make available through each county treasurer or designated county official forms to be used for such applications.

(2) Each initial application shall be accompanied by a fee of forty dollars. The fees shall be remitted to the State Treasurer. The State Treasurer shall credit twenty-five percent of the fee to the Highway Trust Fund and seventy-five percent of the fee to the Department of Motor Vehicles Cash Fund.

(3) An application for renewal of a license plate previously approved and issued shall be accompanied by a fee of forty dollars. County treasurers or designated county officials collecting fees pursuant to this subsection shall remit them to the State Treasurer. The State Treasurer shall credit twenty-five percent of the fee to the Highway Trust Fund and seventy-five percent of the fee to the Department of Motor Vehicles Cash Fund.

Source: Laws 2005, LB 274, § 119; Laws 2009, LB110, § 5.
Operative date January 1, 2010.

60-3,122 Pearl Harbor plates; fee.

(1) Any person may, in addition to the application required by section 60-385, apply to the department for license plates designed by the department to indicate that he or she is a survivor of the Japanese attack on Pearl Harbor if he or she:

(a) Was a member of the United States Armed Forces on December 7, 1941;

(b) Was on station on December 7, 1941, during the hours of 7:55 a.m. to 9:45 a.m. Hawaii time at Pearl Harbor, the island of Oahu, or offshore at a distance not to exceed three miles;

(c) Was discharged or otherwise separated with a characterization of honorable from the United States Armed Forces; and

(d) Holds a current membership in a Nebraska Chapter of the Pearl Harbor Survivors Association.

(2) The license plates shall be issued upon the applicant paying the regular license fee and an additional fee of five dollars and furnishing proof satisfactory to the department that the applicant fulfills the requirements provided by subsection (1) of this section. The additional fee shall be remitted to the State Treasurer for credit to the Nebraska Veteran Cemetery System Operation Fund. Only one motor vehicle, trailer, semitrailer, or cabin trailer owned by the applicant shall be so licensed at any one time. Motor vehicles and trailers registered under section 60-3,198 shall not be so licensed.

(3) If the license plates issued pursuant to this section are lost, stolen, or mutilated, the recipient of the plates shall be issued replacement license plates upon request and without charge.

Source: Laws 2005, LB 274, § 122; Laws 2007, LB286, § 40; Laws 2009, LB110, § 6.
Operative date January 1, 2010.

60-3,122.02 Gold Star Family plates; fee.

(1) A person may apply to the department for Gold Star Family plates in lieu of regular license plates on an application prescribed and provided by the department for any motor vehicle, trailer, semitrailer, or cabin trailer, except for a motor vehicle or trailer registered under section 60-3,198. An applicant receiving a Gold Star Family plate for a farm truck with a gross weight of over sixteen tons shall affix the appropriate tonnage decal to the plate. The department shall make forms available for such applications through the county treasurers or designated county officials. The license plates shall be issued upon payment of the license fee described in subsection (2) of this section and furnishing proof satisfactory to the department that the applicant is a surviving spouse, whether remarried or not, or an ancestor, including a stepparent, a descendant, including a stepchild, a foster parent or a person in loco parentis, or a sibling of a person who died while in good standing on active duty in the military service of the United States.

(2)(a) Each application for initial issuance of consecutively numbered Gold Star Family plates shall be accompanied by a fee of five dollars. An application for renewal of such plates shall be accompanied by a fee of five dollars. County treasurers or designated county officials collecting fees for renewals pursuant to this subdivision shall remit them to the State Treasurer. The State Treasurer

shall credit five dollars of the fee for initial issuance and renewal of such plates to the Nebraska Veteran Cemetery System Operation Fund.

(b) Each application for initial issuance of personalized message Gold Star Family plates shall be accompanied by a fee of forty dollars. An application for renewal of such plates shall be accompanied by a fee of forty dollars. County treasurers or designated county officials collecting fees for renewals pursuant to this subdivision shall remit them to the State Treasurer. The State Treasurer shall credit twenty-five percent of the fee for initial issuance and renewal of such plates to the Department of Motor Vehicles Cash Fund and seventy-five percent of the fee to the Nebraska Veteran Cemetery System Operation Fund.

(3) When the department receives an application for Gold Star Family plates, the department shall deliver the plates to the county treasurer or designated county official of the county in which the motor vehicle or cabin trailer is registered. The county treasurer or designated county official shall issue Gold Star Family plates in lieu of regular license plates when the applicant complies with the other provisions of the Motor Vehicle Registration Act for registration of the motor vehicle or cabin trailer. If Gold Star Family plates are lost, stolen, or mutilated, the licensee shall be issued replacement license plates upon request and without charge.

(4) The owner of a motor vehicle or cabin trailer bearing Gold Star Family plates may apply to the county treasurer or designated county official to have such plates transferred to a motor vehicle other than the vehicle for which such plates were originally purchased if such vehicle is owned by the owner of the plates. The owner may have the unused portion of the fee for the plates credited to the other vehicle which will bear the plates at the rate of eight and one-third percent per month for each full month left in the registration period. Application for such transfer shall be accompanied by a fee of three dollars. Fees collected pursuant to this subsection shall be remitted to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund.

(5) If the cost of manufacturing Gold Star Family plates at any time exceeds the amount charged for license plates pursuant to section 60-3,102, any money to be credited to the Nebraska Veteran Cemetery System Operation Fund shall instead be credited first to the Highway Trust Fund in an amount equal to the difference between the manufacturing costs of Gold Star Family plates and the amount charged pursuant to section 60-3,102 with respect to such plates and the remainder shall be credited to the Nebraska Veteran Cemetery System Operation Fund.

Source: Laws 2007, LB570, § 3; Laws 2009, LB110, § 7; Laws 2009, LB331, § 2.
Operative date January 1, 2010.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB110, section 7, with LB331, section 2, to reflect all amendments.

60-3,123 Prisoner of war plates; fee.

(1) Any person who was captured and incarcerated by an enemy of the United States during a period of conflict with such enemy and who was discharged or otherwise separated with a characterization of honorable from or is currently serving in the United States Armed Forces may, in addition to the application required in section 60-385, apply to the department for license plates designed to indicate that he or she is a former prisoner of war.

(2) The license plates shall be issued upon the applicant paying the regular license fee and an additional fee of five dollars and furnishing proof satisfactory to the department that the applicant was formerly a prisoner of war. The additional fee shall be remitted to the State Treasurer for credit to the Nebraska Veteran Cemetery System Operation Fund. Only one motor vehicle, trailer, semitrailer, or cabin trailer owned by an applicant shall be so licensed at any one time. Motor vehicles and trailers registered under section 60-3,198 shall not be so licensed.

(3) If the license plates issued under this section are lost, stolen, or mutilated, the recipient of the license plates shall be issued replacement license plates upon request and without charge.

Source: Laws 2005, LB 274, § 123; Laws 2007, LB286, § 41; Laws 2009, LB110, § 8.
Operative date January 1, 2010.

60-3,124 Disabled veteran plates; fee.

(1) Any person who is a veteran of the United States Armed Forces, who was discharged or otherwise separated with a characterization of honorable or general (under honorable conditions), and who is classified by the United States Department of Veterans Affairs as one hundred percent service-connected disabled may, in addition to the application required in section 60-385, apply to the Department of Motor Vehicles for license plates designed by the department to indicate that the applicant is a disabled veteran. The inscription on the license plates shall be D.A.V. immediately below the license plate number to indicate that the holder of the license plates is a disabled veteran.

(2) The plates shall be issued upon the applicant paying the regular license fee and an additional fee of five dollars and furnishing proof satisfactory to the department that the applicant is a disabled veteran. The additional fee shall be remitted to the State Treasurer for credit to the Nebraska Veteran Cemetery System Operation Fund. Only one motor vehicle, trailer, semitrailer, or cabin trailer owned by the applicant shall be so licensed at any one time. Motor vehicles and trailers registered under section 60-3,198 shall not be so licensed.

(3) If the license plates issued under this section are lost, stolen, or mutilated, the recipient of the plates shall be issued replacement license plates as provided in section 60-3,157.

Source: Laws 2005, LB 274, § 124; Laws 2007, LB286, § 42; Laws 2009, LB110, § 9.
Operative date January 1, 2010.

60-3,125 Purple Heart plates; fee.

(1) Any person may, in addition to the application required by section 60-385, apply to the department for license plates designed by the department to indicate that the applicant has received from the federal government an award of a Purple Heart. The inscription of the plates shall be designed so as to include a facsimile of the award and beneath any numerical designation upon the plates pursuant to section 60-370 the words Purple Heart separately on one line and the words Combat Wounded on the line below.

(2) The license plates shall be issued upon payment of the regular license fee and an additional fee of five dollars and furnishing proof satisfactory to the

department that the applicant was awarded the Purple Heart. The additional fee shall be remitted to the State Treasurer for credit to the Nebraska Veteran Cemetery System Operation Fund. Any number of motor vehicles, trailers, semitrailers, or cabin trailers owned by the applicant may be so licensed at any one time. Motor vehicles and trailers registered under section 60-3,198 shall not be so licensed.

(3) If license plates issued pursuant to this section are lost, stolen, or mutilated, the recipient of the plates shall be issued replacement license plates upon request and without charge.

Source: Laws 2005, LB 274, § 125; Laws 2007, LB286, § 43; Laws 2009, LB110, § 10.
Operative date January 1, 2010.

60-3,128 Nebraska Cornhusker Spirit Plates; application; fee; transfer; credit allowed.

(1) A person may apply to the department for Nebraska Cornhusker Spirit Plates in lieu of regular license plates on an application prescribed and provided by the department for any motor vehicle, trailer, semitrailer, or cabin trailer, except for motor vehicles or trailers registered under section 60-3,198. An applicant receiving a spirit plate for a farm truck with a gross weight of over sixteen tons or for a commercial motor vehicle registered for a gross weight of five tons or over shall affix the appropriate tonnage decal to the spirit plate. The department shall make forms available for such applications through the county treasurers or designated county officials. Each application for initial issuance or renewal of spirit plates shall be accompanied by a fee of seventy dollars. Fees collected pursuant to this subsection shall be remitted to the State Treasurer. The State Treasurer shall credit forty-three percent of the fees for initial issuance and renewal of spirit plates to the Department of Motor Vehicles Cash Fund. The State Treasurer shall credit fifty-seven percent of the fees to the Spirit Plate Proceeds Fund until the fund has been credited five million dollars from such fees and thereafter to the Highway Trust Fund.

(2) When the department receives an application for spirit plates, it shall deliver the plates to the county treasurer or designated county official of the county in which the motor vehicle or cabin trailer is registered. The county treasurer or designated county official shall issue spirit plates in lieu of regular license plates when the applicant complies with the other provisions of law for registration of the motor vehicle or cabin trailer. If spirit plates are lost, stolen, or mutilated, the licensee shall be issued replacement license plates pursuant to section 60-3,157.

(3)(a) The owner of a motor vehicle or cabin trailer bearing spirit plates may make application to the county treasurer or designated county official to have such spirit plates transferred to a motor vehicle or cabin trailer other than the motor vehicle or cabin trailer for which such plates were originally purchased if such motor vehicle or cabin trailer is owned by the owner of the spirit plates.

(b) The owner may have the unused portion of the spirit plate fee credited to the other motor vehicle or cabin trailer which will bear the spirit plate at the rate of eight and one-third percent per month for each full month left in the registration period.

(c) Application for such transfer shall be accompanied by a fee of three dollars. Fees collected pursuant to this subsection shall be remitted to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund.

Source: Laws 2005, LB 274, § 128; Laws 2007, LB286, § 45; Laws 2009, LB110, § 11.
Operative date January 1, 2010.

60-3,129 Spirit Plate Proceeds Fund; created; use; investment.

(1) The Spirit Plate Proceeds Fund is created. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(2) If the cost of manufacturing Nebraska Cornhusker Spirit Plates at any time exceeds the amount charged for license plates pursuant to section 60-3,102, any money to be credited to the Spirit Plate Proceeds Fund shall instead be credited first to the Highway Trust Fund in an amount equal to the difference between the manufacturing costs of such spirit plates and the amount charged pursuant to such section with respect to such spirit plates and the remainder shall be credited to the Spirit Plate Proceeds Fund as provided in section 60-3,128.

(3) The first three million dollars credited to the Spirit Plate Proceeds Fund and not credited to the Highway Trust Fund shall be appropriated to the University of Nebraska to establish an endowment fund to provide financial support to former University of Nebraska athletes to pursue undergraduate and postgraduate studies at any University of Nebraska campus. Funds appropriated by the Legislature for such scholarship program shall be held, managed, and invested as an endowed scholarship fund in such manner as the Board of Regents of the University of Nebraska shall determine and as authorized by section 72-1246. The income from the endowed scholarship fund shall be expended for such scholarships. The University of Nebraska shall grant financial support to former athletes who demonstrate financial need as determined by the Federal Pell Grant Program or similar need-based qualifications as approved by the financial aid office of the appropriate campus.

(4) The next two million dollars credited to the Spirit Plate Proceeds Fund and not credited to the Highway Trust Fund shall be appropriated to the University of Nebraska to establish an endowment fund to provide financial support for the academic service units of the athletic departments of the campuses of the University of Nebraska in support of academic services to athletes.

Source: Laws 2005, LB 274, § 129; Laws 2009, LB110, § 12.
Operative date January 1, 2010.

Cross References

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

60-3,130.04 Historical vehicle; model-year license plates; authorized.

(1) An owner of a historical vehicle eligible for registration under section 60-3,130 may use a license plate or plates designed by this state in the year corresponding to the model year when the vehicle was manufactured in lieu of the plates designed pursuant to section 60-3,130.03 subject to the approval of

the department. The department shall inspect the plate or plates and may approve the plate or plates if it is determined that the model-year license plate or plates are legible and serviceable and that the license plate numbers do not conflict with or duplicate other numbers assigned and in use. An original-issued license plate or plates that have been restored to original condition may be used when approved by the department.

(2) The department may consult with a recognized car club in determining whether the year of the license plate or plates to be used corresponds to the model year when the vehicle was manufactured.

(3) If only one license plate is used on the vehicle, the license plate shall be placed on the rear of the vehicle. The owner of a historical vehicle may use only one plate on the vehicle even for years in which two license plates were issued for vehicles in general.

(4) License plates used pursuant to this section corresponding to the year of manufacture of the vehicle shall not be personalized message license plates, Pearl Harbor license plates, prisoner-of-war license plates, disabled veteran license plates, Purple Heart license plates, amateur radio station license plates, Nebraska Cornhusker Spirit Plates, handicapped or disabled person license plates, or specialty license plates.

Source: Laws 2006, LB 663, § 28; Laws 2007, LB286, § 46; Laws 2009, LB110, § 13.
Operative date January 1, 2010.

60-3,135 Undercover license plates; issuance; confidential.

(1)(a) Undercover license plates may be issued to federal, state, county, city, or village law enforcement agencies and shall be used only for legitimate criminal investigatory purposes. Undercover license plates may also be issued to the Nebraska State Patrol, the Game and Parks Commission, deputy state sheriffs employed by the Nebraska Brand Committee and State Fire Marshal for state law enforcement purposes, persons employed by the Tax Commissioner for state revenue enforcement purposes, the Department of Health and Human Services for the purposes of communicable disease control, the prevention and control of those communicable diseases which endanger the public health, the enforcement of drug control laws, or other investigation purposes, the Department of Agriculture for special investigative purposes, and the Insurance Fraud Prevention Division of the Department of Insurance for investigative purposes. Undercover license plates shall not be used on personally owned vehicles or for personal use of government-owned vehicles.

(b) The director shall prescribe a form for agencies to apply for undercover license plates. The form shall include a space for the name and signature of the contact person for the requesting agency, a statement that the undercover license plates are to be used only for legitimate criminal investigatory purposes, and a statement that undercover license plates are not to be used on personally owned vehicles or for personal use of government-owned vehicles.

(2) The agency shall include the name and signature of the contact person for the agency on the form and pay the fee prescribed in section 60-3,102. If the undercover license plates will be used for the investigation of a specific event rather than for ongoing investigations, the agency shall designate on the form an estimate of the length of time the undercover license plates will be needed.

The contact person in the agency shall sign the form and verify the information contained in the form.

(3) Upon receipt of a completed form, the director shall determine whether the undercover license plates will be used by an approved agency for a legitimate purpose pursuant to subsection (1) of this section. If the director determines that the undercover license plates will be used for such a purpose, he or she may issue the undercover license plates in the form and under the conditions he or she determines to be necessary. The decision of the director regarding issuance of undercover license plates is final.

(4) The department shall keep records pertaining to undercover license plates confidential, and such records shall not be subject to public disclosure.

(5) The contact person shall return the undercover license plates to the department if:

(a) The undercover license plates expire and are not renewed;

(b) The purpose for which the undercover license plates were issued has been completed or terminated; or

(c) The director requests their return.

(6) A state agency, board, or commission that uses motor vehicles from the transportation services bureau of the Department of Administrative Services shall notify the bureau immediately after undercover license plates have been assigned to the motor vehicle and shall provide the equipment and license plate number and the undercover license plate number to the bureau. The transportation services bureau shall maintain a list of state-owned motor vehicles which have been assigned undercover license plates. The list shall be confidential and not be subject to public disclosure.

(7) The contact person shall be held accountable to keep proper records of the number of undercover plates possessed by the agency, the particular license plate numbers for each motor vehicle, and the person who is assigned to the motor vehicle. This record shall be confidential and not be subject to public disclosure.

Source: Laws 2005, LB 274, § 135; Laws 2007, LB296, § 227; Laws 2009, LB28, § 1.
Effective date August 30, 2009.

60-3,137 Motor vehicle insurance data base; information required.

Each insurance company doing business in this state shall provide information shown on each automobile liability policy issued in this state as required by the department pursuant to sections 60-3,136 to 60-3,139 for inclusion in the motor vehicle insurance data base in a form and manner acceptable to the department. Any person who qualifies as a self-insurer under sections 60-562 to 60-564 or any person who provides financial responsibility under sections 75-392 to 75-399 shall not be required to provide information to the department for inclusion in the motor vehicle insurance data base.

Source: Laws 2005, LB 274, § 137; Laws 2007, LB358, § 9; Laws 2009, LB331, § 3.
Operative date August 30, 2009.

60-3,157 Lost or mutilated license plate or registration certificate; duplicate; fees.

If a license plate or registration certificate is lost or mutilated or has become illegible, the person to whom such license plate and registration certificate has been issued shall immediately apply to the county treasurer or designated county official for a duplicate registration certificate or for new license plates, accompanying his or her application with a fee of one dollar for a duplicate registration certificate and a fee of two dollars and fifty cents for a duplicate or replacement license plate. No fee shall be required under this section if the vehicle or trailer was reported stolen under section 60-178.

Source: Laws 2005, LB 274, § 157; Laws 2009, LB175, § 2.
Effective date August 30, 2009.

60-3,193.01 International Registration Plan; adopted.

For purposes of the Motor Vehicle Registration Act, the International Registration Plan is adopted and incorporated by reference as the plan existed on July 1, 2009.

Source: Laws 2008, LB756, § 10; Laws 2009, LB331, § 4.
Operative date August 30, 2009.

60-3,198 Fleet of vehicles in interjurisdiction commerce; registration; exception; application; fees; temporary authority; evidence of registration; proportional registration; removal from fleet; effect; unladen-weight registration; trip permit; fee.

(1) Any owner engaged in operating a fleet of apportionable vehicles in this state in interjurisdiction commerce may, in lieu of registration of such apportionable vehicles under the general provisions of the Motor Vehicle Registration Act, register and license such fleet for operation in this state by filing a statement and the application required by section 60-3,203 with the Division of Motor Carrier Services of the department. The statement shall be in such form and contain such information as the division requires, declaring the total mileage operated by such vehicles in all jurisdictions and in this state during the preceding year and describing and identifying each such apportionable vehicle to be operated in this state during the ensuing license year. Upon receipt of such statement and application, the division shall determine the total fee payment, which shall be equal to the amount of fees due pursuant to section 60-3,203 and the amount obtained by applying the formula provided in section 60-3,204 to a fee of thirty-two dollars per ton based upon gross vehicle weight of the empty weights of a truck or truck-tractor and the empty weights of any trailer or combination thereof with which it is to be operated in combination at any one time plus the weight of the maximum load to be carried thereon at any one time, and shall notify the applicant of the amount of payment required to be made. Mileage operated in noncontracting reciprocity jurisdictions by apportionable vehicles based in Nebraska shall be applied to the portion of the formula for determining the Nebraska injurisdiction fleet distance.

Temporary authority which permits the operation of a fleet or an addition to a fleet in this state while the application is being processed may be issued upon application to the division if necessary to complete processing of the application.

Upon completion of such processing and receipt of the appropriate fees, the division shall issue to the applicant a sufficient number of distinctive registration certificates which provide a list of the jurisdictions in which the apportion-

able vehicle has been apportioned, the weight for which registered, and such other evidence of registration for display on the apportionable vehicle as the division determines appropriate for each of the apportionable vehicles of his or her fleet, identifying it as a part of an interjurisdiction fleet proportionately registered. All fees received as provided in this section shall be remitted to the State Treasurer for credit to the Motor Carrier Services Division Distributive Fund.

The apportionable vehicles so registered shall be exempt from all further registration and license fees under the Motor Vehicle Registration Act for movement or operation in the State of Nebraska except as provided in section 60-3,203. The proportional registration and licensing provision of this section shall apply to apportionable vehicles added to such fleets and operated in this state during the license year except with regard to permanent license plates issued under section 60-3,203.

The right of applicants to proportional registration under this section shall be subject to the terms and conditions of any reciprocity agreement, contract, or consent made by the division.

When a nonresident fleet owner has registered his or her apportionable vehicles, his or her apportionable vehicles shall be considered as fully registered for both interjurisdiction and intrajurisdiction commerce when the jurisdiction of base registration for such fleet accords the same consideration for fleets with a base registration in Nebraska. Each apportionable vehicle of a fleet registered by a resident of Nebraska shall be considered as fully registered for both interjurisdiction and intrajurisdiction commerce.

(2) Mileage proportions for interjurisdiction fleets not operated in this state during the preceding year shall be determined by the division upon the application of the applicant on forms to be supplied by the division which shall show the operations of the preceding year in other jurisdictions and estimated operations in Nebraska or, if no operations were conducted the previous year, a full statement of the proposed method of operation.

(3) Any owner complying with and being granted proportional registration shall preserve the records on which the application is made for a period of three years following the current registration year. Upon request of the division, the owner shall make such records available to the division at its office for audit as to accuracy of computation and payments or pay the costs of an audit at the home office of the owner by a duly appointed representative of the division if the office where the records are maintained is not within the State of Nebraska. The division may enter into agreements with agencies of other jurisdictions administering motor vehicle registration laws for joint audits of any such owner. All payments received to cover the costs of an audit shall be remitted by the division to the State Treasurer for credit to the Motor Carrier Division Cash Fund. No deficiency shall be assessed and no claim for credit shall be allowed for any license registration year for which records on which the application was made are no longer required to be maintained.

(4) If the division claims that a greater amount of fee is due under this section than was paid, the division shall notify the owner of the additional amount claimed to be due. The owner may accept such claim and pay the amount due, or he or she may dispute the claim and submit to the division any information which he or she may have in support of his or her position. If the dispute cannot otherwise be resolved within the division, the owner may petition for an

appeal of the matter. The director shall appoint a hearing officer who shall hear the dispute and issue a written decision. Any appeal shall be in accordance with the Administrative Procedure Act. Upon expiration of the time for perfecting an appeal if no appeal is taken or upon final judicial determination if an appeal is taken, the division shall deny the owner the right to further registration for a fleet license until the amount finally determined to be due, together with any costs assessed against the owner, has been paid.

(5) Every applicant who licenses any apportionable vehicles under this section and section 60-3,203 shall have his or her registration certificates issued only after all fees under such sections are paid and, if applicable, proof has been furnished of payment, in the form prescribed by the director as directed by the United States Secretary of the Treasury, of the federal heavy vehicle use tax imposed by 26 U.S.C. 4481 of the Internal Revenue Code as defined in section 49-801.01.

(6)(a) In the event of the transfer of ownership of any registered apportionable vehicle, (b) in the case of loss of possession because of fire, theft, or wrecking, junking, or dismantling of any registered apportionable vehicle, (c) when a salvage branded certificate of title is issued for any registered apportionable vehicle, (d) whenever a type or class of registered apportioned vehicle is subsequently declared by legislative act or court decision to be illegal or ineligible to be operated or towed on the public roads and no longer subject to registration fees and taxes, (e) upon trade-in or surrender of a registered apportionable vehicle under a lease, or (f) in case of a change in the situs of a registered apportionable vehicle to a location outside of this state, its registration shall expire, except that if the registered owner or lessee applies to the division after such transfer or loss of possession and accompanies the application with a fee of one dollar and fifty cents, he or she may have any remaining credit of vehicle fees and taxes from the previously registered apportionable vehicle applied toward payment of any vehicle fees and taxes due and owing on another registered apportionable vehicle. If such registered apportionable vehicle has a greater gross vehicle weight than that of the previously registered apportionable vehicle, the registered owner or lessee of the registered apportionable vehicle shall additionally pay only the registration fee for the increased gross vehicle weight for the remaining months of the registration year based on the factors determined by the division in the original fleet application.

(7) Whenever a Nebraska-based fleet owner files an application with the division to delete a registered apportionable vehicle from a fleet of registered apportionable vehicles (a) because of a transfer of ownership of the registered apportionable vehicle, (b) because of loss of possession due to fire, theft, or wrecking, junking, or dismantling of the registered apportionable vehicle, (c) because a salvage branded certificate of title is issued for the registered apportionable vehicle, (d) because a type or class of registered apportioned vehicle is subsequently declared by legislative act or court decision to be illegal or ineligible to be operated or towed on the public roads and no longer subject to registration fees and taxes, (e) because of a trade-in or surrender of the registered apportionable vehicle under a lease, or (f) because of a change in the situs of the registered apportionable vehicle to a location outside of this state, the registered owner may, by returning the registration certificate or certificates and such other evidence of registration used by the division or, if such certificate or certificates or such other evidence of registration is unavailable, then by making an affidavit to the division of such transfer or loss, receive a

refund of that portion of the unused registration fee based upon the number of unexpired months remaining in the registration year from the date of transfer or loss. No refund shall be allowed for any fees paid under section 60-3,203. When such apportionable vehicle is transferred or lost within the same month as acquired, no refund shall be allowed for such month. Such refund may be in the form of a credit against any registration fees that have been incurred or are, at the time of the refund, being incurred by the registered apportionable vehicle owner. The Nebraska-based fleet owner shall make a claim for a refund under this subsection within the registration period or shall be deemed to have forfeited his or her right to the refund.

(8) Whenever a Nebraska-based fleet owner files an application with the division to delete a registered apportionable vehicle from a fleet of registered apportionable vehicles because the apportionable vehicle is disabled and has been removed from service, the registered owner may, by returning the registration certificate or certificates and such other evidence of registration used by the division or, in the case of the unavailability of such certificate or certificates or such other evidence of registration, then by making an affidavit to the division of such disablement and removal from service, receive a credit for that portion of the unused registration fee deposited in the Highway Trust Fund based upon the number of unexpired months remaining in the registration year. No credit shall be allowed for any fees paid under section 60-3,203. When such apportionable vehicle is removed from service within the same month in which it was registered, no credit shall be allowed for such month. Such credit may be applied against registration fees for new or replacement vehicles incurred within one year after cancellation of registration of the apportionable vehicle for which the credit was allowed. When any such apportionable vehicle is reregistered within the same registration year in which its registration has been canceled, the fee shall be that portion of the registration fee provided to be deposited in the Highway Trust Fund for the remainder of the registration year. The Nebraska-based fleet owner shall make a claim for a credit under this subsection within the registration period or shall be deemed to have forfeited his or her right to the credit.

(9) In case of addition to the registered fleet during the registration year, the owner engaged in operating the fleet shall pay the proportionate registration fee from the date the vehicle was placed into service or, if the vehicle was previously registered outside of Nebraska, the date the prior registration expired or the date Nebraska became the base jurisdiction for the fleet, whichever is first, for the remaining balance of the registration year. The fee for any permanent license plate issued for such addition pursuant to section 60-3,203 shall be the full fee required by such section, regardless of the number of months remaining in the license year.

(10) In lieu of registration under subsections (1) through (9) of this section, the title holder of record may apply to the division for special registration, to be known as an unladen-weight registration, for any commercial motor vehicle or combination of vehicles. Such registration shall be valid only for a period of thirty days and shall give no authority to operate the vehicle except when empty. The fee for such registration shall be twenty dollars for each vehicle, which fee shall be remitted to the State Treasurer for credit to the Highway Trust Fund. The issuance of such permits shall be governed by section 60-3,179.

(11) Any person may, in lieu of registration under subsections (1) through (9) of this section or for other jurisdictions as approved by the director, purchase a

trip permit for any nonresident truck, truck-tractor, bus, or truck or truck-tractor combination. Such permit shall be valid for a period of seventy-two hours. The fee for such permit shall be twenty-five dollars for each truck, truck-tractor, bus, or truck or truck-tractor combination. Such permit shall be available at weighing stations operated by the carrier enforcement division and at various vendor stations as determined appropriate by the carrier enforcement division. The carrier enforcement division shall act as an agent for the Division of Motor Carrier Services in collecting such fees and shall remit all such fees collected to the State Treasurer for credit to the Highway Cash Fund. Trip permits shall be obtained at the first available location whether that is a weighing station or a vendor station. The vendor stations shall be entitled to collect and retain an additional fee of ten percent of the fee collected pursuant to this subsection as reimbursement for the clerical work of issuing the permits.

Source: Laws 2005, LB 274, § 198; Laws 2008, LB756, § 15; Laws 2009, LB331, § 5.
Operative date August 30, 2009.

Cross References

Administrative Procedure Act, see section 84-920.

60-3,205 Registration certificate; disciplinary actions; director; powers; procedure.

(1)(a) The director may suspend, revoke, cancel, or refuse to issue or renew a registration certificate under the International Registration Plan Act:

(i) If the applicant or certificate holder has had his or her license issued under the International Fuel Tax Agreement Act revoked or the director refused to issue or refused to renew such license; or

(ii) If the applicant or certificate holder is in violation of sections 75-392 to 75-399.

(b) Prior to taking action under this section, the director shall notify and advise the applicant or certificate holder of the proposed action and the reasons for such action in writing, by registered or certified mail, to his or her last-known business address as shown on the application for the certificate or renewal. The notice shall also include an advisement of the procedures in subdivision (c) of this subsection.

(c) The applicant or certificate holder may, within thirty days after the date of the mailing of the notice, petition the director for a hearing to contest the proposed action. The hearing shall be commenced in accordance with the rules and regulations adopted and promulgated by the department. If a petition is filed, the director shall, within twenty days after receipt of the petition, set a hearing date at which the applicant or certificate holder may show cause why the proposed action should not be taken. The director shall give the applicant or certificate holder reasonable notice of the time and place of the hearing. If the director's decision is adverse to the applicant or certificate holder, the applicant or certificate holder may appeal the decision in accordance with the Administrative Procedure Act.

(d) Except as provided in subsections (2) and (3) of this section, the filing of the petition shall stay any action by the director until a hearing is held and a final decision and order is issued.

(e) Except as provided in subsections (2) and (3) of this section, if no petition is filed at the expiration of thirty days after the date on which the notification was mailed, the director may take the proposed action described in the notice.

(f) If, in the judgment of the director, the applicant or certificate holder has complied with or is no longer in violation of the provisions for which the director took action under this subsection, the director may reinstate the registration certificate without delay.

(2)(a) The director may suspend, revoke, cancel, or refuse to issue or renew a registration certificate under the International Registration Plan Act or a license under the International Fuel Tax Agreement Act if the applicant, licensee, or certificate holder has issued to the department a check or draft which has been returned because of insufficient funds, no funds, or a stop-payment order. The director may take such action no sooner than seven days after the written notice required in subdivision (1)(b) of this section has been provided. Any petition to contest such action filed pursuant to subdivision (1)(c) of this section shall not stay such action of the director.

(b) If the director takes an action pursuant to this subsection, the director shall reinstate the registration certificate or license without delay upon the payment of certified funds by the applicant, licensee, or certificate holder for any fees due and reasonable administrative costs, not to exceed twenty-five dollars, incurred in taking such action.

(c) The rules, regulations, and orders of the director and the department that pertain to hearings commenced in accordance with this section and that are in effect prior to March 17, 2006, shall remain in effect, unless changed or eliminated by the director or the department, except for those portions involving a stay upon the filing of a petition to contest any action taken pursuant to this subsection, in which case this subsection shall supersede those provisions.

(3) Any person who receives notice from the director of action taken pursuant to subsection (1) or (2) of this section shall, within three business days, return such registration certificate and license plates to the department as provided in this section. If any person fails to return the registration certificate and license plates to the department, the department shall notify the Nebraska State Patrol that any such person is in violation of this section.

Source: Laws 2005, LB 274, § 205; Laws 2006, LB 853, § 5; Laws 2007, LB358, § 10; Laws 2009, LB331, § 6.
Operative date August 30, 2009.

Cross References

Administrative Procedure Act, see section 84-920.
International Fuel Tax Agreement Act, see section 66-1401.

60-3,222 Payment of fee or tax; check, draft, or financial transaction returned or not honored; county treasurer; powers; notice; return of registration and license plates required; sheriff; powers.

(1) If a fee required under the Motor Vehicle Registration Act or a tax required to be paid on any motor vehicle or trailer has been paid by check, draft, or other financial transaction, including an electronic financial transaction, and the check, draft, or financial transaction has been returned or not honored because of insufficient funds, no account, a stop-payment order, or any other reason, a county treasurer may cancel or refuse to issue or renew registration under the act.

(2) The county treasurer may take the action described in subsection (1) of this section no sooner than seven days after the notice required in subsection (3) of this section has been mailed.

(3) Prior to taking action described in subsection (1) of this section, the county treasurer shall notify the applicant or registrant of the proposed action and the reasons for such action in writing, by first-class, registered, or certified mail, mailed to the applicant's or registrant's last-known address as shown on the application for registration or renewal.

(4) If the county treasurer takes action pursuant to this section, the county treasurer shall reinstate the registration without delay upon the payment of certified funds by the applicant or registrant for any fees and taxes due and reasonable administrative costs, not to exceed twenty-five dollars, incurred in taking such action.

(5) Any person who is sent a notice from the county treasurer pursuant to subsection (1) of this section shall, within ten business days after mailing of the notice, return to the county treasurer the motor vehicle registration and license plates of the vehicle or trailer regarding which the action has been taken. If the person fails to return the registration and license plates to the county treasurer, the county treasurer shall notify the sheriff of the county in which the person resides that the person is in violation of this section. The sheriff may recover the registration and license plates and return them to the county treasurer.

Source: Laws 2009, LB129, § 2.
Effective date August 30, 2009.

ARTICLE 4

MOTOR VEHICLE OPERATORS' LICENSES

(e) GENERAL PROVISIONS

Section
60-462.01. Federal regulations; adopted.
60-462.02. Legislative intent; director; department; powers and duties.

(f) PROVISIONS APPLICABLE TO ALL OPERATORS' LICENSES

60-480.01. Undercover drivers' licenses; issuance; confidential; unlawful disclosure; penalty.
60-484.02. Digital images and signatures; use; confidentiality; violation; penalty.
60-497.01. Conviction and probation records; abstract of court record; transmission to director; duties.
60-498.02. Driving under influence of alcohol; revocation of operator's license; reinstatement; procedure; eligibility for employment driving permit and ignition interlock permit.

(g) PROVISIONS APPLICABLE TO OPERATION OF MOTOR VEHICLES OTHER THAN COMMERCIAL

60-4,115. Fees; allocation; identity security surcharge.
60-4,118.06. Ignition interlock permit; issued; when; operation restrictions; violation; penalty.

(h) PROVISIONS APPLICABLE TO OPERATION OF COMMERCIAL MOTOR VEHICLES

60-4,141.01. Operation of commercial motor vehicle; restrictions; prohibited acts; violation; penalty.
60-4,147.02. Hazardous materials endorsement; USA PATRIOT Act requirements.
60-4,168.01. Out-of-service order; violation; disqualification; when.

(e) GENERAL PROVISIONS

60-462.01 Federal regulations; adopted.

For purposes of the Motor Vehicle Operator's License Act, the following federal regulations are adopted as Nebraska law as they existed on January 1, 2009:

(1) Beginning on an implementation date designated by the director, the federal requirements for interstate shipment of etiologic agents, 42 C.F.R. part 72; and

(2) The parts, subparts, and sections of Title 49 of the Code of Federal Regulations, as referenced in the Motor Vehicle Operator's License Act.

Source: Laws 2003, LB 562, § 20; Laws 2004, LB 560, § 36; Laws 2005, LB 76, § 3; Laws 2006, LB 853, § 7; Laws 2006, LB 1007, § 4; Laws 2007, LB239, § 4; Laws 2008, LB756, § 16; Laws 2009, LB331, § 7.
Operative date August 30, 2009.

60-462.02 Legislative intent; director; department; powers and duties.

It is the intent of the Legislature that the department develop, implement, and maintain processes for the issuance of operators' licenses and state identification cards designed to protect the identity of applicants for and holders of such licenses and cards and reduce identity theft, fraud, forgery, and counterfeiting to the maximum extent possible with respect to such licenses and cards. The director shall designate an implementation date for such processes which date is on or before August 1, 2009. The department shall adopt security and technology practices to enhance the enrollment, production, data storage, and credentialing system of such licenses and cards in order to maximize the integrity of the process.

Source: Laws 2008, LB911, § 2; Laws 2009, LB331, § 8.
Operative date March 6, 2009.

(f) PROVISIONS APPLICABLE TO ALL OPERATORS' LICENSES

60-480.01 Undercover drivers' licenses; issuance; confidential; unlawful disclosure; penalty.

(1)(a) Undercover drivers' licenses may be issued to federal, state, county, city, or village law enforcement agencies and shall be used only for legitimate criminal investigatory purposes. Undercover drivers' licenses may also be issued to the Nebraska State Patrol, the Game and Parks Commission, deputy state sheriffs employed by the Nebraska Brand Committee and State Fire Marshal for state law enforcement purposes, persons employed by the Tax Commissioner for state revenue enforcement purposes, the Department of Health and Human Services for the purposes of communicable disease control, the prevention and control of those communicable diseases which endanger the public health, the enforcement of drug control laws, or other investigation purposes, the Department of Agriculture for special investigative purposes, and the Insurance Fraud Prevention Division of the Department of Insurance for investigative purposes. Undercover drivers' licenses are not for personal use.

(b) The director shall prescribe a form for agencies to apply for undercover drivers' licenses. The form shall include a space for the name and signature of

the contact person for the requesting agency, a statement that the undercover drivers' licenses are to be used only for legitimate criminal investigatory purposes, and a statement that undercover drivers' licenses are not for personal use.

(2) The agency shall include the name and signature of the contact person for the agency on the form and pay the fees prescribed in section 60-4,115. If the undercover drivers' licenses will be used for the investigation of a specific event rather than for ongoing investigations, the agency shall designate on the form an estimate of the length of time the undercover drivers' licenses will be needed. The contact person in the agency shall sign the form and verify the information contained in the form.

(3) Upon receipt of a completed form, the director shall determine whether the undercover drivers' licenses will be used by an approved agency for a legitimate purpose pursuant to subsection (1) of this section. If the director determines that the undercover drivers' licenses will be used for such a purpose, he or she may issue the undercover drivers' licenses in the form and under the conditions he or she determines to be necessary. The decision of the director regarding issuance of undercover drivers' licenses is final.

(4) The Department of Motor Vehicles shall keep records pertaining to undercover drivers' licenses confidential, and such records shall not be subject to public disclosure. Any person who receives information pertaining to undercover drivers' licenses in the course of his or her employment and who discloses any such information to any unauthorized individual shall be guilty of a Class III misdemeanor.

(5) The contact person shall return the undercover drivers' licenses to the Department of Motor Vehicles if:

(a) The undercover drivers' licenses expire and are not renewed;

(b) The purpose for which the undercover drivers' licenses were issued has been completed or terminated;

(c) The persons for whom the undercover drivers' licenses were issued cease to be employees of the agency; or

(d) The director requests their return.

Source: Laws 1997, LB 256, § 6; Laws 2007, LB296, § 228; Laws 2009, LB28, § 2; Laws 2009, LB331, § 9.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB28, section 2, with LB331, section 9, to reflect all amendments.

Note: Changes made by LB28 became effective August 30, 2009. Changes made by LB331 became operative August 30, 2009.

60-484.02 Digital images and signatures; use; confidentiality; violation; penalty.

(1) Each applicant for an operator's license or state identification card shall have his or her digital image taken. Digital images shall be preserved for use as prescribed in sections 60-4,119, 60-4,151, and 60-4,180. The images shall be used for issuing operators' licenses and state identification cards. The images may be retrieved only by the Department of Motor Vehicles for issuing renewal, duplicate, and replacement operators' licenses and state identification cards and may not be otherwise released except in accordance with subsection (3) of this section.

(2) Upon application for an operator's license or state identification card, each applicant shall provide his or her signature in a form prescribed by the department. Digital signatures shall be preserved for use on original, renewal, duplicate, and replacement operators' licenses and state identification cards and may not be otherwise released except in accordance with subsection (3) of this section.

(3) No officer, employee, agent, or contractor of the department or a law enforcement officer shall release a digital image or a digital signature except to a federal, state, or local law enforcement agency, a certified law enforcement officer employed in an investigative position by a state or federal agency, or a driver licensing agency of another state for the purpose of carrying out the functions of the agency or assisting another agency in carrying out its functions upon the verification of the identity of the person requesting the release of the information and the verification of the purpose of the requester in requesting the release. Any officer, employee, agent, or contractor of the department or law enforcement officer that knowingly discloses or knowingly permits disclosure of a digital image or digital signature in violation of this section shall be guilty of a Class I misdemeanor.

Source: Laws 2001, LB 574, § 4; Laws 2004, LB 560, § 38; Laws 2005, LB 1, § 3; Laws 2009, LB372, § 1.
Effective date August 30, 2009.

60-497.01 Conviction and probation records; abstract of court record; transmission to director; duties.

(1) An abstract of the court record of every case in which a person is convicted of violating any provision of the Motor Vehicle Operator's License Act, the Motor Vehicle Safety Responsibility Act, the Nebraska Rules of the Road, or section 28-524, as from time to time amended by the Legislature, or any traffic regulations in city or village ordinances shall be transmitted within thirty days of sentencing or other disposition by the court to the director. Any abstract received by the director more than thirty days after the date of sentencing or other disposition shall be reported by the director to the State Court Administrator.

(2) Any person violating section 28-306, 60-696, 60-697, 60-6,196, 60-6,197, 60-6,213, or 60-6,214 who is placed on probation shall be assessed the same points under section 60-4,182 as if such person were not placed on probation unless a court has ordered that such person must obtain an ignition interlock permit in order to operate a motor vehicle with an ignition interlock device pursuant to section 60-6,211.05 and sufficient evidence is presented to the department that such a device is installed. For any other violation, the director shall not assess such person with any points under section 60-4,182 for such violation when the person is placed on probation until the director is advised by the court that such person previously placed on probation has violated the terms of his or her probation and such probation has been revoked. Upon receiving notice of revocation of probation, the director shall assess to such person the points which such person would have been assessed had the person not been placed on probation. When a person fails to successfully complete probation, the court shall notify the director immediately.

Source: Laws 1931, c. 110, § 58, p. 326; Laws 1941, c. 124, § 9, p. 476; C.S.Supp.,1941, § 39-1189; R.S.1943, § 39-794; Laws 1953, c.

219, § 7, p. 771; Laws 1957, c. 164, § 1, p. 579; Laws 1957, c. 366, § 15, p. 1255; Laws 1957, c. 165, § 1, p. 582; Laws 1972, LB 1058, § 2; Laws 1972, LB 1032, § 247; Laws 1973, LB 317, § 1; Laws 1973, LB 226, § 25; R.S.Supp.,1973, § 39-794; Laws 1975, LB 379, § 1; Laws 1987, LB 79, § 1; Laws 1991, LB 420, § 2; R.S.Supp.,1992, § 39-669.22; Laws 1993, LB 370, § 75; Laws 1993, LB 575, § 15; Laws 1993, LB 564, § 13; Laws 2001, LB 38, § 18; Laws 2006, LB 925, § 2; Laws 2008, LB736, § 2; Laws 2009, LB63, § 32.
Effective date May 28, 2009.

Cross References

Motor Vehicle Safety Responsibility Act, see section 60-569.
Nebraska Rules of the Road, see section 60-601.

60-498.02 Driving under influence of alcohol; revocation of operator's license; reinstatement; procedure; eligibility for employment driving permit and ignition interlock permit.

(1) At the expiration of thirty days after the date of arrest as described in subsection (2) of section 60-6,197 or if after a hearing pursuant to section 60-498.01 the director finds that the operator's license should be revoked, the director shall (a) revoke the operator's license of a person arrested for refusal to submit to a chemical test of blood, breath, or urine as required by section 60-6,197 for a period of one year and (b) revoke the operator's license of a person who submits to a chemical test pursuant to such section which discloses the presence of a concentration of alcohol specified in section 60-6,196 for a period of ninety days unless the person's driving record abstract maintained in the department's computerized records shows one or more prior administrative license revocations on which final orders have been issued during the immediately preceding twelve-year period at the time the order of revocation is issued, in which case the period of revocation shall be one year. Except as otherwise provided in section 60-6,211.05, a new operator's license shall not be issued to such person until the period of revocation has elapsed. If the person subject to the revocation is a nonresident of this state, the director shall revoke only the nonresident's operating privilege as defined in section 60-474 of such person and shall immediately forward the operator's license and a statement of the order of revocation to the person's state of residence.

(2)(a) At the expiration of thirty days after an order of revocation is entered under subdivision (1)(b) of this section, any person whose operator's license has been administratively revoked for a period of ninety days for submitting to a chemical test pursuant to section 60-6,197 which disclosed the presence of a concentration of alcohol in violation of section 60-6,196 may make application to the director for issuance of an employment driving permit pursuant to section 60-4,130.

(b) At the expiration of sixty days after an order of revocation is entered under subdivision (1)(a) of this section, any person whose operator's license has been administratively revoked for refusal to submit to a chemical test pursuant to section 60-6,197, may make application to the director for issuance of an employment driving permit pursuant to section 60-4,130 unless the person's driving record abstract maintained in the department's computerized records shows one or more prior administrative license revocations on which final

orders have been issued during the immediately preceding twelve-year period at the time the order of revocation is issued.

(3)(a) At the expiration of thirty days after an order of administrative license revocation for ninety days is entered under subdivision (1)(b) of this section, any person who submitted to a chemical test pursuant to section 60-6,197 which disclosed the presence of a concentration of alcohol in violation of section 60-6,196 is eligible for an order to allow application for an ignition interlock permit to operate a motor vehicle equipped with an ignition interlock device pursuant to section 60-6,211.05 upon presentation of sufficient evidence to the department that such a device is installed.

(b) At the expiration of sixty days after an order of administrative license revocation for one year is entered under subdivision (1)(b) of this section, any person who submitted to a chemical test pursuant to section 60-6,197 which disclosed the presence of a concentration of alcohol in violation of section 60-6,196 is eligible for an order to allow application for an ignition interlock permit in order to operate a motor vehicle equipped with an ignition interlock device pursuant to section 60-6,211.05 upon presentation of sufficient evidence to the department that such a device is installed.

(c) At the expiration of sixty days after an order of administrative license revocation is entered under subdivision (1)(a) of this section, any person who refused to submit to a chemical test pursuant to section 60-6,197 is eligible for an order to allow application for an ignition interlock permit in order to operate a motor vehicle equipped with an ignition interlock device pursuant to section 60-6,211.05 upon presentation of sufficient evidence to the department that such a device is installed, unless the person's driving record abstract maintained in the department's computerized records shows one or more prior administrative license revocations on which final orders have been issued during the immediately preceding twelve-year period at the time the order of revocation is issued.

(d) A person operating a motor vehicle pursuant to this subsection shall only operate the motor vehicle to and from his or her residence, his or her place of employment, his or her school, an alcohol treatment program, required visits with his or her probation officer, or an ignition interlock service facility. Such permit shall indicate for which purposes the permit may be used. All permits issued pursuant to this subsection shall indicate that the permit is not valid for the operation of any commercial motor vehicle.

(4) A person may have his or her eligibility for a license reinstated upon payment of a reinstatement fee as required by section 60-694.01.

(5)(a) A person whose operator's license is subject to revocation pursuant to subsection (3) of section 60-498.01 shall have all proceedings dismissed or his or her operator's license immediately reinstated without payment of the reinstatement fee upon receipt of suitable evidence by the director that:

(i) Within the thirty-day period following the date of arrest, the prosecuting attorney responsible for the matter declined to file a complaint alleging a violation of section 60-6,196 and notified the director by first-class mail or facsimile transmission of such decision and the director received such notice within such period or the notice was postmarked within such period; or

(ii) The defendant, after trial, was found not guilty of violating section 60-6,196 or such charge was dismissed on the merits by the court.

(b) The director shall adopt and promulgate rules and regulations establishing standards for the presentation of suitable evidence of compliance with subdivision (a) of this subsection.

(c) If a charge is filed for a violation of section 60-6,196 pursuant to an arrest for which all proceedings were dismissed under this subsection, the prosecuting attorney shall notify the director by first-class mail or facsimile transmission of the filing of such charge and the director may reinstate an administrative license revocation under this section as of the date that the director receives notification of the filing of the charge, except that a revocation shall not be reinstated if it was dismissed pursuant to section 60-498.01.

Source: Laws 1972, LB 1095, § 6; C.S.Supp.,1972, § 39-727.17; Laws 1974, LB 679, § 3; Laws 1982, LB 568, § 7; Laws 1986, LB 153, § 8; Laws 1988, LB 377, § 3; Laws 1992, LB 291, § 11; R.S.Supp.,1992, § 39-669.16; Laws 1993, LB 370, § 301; Laws 1993, LB 491, § 1; Laws 1993, LB 564, § 12; Laws 1998, LB 309, § 16; Laws 2001, LB 38, § 52; R.S.Supp.,2002, § 60-6,206; Laws 2003, LB 209, § 5; Laws 2004, LB 208, § 6; Laws 2008, LB736, § 3; Laws 2009, LB497, § 2.
Effective date May 14, 2009.

(g) PROVISIONS APPLICABLE TO OPERATION OF MOTOR VEHICLES OTHER THAN COMMERCIAL

60-4,115 Fees; allocation; identity security surcharge.

(1) Fees for operators' licenses and state identification cards shall be collected and distributed according to the table in subsection (2) of this section, except for the ignition interlock permit and associated fees as outlined in subsection (4) of this section. County officials shall remit the county portion of the fees collected to the county treasurer for placement in the county general fund. All other fees collected shall be remitted to the State Treasurer for credit to the appropriate fund. The State Treasurer shall transfer an amount equal to three dollars and fifty cents times the number of original or renewal Class M licenses issued pursuant to section 60-4,127 during the previous year from the Department of Motor Vehicles Cash Fund to the Motorcycle Safety Education Fund.

(2) The fees provided in this subsection in the following dollar amounts apply for operators' licenses and state identification cards.

Document	Total Fee	County General Fund	Department of Motor Vehicles Cash Fund	State General Fund
State identification card:				
Valid for 1 year or less	5.00	2.75	1.25	1.00
Valid for more than 1 year but not more than 2 years	10.00	2.75	4.00	3.25
Valid for more than 2 years but not more than 3 years	14.00	2.75	5.25	6.00
Valid for more than 3 years but not more than 4 years	19.00	2.75	8.00	8.25
Valid for more than 4 years for person under 21	24.00	2.75	10.25	11.00
Valid for 5 years	24.00	3.50	10.25	10.25
Duplicate or replacement	11.00	2.75	6.00	2.25

Document	Total Fee	County General Fund	Department of Motor Vehicles Cash Fund	State General Fund
Class O or M operator's license:				
Valid for 1 year or less	5.00	2.75	1.25	1.00
Valid for more than 1 year but not more than 2 years	10.00	2.75	4.00	3.25
Valid for more than 2 years but not more than 3 years	14.00	2.75	5.25	6.00
Valid for more than 3 years but not more than 4 years	19.00	2.75	8.00	8.25
Valid for 5 years	24.00	3.50	10.25	10.25
Bioptic or telescopic lens restriction:				
Valid for 1 year or less	5.00	0	5.00	0
Valid for more than 1 year but not more than 2 years	10.00	2.75	4.00	3.25
Duplicate or replacement	11.00	2.75	6.00	2.25
Add, change, or remove class, endorsement, or restriction	5.00	0	5.00	0
Provisional operator's permit:				
Original	15.00	2.75	12.25	0
Bioptic or telescopic lens restriction:				
Valid for 1 year or less	5.00	0	5.00	0
Valid for more than 1 year but not more than 2 years	15.00	2.75	12.25	0
Duplicate or replacement	11.00	2.75	6.00	2.25
Add, change, or remove class, endorsement, or restriction	5.00	0	5.00	0
LPD-learner's permit:				
Original	8.00	.25	5.00	2.75
Duplicate or replacement	11.00	2.75	6.00	2.25
Add, change, or remove class, endorsement, or restriction	5.00	0	5.00	0
LPE-learner's permit:				
Original	8.00	.25	5.00	2.75
Duplicate or replacement	11.00	2.75	6.00	2.25
Add, change, or remove class, endorsement, or restriction	5.00	0	5.00	0
School permit:				
Original	8.00	.25	5.00	2.75
Duplicate or replacement	11.00	2.75	6.00	2.25
Add, change, or remove class, endorsement, or restriction	5.00	0	5.00	0
Farm permit:				
Original or renewal	5.00	.25	0	4.75
Duplicate or replacement	5.00	.25	0	4.75
Temporary	5.00	.25	0	4.75
Add, change, or remove class, endorsement, or restriction	5.00	0	5.00	0
Driving permits:				
Employment	45.00	0	5.00	40.00
Medical hardship	45.00	0	5.00	40.00
Duplicate or replacement	10.00	.25	5.00	4.75
Add, change, or remove class, endorsement, or restriction	5.00	0	5.00	0
Commercial driver's license:				
Valid for 1 year or less	11.00	1.75	5.00	4.25
Valid for more than 1 year but not more than 2 years	22.00	1.75	5.00	15.25
Valid for more than 2 years but not more than 3 years	33.00	1.75	5.00	26.25

Document	Total Fee	County General Fund	Department of Motor Vehicles Cash Fund	State General Fund
Valid for more than 3 years but not more than 4 years	44.00	1.75	5.00	37.25
Valid for 5 years	55.00	1.75	5.00	48.25
Bioptic or telescopic lens restriction:				
Valid for one year or less	11.00	1.75	5.00	4.25
Valid for more than 1 year but not more than 2 years	22.00	1.75	5.00	15.25
Duplicate or replacement	11.00	2.75	6.00	2.25
Add, change, or remove class, endorsement, or restriction	10.00	1.75	5.00	3.25
LPC-learner's permit:				
Original or renewal	10.00	.25	5.00	4.75
Duplicate or replacement	10.00	.25	5.00	4.75
Add, change, or remove class, endorsement, or restriction	10.00	.25	5.00	4.75
Seasonal permit:				
Original or renewal	10.00	.25	5.00	4.75
Duplicate or replacement	10.00	.25	5.00	4.75
Add, change, or remove class, endorsement, or restriction	10.00	.25	5.00	4.75
School bus permit:				
Original or renewal	5.00	0	5.00	0
Duplicate or replacement	5.00	0	5.00	0
Add, change, or remove class, endorsement, or restriction	5.00	0	5.00	0

(3) If the department issues an operator's license or a state identification card, the department shall remit the county portion of the fees to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund.

(4)(a) The fee for an ignition interlock permit shall be forty-five dollars. Five dollars of the fee shall be remitted to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund. Forty dollars of the fee shall be remitted to the State Treasurer for credit to the Probation Cash Fund.

(b) The fee for a duplicate or replacement ignition interlock permit shall be ten dollars. Twenty-five cents of the fee shall be remitted to the county treasurer for credit to the county general fund. Five dollars of the fee shall be remitted to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund. Four dollars and seventy-five cents of the fee shall be remitted to the State Treasurer for credit to the Probation Cash Fund.

(c) The fee for adding, changing, or removing a class, endorsement, or restriction on an ignition interlock permit shall be five dollars. The fee shall be remitted to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund.

(5) This subsection applies beginning on the implementation date designated by the director pursuant to section 60-462.02. The department and its agents may collect an identity security surcharge to cover the cost of security and technology practices used to protect the identity of applicants for and holders of operators' licenses and state identification cards and to reduce identity theft, fraud, and forgery and counterfeiting of such licenses and cards to the maximum extent possible. The surcharge shall be in addition to all other required fees for operators' licenses and state identification cards. The amount of the

surcharge shall be determined by the department. The surcharge shall not exceed eight dollars. The surcharge shall be remitted to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund.

Source: Laws 1929, c. 148, § 7, p. 515; C.S.1929, § 60-407; Laws 1931, c. 101, § 2, p. 272; Laws 1937, c. 148, § 17, p. 515; Laws 1941, c. 128, § 1, p. 483; Laws 1941, c. 176, § 1, p. 687; C.S.Supp.,1941, § 60-407; R.S.1943, § 60-409; Laws 1945, c. 141, § 6, p. 452; Laws 1947, c. 207, § 3, p. 677; Laws 1949, c. 181, § 3, p. 525; Laws 1951, c. 195, § 12, p. 742; Laws 1955, c. 242, § 1, p. 757; Laws 1957, c. 366, § 39, p. 1273; Laws 1961, c. 315, § 7, p. 1004; Laws 1961, c. 316, § 7, p. 1014; Laws 1963, c. 359, § 2, p. 1151; Laws 1967, c. 234, § 3, p. 624; Laws 1976, LB 329, § 2; Laws 1977, LB 90, § 5; Laws 1981, LB 207, § 1; Laws 1985, Second Spec. Sess., LB 5, § 1; R.S.1943, (1988), § 60-409; Laws 1989, LB 285, § 65; Laws 1992, LB 319, § 4; Laws 1993, LB 491, § 12; Laws 1995, LB 467, § 11; Laws 1998, LB 309, § 5; Laws 1998, LB 320, § 5; Laws 1999, LB 704, § 17; Laws 2001, LB 574, § 11; Laws 2005, LB 1, § 5; Laws 2006, LB 1008, § 2; Laws 2008, LB736, § 4; Laws 2008, LB911, § 12; Laws 2009, LB497, § 3. Effective date May 14, 2009.

60-4,118.06 Ignition interlock permit; issued; when; operation restrictions; violation; penalty.

(1) Upon receipt by the director of (a) a certified copy of a court order issued pursuant to section 60-6,211.05, a certified copy of an order for installation of an ignition interlock device and issuance of an ignition interlock permit pursuant to subdivision (1), (2), or (3) of section 60-6,197.03, or a copy of an order from the Board of Pardons pursuant to section 83-1,127.02, (b) sufficient evidence that the person has surrendered his or her operator's license to the Department of Motor Vehicles and installed an approved ignition interlock device in accordance with such order, and (c) payment of the fee provided in section 60-4,115, such person may apply for an ignition interlock permit. A person subject to administrative license revocation under section 60-498.02 shall be eligible for an ignition interlock permit as provided in such section. The director shall issue an ignition interlock permit for the operation of a motor vehicle equipped with an ignition interlock device. Any person issued an ignition interlock permit pursuant to a court order shall only operate the motor vehicle equipped with an ignition interlock device to and from his or her residence, his or her place of employment, his or her school, an alcohol treatment program, required visits with his or her probation officer, or an ignition interlock service facility. The permit shall indicate for which purposes the permit may be used. All permits issued pursuant to this subsection shall indicate that the permit is not valid for the operation of any commercial motor vehicle.

(2) Upon expiration of the revocation period or upon expiration of an order issued by the Board of Pardons pursuant to section 83-1,127.02, a person may apply to the department in writing for issuance of an operator's license. Regardless of whether the license surrendered by such person under subsection (1) of this section has expired, the person shall apply for a new operator's license pursuant to the Motor Vehicle Operator's License Act.

(3) A person who operates a motor vehicle in violation of the purposes for operation indicated on the ignition interlock permit shall be guilty of a Class II misdemeanor, shall have his or her ignition interlock permit revoked, and shall serve the balance of any revocation period without the privilege to operate a motor vehicle using an ignition interlock device.

Source: Laws 2001, LB 38, § 32; Laws 2003, LB 209, § 9; Laws 2008, LB736, § 5; Laws 2009, LB497, § 4.
Effective date May 14, 2009.

(h) PROVISIONS APPLICABLE TO OPERATION OF COMMERCIAL MOTOR VEHICLES

60-4,141.01 Operation of commercial motor vehicle; restrictions; prohibited acts; violation; penalty.

(1) No person shall operate a commercial motor vehicle upon the highways of this state while his or her commercial driver's license or privilege to operate a commercial motor vehicle is suspended, revoked, or canceled, while subject to a disqualification or an out-of-service order, or while there is an out-of-service order in effect for the commercial motor vehicle being operated or for the motor carrier operation.

(2) No person shall operate a commercial motor vehicle transporting hazardous materials upon the highways of this state while his or her commercial driver's license or privilege to operate a commercial motor vehicle is suspended, revoked, or canceled, while subject to a disqualification or an out-of-service order, or while there is an out-of-service order in effect for the commercial motor vehicle being operated or for the motor carrier operation.

(3) No person shall operate a commercial motor vehicle transporting sixteen or more passengers including the driver upon the highways of this state while his or her commercial driver's license or privilege to operate a commercial motor vehicle is suspended, revoked, or canceled, while subject to a disqualification or an out-of-service order, or while there is an out-of-service order in effect for the commercial motor vehicle being operated or for the motor carrier operation.

(4) No person shall operate a commercial motor vehicle upon the highways of this state while he or she is disqualified under section 60-4,168.

(5) Any person operating a commercial motor vehicle in violation of subsection (1), (2), (3), or (4) of this section shall (a) for a first such offense, be guilty of a Class II misdemeanor, and the court shall, as a part of the judgment of conviction, order such person not to operate any commercial motor vehicle for any purpose for a period of one year from the date ordered by the court and also order the commercial driver's license of such person to be revoked for a like period and (b) for each subsequent such offense, be guilty of a Class II misdemeanor, and the court shall, as a part of the judgment of conviction, order such person not to operate any commercial motor vehicle for any purpose for a period of two years from the date ordered by the court and also order the commercial driver's license of such person to be revoked for a like period. Such orders of the court shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked, whichever is later.

(6) For purposes of this section, out-of-service order has the same meaning as in section 75-362.

Source: Laws 1990, LB 980, § 16; Laws 2001, LB 38, § 36; Laws 2003, LB 562, § 12; Laws 2009, LB204, § 1.
Effective date August 30, 2009.

60-4,147.02 Hazardous materials endorsement; USA PATRIOT Act requirements.

No endorsement authorizing the driver to operate a commercial motor vehicle transporting hazardous materials shall be issued, renewed, or transferred by the Department of Motor Vehicles unless the endorsement is issued, renewed, or transferred in conformance with the requirements of section 1012 of the federal Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, USA PATRIOT Act, 49 U.S.C. 5103a, including all amendments and federal rules and regulations adopted and promulgated pursuant thereto as of January 1, 2009, for the issuance of licenses to operate commercial motor vehicles transporting hazardous materials.

Source: Laws 2005, LB 76, § 17; Laws 2006, LB 853, § 12; Laws 2007, LB239, § 5; Laws 2008, LB756, § 17; Laws 2009, LB331, § 10.
Operative date August 30, 2009.

60-4,168.01 Out-of-service order; violation; disqualification; when.

(1) Except as provided in subsection (2) of this section, a person who is convicted of violating an out-of-service order while operating a commercial motor vehicle which is transporting nonhazardous materials shall be subject to disqualification as follows:

(a) A person shall be disqualified from operating a commercial motor vehicle for a period of at least one hundred eighty days but no more than one year upon a court conviction for violating an out-of-service order;

(b) A person shall be disqualified from operating a commercial motor vehicle for a period of at least two years but no more than five years upon a second court conviction for violating an out-of-service order, which arises out of a separate incident, during any ten-year period; and

(c) A person shall be disqualified from operating a commercial motor vehicle for a period of at least three years but no more than five years upon a third or subsequent court conviction for violating an out-of-service order, which arises out of a separate incident, during any ten-year period.

(2) A person who is convicted of violating an out-of-service order while operating a commercial motor vehicle which is transporting hazardous materials required to be placarded pursuant to section 75-364 or while operating a commercial motor vehicle designed or used to transport sixteen or more passengers, including the driver, shall be subject to disqualification as follows:

(a) A person shall be disqualified from operating a commercial motor vehicle for a period of at least one hundred eighty days but no more than two years upon conviction for violating an out-of-service order; and

(b) A person shall be disqualified from operating a commercial motor vehicle for a period of at least three years but no more than five years upon a second or

subsequent conviction for violating an out-of-service order, which arises out of a separate incident, during any ten-year period.

(3) For purposes of this section, out-of-service order has the same meaning as in section 75-362.

Source: Laws 1996, LB 323, § 5; Laws 2003, LB 562, § 17; Laws 2009, LB204, § 2.
Effective date August 30, 2009.

ARTICLE 6

NEBRASKA RULES OF THE ROAD

(a) GENERAL PROVISIONS

(a) GENERAL PROVISIONS

60-601 Rules, how cited.

Sections 60-601 to 60-6,378 shall be known and may be cited as the Nebraska Rules of the Road.

Source: Laws 1973, LB 45, § 122; Laws 1989, LB 285, § 9; Laws 1992, LB 872, § 5; Laws 1992, LB 291, § 14; R.S.Supp.,1992, § 39-6,122; Laws 1993, LB 370, § 97; Laws 1993, LB 564, § 14;

Laws 1996, LB 901, § 3; Laws 1996, LB 1104, § 2; Laws 1997, LB 91, § 1; Laws 1998, LB 309, § 12; Laws 1999, LB 585, § 3; Laws 2001, LB 38, § 42; Laws 2002, LB 1105, § 448; Laws 2002, LB 1303, § 10; Laws 2004, LB 208, § 8; Laws 2006, LB 853, § 14; Laws 2006, LB 925, § 4; Laws 2008, LB736, § 6; Laws 2008, LB756, § 18; Laws 2009, LB92, § 1.
Effective date August 30, 2009.

60-658 School bus, defined.

School bus shall mean any motor vehicle which complies with the general design, equipment, and color requirements adopted and promulgated pursuant to subdivision (13) of section 79-318 and which is used to transport students to or from school or in connection with school activities but shall not include buses operated by common carriers in urban transportation of school students.

Source: Laws 1993, LB 370, § 154; Laws 1993, LB 575, § 5; Laws 2009, LB549, § 3.
Effective date August 30, 2009.

(c) PENALTY AND ENFORCEMENT PROVISIONS

60-682.01 Speed limit violations; fines.

(1) Any person who operates a vehicle in violation of any maximum speed limit established for any highway or freeway is guilty of a traffic infraction and upon conviction shall be fined:

(a) Ten dollars for traveling one to five miles per hour over the authorized speed limit;

(b) Twenty-five dollars for traveling over five miles per hour but not over ten miles per hour over the authorized speed limit;

(c) Seventy-five dollars for traveling over ten miles per hour but not over fifteen miles per hour over the authorized speed limit;

(d) One hundred twenty-five dollars for traveling over fifteen miles per hour but not over twenty miles per hour over the authorized speed limit;

(e) Two hundred dollars for traveling over twenty miles per hour but not over thirty-five miles per hour over the authorized speed limit; and

(f) Three hundred dollars for traveling over thirty-five miles per hour over the authorized speed limit.

(2) The fines prescribed in subsection (1) of this section shall be doubled if the violation occurs within a maintenance, repair, or construction zone established pursuant to section 60-6,188. For purposes of this subsection, maintenance, repair, or construction zone means (a)(i) the portion of a highway identified by posted or moving signs as being under maintenance, repair, or construction or (ii) the portion of a highway identified by maintenance, repair, or construction zone speed limit signs displayed pursuant to section 60-6,188 and (b) within such portion of a highway where road construction workers are present. The maintenance, repair, or construction zone starts at the location of the first sign identifying the maintenance, repair, or construction zone and continues until a posted or moving sign indicates that the maintenance, repair, or construction zone has ended.

(3) The fines prescribed in subsection (1) of this section shall be doubled if the violation occurs within a school crossing zone as defined in section 60-658.01.

Source: Laws 1996, LB 901, § 11; Laws 1997, LB 91, § 4; Laws 2008, LB621, § 2; Laws 2009, LB111, § 1.
Effective date April 23, 2009.

(i) PEDESTRIANS

60-6,157 Pedestrians soliciting rides or business; prohibited acts; ordinance authorizing solicitation of contributions.

(1) Except as otherwise provided in subsection (3) of this section, no person shall stand in a roadway for the purpose of soliciting a ride, employment, contributions, or business from the occupant of any vehicle.

(2) No person shall stand on or in proximity to a highway for the purposes of soliciting the watching or guarding of any vehicle while parked or about to be parked on a highway.

(3)(a) Any municipality may, by ordinance, allow pedestrians over the age of eighteen to enter one or more roadways, except roadways that are part of the state highway system, at specified times and locations and approach vehicles when stopped by traffic control devices or traffic control signals for the purpose of soliciting contributions which are to be devoted to charitable or community betterment purposes.

(b) Any ordinance enacted pursuant to this subsection shall be a general ordinance which shall not exclude or give preference to any individual or the members of any organization, association, or group. Any ordinance whose terms or provisions do not strictly comply with this subsection is void.

Source: Laws 1973, LB 45, § 47; R.S.1943, (1988), § 39-647; Laws 1993, LB 370, § 253; Laws 2009, LB278, § 1.
Effective date August 30, 2009.

(o) ALCOHOL AND DRUG VIOLATIONS

60-6,197.01 Driving while license has been revoked; driving under influence of alcoholic liquor or drug; second and subsequent violations; restrictions on motor vehicles; additional restrictions authorized.

(1) Upon conviction for a violation described in section 60-6,197.06 or a second or subsequent violation of section 60-6,196 or 60-6,197, the court shall impose either of the following restrictions:

(a)(i) The court shall order all motor vehicles owned by the person so convicted immobilized at the owner's expense for a period of time not less than five days and not more than eight months and shall notify the Department of Motor Vehicles of the period of immobilization. Any immobilized motor vehicle shall be released to the holder of a bona fide lien on the motor vehicle executed prior to such immobilization when possession of the motor vehicle is requested as provided by law by such lienholder for purposes of foreclosing and satisfying such lien. If a person tows and stores a motor vehicle pursuant to this subdivision at the direction of a peace officer or the court and has a lien upon such motor vehicle while it is in his or her possession for reasonable towing

and storage charges, the person towing the vehicle has the right to retain such motor vehicle until such lien is paid. For purposes of this subdivision, immobilized or immobilization means revocation or suspension, at the discretion of the court, of the registration of such motor vehicle or motor vehicles, including the license plates; and

(ii)(A) Any immobilized motor vehicle shall be released by the court without any legal or physical restraints to any registered owner who is not the registered owner convicted of a second or subsequent violation of section 60-6,196 or 60-6,197 if an affidavit is submitted to the court by such registered owner stating that the affiant is employed, that the motor vehicle subject to immobilization is necessary to continue that employment, that such employment is necessary for the well-being of the affiant's dependent children or parents, that the affiant will not authorize the use of the motor vehicle by any person known by the affiant to have been convicted of a second or subsequent violation of section 60-6,196 or 60-6,197, that affiant will immediately report to a local law enforcement agency any unauthorized use of the motor vehicle by any person known by the affiant to have been convicted of a second or subsequent conviction of section 60-6,196 or 60-6,197, and that failure to release the motor vehicle would cause undue hardship to the affiant.

(B) A registered owner who executes an affidavit pursuant to subdivision (1)(a)(ii)(A) of this section which is acted upon by the court and who fails to immediately report an unauthorized use of the motor vehicle which is the subject of the affidavit is guilty of a Class IV misdemeanor and may not file any additional affidavits pursuant to subdivision (1)(a)(ii)(A) of this section.

(C) The department shall adopt and promulgate rules and regulations to implement the provisions of subdivision (1)(a) of this section; or

(b) As an alternative to subdivision (1)(a) of this section, the court shall order the convicted person, in order to operate a motor vehicle, to obtain an ignition interlock permit and install an ignition interlock device on each motor vehicle owned or operated by the convicted person if he or she was sentenced to an operator's license revocation of at least one year. No ignition interlock permit may be issued until sufficient evidence is presented to the department that an ignition interlock device is installed on each vehicle and that the applicant is eligible for use of an ignition interlock device. The installation of an ignition interlock device shall be for a period not less than six months.

(2) In addition to the restrictions required by subdivision (1)(b) of this section, the court may require a person convicted of a second or subsequent violation of section 60-6,196 or 60-6,197 to use a continuous alcohol monitoring device and abstain from alcohol use for a period of time not to exceed the maximum term of license revocation ordered by the court. A continuous alcohol monitoring device shall not be ordered for a person convicted of a second or subsequent violation unless the installation of an ignition interlock device is also required.

Source: Laws 1999, LB 585, § 7; Laws 2001, LB 38, § 49; Laws 2006, LB 925, § 10; Laws 2008, LB736, § 7; Laws 2009, LB497, § 5. Effective date May 14, 2009.

60-6,197.02 Driving under influence of alcoholic liquor or drugs; implied consent to submit to chemical test; terms, defined; prior convictions; use; sentencing provisions; when applicable.

(1) A violation of section 60-6,196 or 60-6,197 shall be punished as provided in section 60-6,197.03. For purposes of sentencing under section 60-6,197.03:

(a) Prior conviction means a conviction for a violation committed within the twelve-year period prior to the offense for which the sentence is being imposed as follows:

(i) For a violation of section 60-6,196:

(A) Any conviction for a violation of section 60-6,196;

(B) Any conviction for a violation of a city or village ordinance enacted in conformance with section 60-6,196;

(C) Any conviction under a law of another state if, at the time of the conviction under the law of such other state, the offense for which the person was convicted would have been a violation of section 60-6,196; or

(D) Any conviction for a violation of section 60-6,198; or

(ii) For a violation of section 60-6,197:

(A) Any conviction for a violation of section 60-6,197;

(B) Any conviction for a violation of a city or village ordinance enacted in conformance with section 60-6,197; or

(C) Any conviction under a law of another state if, at the time of the conviction under the law of such other state, the offense for which the person was convicted would have been a violation of section 60-6,197;

(b) Prior conviction includes any conviction under section 60-6,196, 60-6,197, or 60-6,198, or any city or village ordinance enacted in conformance with any of such sections, as such sections or city or village ordinances existed at the time of such conviction regardless of subsequent amendments to any of such sections or city or village ordinances; and

(c) Twelve-year period means the period computed from the date of the prior offense to the date of the offense which resulted in the conviction for which the sentence is being imposed.

(2) In any case charging a violation of section 60-6,196 or 60-6,197, the prosecutor or investigating agency shall use due diligence to obtain the person's driving record from the Department of Motor Vehicles and the person's driving record from other states where he or she is known to have resided within the last twelve years. The prosecutor shall certify to the court, prior to sentencing, that such action has been taken. The prosecutor shall present as evidence for purposes of sentence enhancement a court-certified copy or an authenticated copy of a prior conviction in another state. The court-certified or authenticated copy shall be prima facie evidence of such prior conviction.

(3) For each conviction for a violation of section 60-6,196 or 60-6,197, the court shall, as part of the judgment of conviction, make a finding on the record as to the number of the convicted person's prior convictions. The convicted person shall be given the opportunity to review the record of his or her prior convictions, bring mitigating facts to the attention of the court prior to sentencing, and make objections on the record regarding the validity of such prior convictions.

(4) A person arrested for a violation of section 60-6,196 or 60-6,197 before May 14, 2009, but sentenced pursuant to section 60-6,197.03 for such violation

on or after May 14, 2009, shall be sentenced according to the provisions of section 60-6,197.03 in effect on the date of arrest.

Source: Laws 2004, LB 208, § 12; Laws 2005, LB 594, § 2; Laws 2009, LB497, § 6.
Effective date May 14, 2009.

60-6,197.03 Driving under influence of alcoholic liquor or drugs; implied consent to submit to chemical test; penalties.

Any person convicted of a violation of section 60-6,196 or 60-6,197 shall be punished as follows:

(1) Except as provided in subdivision (2) of this section, if such person has not had a prior conviction, such person shall be guilty of a Class W misdemeanor, and the court shall, as part of the judgment of conviction, order that the operator's license of such person be revoked or impounded for a period of six months from the date ordered by the court. If the court orders the person's operator's license impounded, the court shall also order that the person shall not operate a motor vehicle for a period of six months and shall not order the installation of an ignition interlock device or an ignition interlock permit. If the court orders the person's operator's license revoked, the revocation period shall be for six months. The revocation order shall require that the person not drive for a period of thirty days, after which the court may order that the person apply for an ignition interlock permit for the remainder of the revocation period and have an ignition interlock device installed on any motor vehicle he or she operates during the remainder of the revocation period. Such revocation or impoundment shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked.

If the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence suspension, order that the operator's license of such person be revoked for a period of sixty days from the date ordered by the court. The court may order that during the period of revocation the person apply for an ignition interlock permit and the installation of an ignition interlock device pursuant to section 60-6,211.05. Such order of probation or sentence suspension shall also include, as one of its conditions, the payment of a four-hundred-dollar fine;

(2) If such person has not had a prior conviction and, as part of the current violation, had a concentration of fifteen-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her blood or fifteen-hundredths of one gram or more by weight of alcohol per two hundred ten liters of his or her breath, such person shall be guilty of a Class W misdemeanor, and the court shall, as part of the judgment of conviction, revoke the operator's license of such person for a period of one year from the date ordered by the court. The revocation order shall require that the person not drive for a period of sixty days, after which the court may order that the person apply for an ignition interlock permit for the remainder of the revocation period and have an ignition interlock device installed on any motor vehicle he or she operates during the remainder of the revocation period. Such revocation shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked.

If the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence

suspension, order that the operator's license of such person be revoked for a period of one year from the date ordered by the court. The revocation order shall require that the person not drive for a period of forty-five days, after which the court may order that the person apply for an ignition interlock permit for the remainder of the revocation period and have an ignition interlock device installed on any motor vehicle he or she operates during the remainder of the revocation period. Such revocation shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked. Such order of probation or sentence suspension shall also include, as conditions, the payment of a five-hundred-dollar fine and either confinement in the city or county jail for two days or the imposition of not less than one hundred twenty hours of community service;

(3) Except as provided in subdivision (5) of this section, if such person has had one prior conviction, such person shall be guilty of a Class W misdemeanor, and the court shall, as part of the judgment of conviction, order that the operator's license of such person be revoked for a period of one year from the date ordered by the court. The revocation order shall require that the person not drive for a period of sixty days, after which the court may order that the person apply for an ignition interlock permit for the remainder of the revocation period and have an ignition interlock device installed on any motor vehicle he or she owns or operates during the remainder of the revocation period and shall issue an order pursuant to section 60-6,197.01. Such revocation shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked.

If the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence suspension, order that the operator's license of such person be revoked for a period of one year from the date ordered by the court. The revocation order shall require that the person not drive for a period of forty-five days, after which the court may order that during the period of revocation the person apply for an ignition interlock permit and installation of an ignition interlock device pursuant to section 60-6,211.05 and shall issue an order pursuant to section 60-6,197.01. Such order of probation or sentence suspension shall also include, as conditions, the payment of a five-hundred-dollar fine and either confinement in the city or county jail for ten days or the imposition of not less than two hundred forty hours of community service;

(4) Except as provided in subdivision (6) of this section, if such person has had two prior convictions, such person shall be guilty of a Class W misdemeanor, and the court shall, as part of the judgment of conviction, order that the operator's license of such person be revoked for a period of fifteen years from the date ordered by the court and shall issue an order pursuant to section 60-6,197.01. Such orders shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked.

If the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence suspension, order that the operator's license of such person be revoked for a period of at least two years but not more than fifteen years from the date ordered by the court. The revocation order shall require that the person not drive for a period of forty-five days, after which the court may order that during the period of revocation the person apply for an ignition interlock permit and

installation of an ignition interlock device issued pursuant to section 60-6,211.05 and shall issue an order pursuant to section 60-6,197.01. Such order of probation or sentence suspension shall also include, as conditions, the payment of a six-hundred-dollar fine and confinement in the city or county jail for thirty days;

(5) If such person has had one prior conviction and, as part of the current violation, had a concentration of fifteen-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her blood or fifteen-hundredths of one gram or more by weight of alcohol per two hundred ten liters of his or her breath or refused to submit to a test as required under section 60-6,197, such person shall be guilty of a Class I misdemeanor, and the court shall, as part of the judgment of conviction, revoke the operator's license of such person for a period of at least one year but not more than fifteen years from the date ordered by the court and shall issue an order pursuant to section 60-6,197.01. Such revocation and order shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked. The court shall also sentence such person to serve at least ninety days' imprisonment in the city or county jail or an adult correctional facility.

If the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence suspension, order that the operator's license of such person be revoked for a period of at least one year but not more than fifteen years from the date ordered by the court. The revocation order shall require that the person not drive for a period of forty-five days, after which the court may order that during the period of revocation the person apply for an ignition interlock permit and installation of an ignition interlock device issued pursuant to section 60-6,211.05 and shall issue an order pursuant to section 60-6,197.01. Such order of probation or sentence suspension shall also include, as conditions, the payment of a one-thousand-dollar fine and confinement in the city or county jail for thirty days;

(6) If such person has had two prior convictions and, as part of the current violation, had a concentration of fifteen-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her blood or fifteen-hundredths of one gram or more by weight of alcohol per two hundred ten liters of his or her breath or refused to submit to a test as required under section 60-6,197, such person shall be guilty of a Class IIIA felony, and the court shall, as part of the judgment of conviction, revoke the operator's license of such person for a period of fifteen years from the date ordered by the court and shall issue an order pursuant to section 60-6,197.01. Such revocation and order shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked. The court shall also sentence such person to serve at least one hundred eighty days' imprisonment in the city or county jail or an adult correctional facility.

If the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence suspension, order that the operator's license of such person be revoked for a period of at least five years but not more than fifteen years from the date ordered by the court. The revocation order shall require that the person not drive for a period of forty-five days, after which the court may order that during the period of revocation the person apply for an ignition interlock permit and

installation of an ignition interlock device issued pursuant to section 60-6,211.05 and shall issue an order pursuant to section 60-6,197.01. Such order of probation or sentence suspension shall also include, as conditions, the payment of a one-thousand-dollar fine and confinement in the city or county jail for sixty days;

(7) Except as provided in subdivision (8) of this section, if such person has had three prior convictions, such person shall be guilty of a Class IIIA felony, and the court shall, as part of the judgment of conviction, order that the operator's license of such person be revoked for a period of fifteen years from the date ordered by the court and shall issue an order pursuant to section 60-6,197.01. Such orders shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked. The court shall also sentence such person to serve at least one hundred eighty days' imprisonment in the city or county jail or an adult correctional facility.

If the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence suspension, order that the operator's license of such person be revoked for a period of fifteen years from the date ordered by the court. The revocation order shall require that the person not drive for a period of forty-five days, after which the court may order that during the period of revocation the person apply for an ignition interlock permit and installation of an ignition interlock device issued pursuant to section 60-6,211.05 and shall issue an order pursuant to section 60-6,197.01. Such order of probation or sentence suspension shall also include, as conditions, the payment of a one-thousand-dollar fine and confinement in the city or county jail for ninety days;

(8) If such person has had three prior convictions and, as part of the current violation, had a concentration of fifteen-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her blood or fifteen-hundredths of one gram or more by weight of alcohol per two hundred ten liters of his or her breath or refused to submit to a test as required under section 60-6,197, such person shall be guilty of a Class III felony, and the court shall, as part of the judgment of conviction, revoke the operator's license of such person for a period of fifteen years from the date ordered by the court and shall issue an order pursuant to section 60-6,197.01. Such revocation and order shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked.

If the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence suspension, order that the operator's license of such person be revoked for a period of fifteen years from the date ordered by the court. The revocation order shall require that the person not drive for a period of forty-five days, after which the court may order that during the period of revocation the person apply for an ignition interlock permit and installation of an ignition interlock device issued pursuant to section 60-6,211.05 and shall issue an order pursuant to section 60-6,197.01. Such order of probation or sentence suspension shall also include, as conditions, the payment of a one-thousand-dollar fine and confinement in the city or county jail for one hundred twenty days;

(9) Except as provided in subdivision (10) of this section, if such person has had four or more prior convictions, such person shall be guilty of a Class III

felony, and the court shall, as part of the judgment of conviction, order that the operator's license of such person be revoked for a period of fifteen years from the date ordered by the court and shall issue an order pursuant to section 60-6,197.01. Such orders shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked.

If the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence suspension, order that the operator's license of such person be revoked for a period of fifteen years from the date ordered by the court. The revocation order shall require that the person not drive for a period of forty-five days, after which the court may order that during the period of revocation the person apply for an ignition interlock permit and installation of an ignition interlock device issued pursuant to section 60-6,211.05 and shall issue an order pursuant to section 60-6,197.01. Such order of probation or sentence suspension shall also include, as conditions, the payment of a one-thousand-dollar fine and confinement in the city or county jail for one hundred eighty days; and

(10) If such person has had four or more prior convictions and, as part of the current violation, had a concentration of fifteen-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her blood or fifteen-hundredths of one gram or more by weight of alcohol per two hundred ten liters of his or her breath or refused to submit to a test as required under section 60-6,197, such person shall be guilty of a Class II felony and the court shall, as part of the judgment of conviction, revoke the operator's license of such person for a period of fifteen years from the date ordered by the court and shall issue an order pursuant to section 60-6,197.01. Such revocation and order shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked.

If the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence suspension, order that the operator's license of such person be revoked for a period of fifteen years from the date ordered by the court. The revocation order shall require that the person not drive for a period of forty-five days, after which the court may order that during the period of revocation the person apply for an ignition interlock permit and installation of an ignition interlock device issued pursuant to section 60-6,211.05 and shall issue an order pursuant to section 60-6,197.01. Such order of probation or sentence suspension shall also include, as conditions, the payment of a one-thousand-dollar fine and confinement in the city or county jail for one hundred eighty days.

Source: Laws 2004, LB 208, § 13; Laws 2005, LB 594, § 3; Laws 2006, LB 925, § 11; Laws 2007, LB578, § 4; Laws 2008, LB736, § 8; Laws 2009, LB497, § 7.
Effective date May 14, 2009.

60-6,197.05 Driving under influence of alcoholic liquor or drugs; implied consent to chemical test; revocation; effect.

Any period of revocation imposed for a violation of section 60-6,196 or 60-6,197 shall be reduced by any period imposed under section 60-498.02. Any period of revocation imposed under subdivision (1) of section 60-6,197.03 for a violation of section 60-6,196 or 60-6,197 or under subdivision (2)(a) of section

60-6,196, as such section existed prior to July 16, 2004, shall not prohibit the operation of a motor vehicle under the terms and conditions of an employment driving permit issued pursuant to subsection (2) of section 60-498.02.

Source: Laws 2004, LB 208, § 15; Laws 2009, LB497, § 8.
Effective date May 14, 2009.

60-6,197.06 Operating motor vehicle during revocation period; penalties.

(1) Unless otherwise provided by law pursuant to an ignition interlock permit, any person operating a motor vehicle on the highways or streets of this state while his or her operator's license has been revoked pursuant to section 28-306, section 60-698, subdivision (4), (5), (6), (7), (8), (9), or (10) of section 60-6,197.03, or section 60-6,198, or pursuant to subdivision (2)(c) or (2)(d) of section 60-6,196 or subdivision (4)(c) or (4)(d) of section 60-6,197 as such subdivisions existed prior to July 16, 2004, shall be guilty of a Class IV felony, and the court shall, as part of the judgment of conviction, revoke the operator's license of such person for a period of fifteen years from the date ordered by the court and shall issue an order pursuant to section 60-6,197.01. Such revocation and order shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked.

(2) If such person has had a conviction under this section or under subsection (6) of section 60-6,196 or subsection (7) of section 60-6,197, as such subsections existed prior to July 16, 2004, prior to the date of the current conviction under this section, such person shall be guilty of a Class III felony, and the court shall, as part of the judgment of conviction, revoke the operator's license of such person for a period of fifteen years from the date ordered by the court and shall issue an order pursuant to section 60-6,197.01. Such revocation and order shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked.

Source: Laws 2004, LB 208, § 16; Laws 2006, LB 925, § 12; Laws 2009, LB497, § 9.
Effective date May 14, 2009.

60-6,211.05 Ignition interlock device; continuous alcohol monitoring device and abstention from alcohol use; orders authorized; prohibited acts; violation; penalty; costs; tampering with device; hearing.

(1)(a) If an order of probation is granted under section 60-6,196 or 60-6,197, as such sections existed prior to July 16, 2004, or section 60-6,196 or 60-6,197 and sections 60-6,197.02 and 60-6,197.03, as such sections existed on or after July 16, 2004, the court may order that the defendant install an ignition interlock device of a type approved by the Director of Motor Vehicles on each motor vehicle operated by the defendant during the period of probation. Upon sufficient evidence of installation, the defendant may apply to the director for an ignition interlock permit pursuant to section 60-4,118.06. The device shall, without tampering or the intervention of another person, prevent the defendant from operating the motor vehicle when the defendant has an alcohol concentration greater than three-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her blood or three-hundredths of one gram or more by weight of alcohol per two hundred ten liters of his or her breath.

(b) If the court orders an ignition interlock permit and installation of an ignition interlock device as part of the judgment of conviction pursuant to

subdivision (1), (2), or (3) of section 60-6,197.03, the device shall be of a type approved by the director and shall be installed on each motor vehicle operated by the defendant. The device shall, without tampering or the intervention of another person, prevent the defendant from operating the motor vehicle when the defendant has an alcohol concentration greater than three-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her blood or three-hundredths of one gram or more by weight of alcohol per two hundred ten liters of his or her breath.

(2) If the court orders installation of an ignition interlock device and issuance of an ignition interlock permit pursuant to subsection (1) of this section, the court may also order the use of a continuous alcohol monitoring device and abstention from alcohol use at all times. The device shall, without tampering or the intervention of another person, test and record the alcohol consumption level of the defendant on a periodic basis and transmit such information to probation authorities.

(3) Any order issued by the court pursuant to this section shall not take effect until the defendant is eligible to operate a motor vehicle pursuant to subsection (3) of section 60-498.02.

(4)(a) If the court orders an ignition interlock device or the Board of Pardons orders an ignition interlock device under section 83-1,127.02, the court or the Board of Pardons shall order the defendant to apply for an ignition interlock permit as provided in section 60-4,118.06 which indicates that the defendant is only allowed to operate a motor vehicle equipped with an ignition interlock device.

(b) Such court order shall remain in effect for a period of time as determined by the court not to exceed the maximum term of revocation which the court could have imposed according to the nature of the violation and shall allow operation of an ignition-interlock-equipped motor vehicle only to and from the defendant's residence, the defendant's place of employment, the defendant's school, an alcohol treatment program, required visits with his or her probation officer, or an ignition interlock service facility.

(c) Such Board of Pardons order shall remain in effect for a period of time not to exceed any period of revocation the applicant is subject to at the time the application for a reprieve is made.

(5) A person who tampers with or circumvents an ignition interlock device installed under a court order while the order is in effect, who operates a motor vehicle which is not equipped with an ignition interlock device in violation of a court order made pursuant to this section, or who otherwise operates a motor vehicle equipped with an ignition interlock device in violation of the requirements of the court order under which the device was installed shall be guilty of a Class II misdemeanor.

(6) Any person restricted to operating a motor vehicle equipped with an ignition interlock device, pursuant to a Board of Pardons order, who operates upon the highways of this state a motor vehicle without such device or if the device has been disabled, bypassed, or altered in any way, shall be punished as provided in subsection (3) of section 83-1,127.02.

(7) If a person ordered to use a continuous alcohol monitoring device and abstain from alcohol use pursuant to a court order as provided in subsection (2) of this section violates the provisions of such court order by removing, tampering with, or otherwise bypassing the continuous alcohol monitoring device or

by consuming alcohol while required to use such device, he or she shall have his or her ignition interlock permit revoked and be unable to apply for reinstatement for the duration of the revocation period imposed by the court.

(8) The director shall adopt and promulgate rules and regulations regarding the approval of ignition interlock devices, the means of installing ignition interlock devices, and the means of administering the ignition interlock permit program.

(9) The costs incurred in order to comply with the ignition interlock requirements of this section shall be paid by the person complying with an order for an ignition interlock permit and installation of an ignition interlock device unless the court or the Board of Pardons has determined the person to be incapable of paying for the cost of installation, removal, or maintenance of the ignition interlock device in accordance with this subsection.

(10)(a) An ignition interlock service facility shall notify the appropriate district probation office, if the order is made pursuant to subdivision (1)(a) of this section, or notify the appropriate court if the order is made pursuant to subdivision (1)(b) of this section, of any evidence of tampering with or circumvention of an ignition interlock device, or any attempts to do so, when the facility becomes aware of such evidence.

(b) If a district probation office receives evidence of tampering with or circumvention of an ignition interlock device, or any attempts to do so, from an ignition interlock service facility, the district probation office shall notify the appropriate court of such violation. The court shall immediately schedule an evidentiary hearing to be held within fourteen days after receiving such evidence, either from the district probation office or an ignition interlock service facility, and the court shall cause notice of the hearing to be given to the person operating a motor vehicle pursuant to an order under subsection (1) of this section. If the person who is the subject of such evidence does not appear at the hearing and show cause why the order made pursuant to subsection (1) of this section should remain in effect, the court shall rescind the original order. Nothing in this subsection shall apply to an order made by the Board of Pardons pursuant to section 83-1,127.02.

(11) Notwithstanding any other provision of law, the costs associated with the installation, maintenance, and removal of a court-ordered ignition interlock device by the Office of Probation Administration shall not be construed so as to create an order of probation when an order for the installation of an ignition interlock device and ignition interlock permit was made pursuant to subdivision (1)(b) of this section as part of a conviction.

Source: Laws 1993, LB 564, § 6; Laws 1998, LB 309, § 24; Laws 2001, LB 38, § 55; Laws 2003, LB 209, § 15; Laws 2004, LB 208, § 22; Laws 2006, LB 925, § 16; Laws 2008, LB736, § 10; Laws 2009, LB497, § 10.
Effective date May 14, 2009.

60-6,211.10 Repealed. Laws 2009, LB497, § 12.

(u) OCCUPANT PROTECTION SYSTEMS

60-6,265 Occupant protection system, defined.

For purposes of sections 60-6,266 to 60-6,273, occupant protection system means a system utilizing a lap belt, a shoulder belt, or any combination of belts

installed in a motor vehicle which (1) restrains drivers and passengers and (2) conforms to Federal Motor Vehicle Safety Standards, 49 C.F.R. 571.207, 571.208, 571.209, and 571.210, as such standards existed on January 1, 2009, or to the federal motor vehicle safety standards for passenger restraint systems applicable for the motor vehicle's model year.

Source: Laws 1993, LB 370, § 361; Laws 2004, LB 227, § 1; Laws 2006, LB 853, § 19; Laws 2007, LB239, § 6; Laws 2008, LB756, § 21; Laws 2009, LB331, § 11.
Operative date August 30, 2009.

60-6,267 Use of restraint system or occupant protection system; when; information and education program.

(1) Any person in Nebraska who drives any motor vehicle which has or is required to have an occupant protection system shall ensure that:

(a) All children up to six years of age being transported by such vehicle use a child passenger restraint system of a type which meets Federal Motor Vehicle Safety Standard 213 as developed by the National Highway Traffic Safety Administration, as such standard existed on January 1, 2009, and which is correctly installed in such vehicle; and

(b) All children six years of age and less than eighteen years of age being transported by such vehicle use an occupant protection system.

This subsection shall apply to every motor vehicle which is equipped with an occupant protection system or is required to be equipped with restraint systems pursuant to Federal Motor Vehicle Safety Standard 208, as such standard existed on January 1, 2009, except taxicabs, mopeds, motorcycles, and any motor vehicle designated by the manufacturer as a 1963 year model or earlier which is not equipped with an occupant protection system.

(2) Whenever any licensed physician determines, through accepted medical procedures, that use of a child passenger restraint system by a particular child would be harmful by reason of the child's weight, physical condition, or other medical reason, the provisions of subsection (1) of this section shall be waived. The driver of any vehicle transporting such a child shall carry on his or her person or in the vehicle a signed written statement of the physician identifying the child and stating the grounds for such waiver.

(3) The drivers of authorized emergency vehicles shall not be subject to the requirements of subsection (1) of this section when operating such authorized emergency vehicles pursuant to their employment.

(4) A driver of a motor vehicle shall not be subject to the requirements of subsection (1) of this section if the motor vehicle is being operated in a parade or exhibition and the parade or exhibition is being conducted in accordance with applicable state law and local ordinances and resolutions.

(5) The Department of Roads shall develop and implement an ongoing statewide public information and education program regarding the use of child passenger restraint systems and occupant protection systems and the availability of distribution and discount programs for child passenger restraint systems.

(6) All persons being transported by a motor vehicle operated by a holder of a provisional operator's permit or a school permit shall use such motor vehicle's occupant protection system.

Source: Laws 1983, LB 306, § 2; Laws 1985, LB 259, § 1; Laws 1990, LB 958, § 1; Laws 1992, LB 958, § 3; R.S.Supp.,1992, § 39-6,103.01;

Laws 1993, LB 370, § 363; Laws 2000, LB 410, § 1; Laws 2002, LB 1073, § 1; Laws 2004, LB 227, § 2; Laws 2006, LB 853, § 20; Laws 2007, LB239, § 7; Laws 2008, LB756, § 22; Laws 2009, LB219, § 1; Laws 2009, LB331, § 12.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB219, section 1, with LB331, section 12, to reflect all amendments.

Note: Changes made by LB219 became operative July 1, 2009. Changes made by LB331 became operative August 30, 2009.

(ii) EMERGENCY VEHICLE OR ROAD ASSISTANCE VEHICLE

60-6,378 Stopped authorized emergency vehicle or road assistance vehicle; driver; duties; violation; penalty.

(1)(a) A driver in a vehicle on a controlled-access highway approaching or passing a stopped authorized emergency vehicle or road assistance vehicle which makes use of proper audible or visual signals shall proceed with due care and caution as described in subdivision (b) of this subsection.

(b) On a controlled-access highway with at least two adjacent lanes of travel in the same direction on the same side of the highway where a stopped authorized emergency vehicle or road assistance vehicle is using proper audible or visual signals, the driver of the vehicle shall proceed with due care and caution and yield the right-of-way by moving into a lane at least one moving lane apart from the stopped authorized emergency vehicle or road assistance vehicle unless directed otherwise by a peace officer or other authorized emergency personnel. If moving into another lane is not possible because of weather conditions, road conditions, or the immediate presence of vehicular or pedestrian traffic or because the controlled-access highway does not have two available adjacent lanes of travel in the same direction on the same side of the highway where such a stopped authorized emergency vehicle or road assistance vehicle is located, the driver of the approaching or passing vehicle shall reduce his or her speed, maintain a safe speed with regard to the location of the stopped authorized emergency vehicle or road assistance vehicle, the weather conditions, the road conditions, and vehicular or pedestrian traffic, and proceed with due care and caution or proceed as directed by a peace officer or other authorized emergency personnel or road assistance personnel.

(c) Any person who violates this subsection is guilty of a traffic infraction for a first offense and Class IIIA misdemeanor for a second or subsequent offense.

(2) The Department of Roads shall erect and maintain or cause to be erected and maintained signs giving notice of subsection (1) of this section along controlled-access highways.

(3) Enforcement of subsection (1) of this section shall not be accomplished using simulated situations involving an authorized emergency vehicle or a road assistance vehicle.

(4) This section does not relieve the driver of an authorized emergency vehicle or a road assistance vehicle from the duty to drive with due regard for the safety of all persons using the highway.

(5) For purposes of this section, road assistance vehicle includes a vehicle operated by the Department of Roads, a Nebraska State Patrol motorist assistance vehicle, and a United States Department of Transportation registered towing or roadside assistance vehicle. A road assistance vehicle shall emit a

warning signal utilizing properly displayed emergency indicators such as strobe, rotating, or oscillating lights when stopped along a highway.

Source: Laws 2009, LB92, § 2.
Effective date August 30, 2009.

ARTICLE 14

MOTOR VEHICLE INDUSTRY LICENSING

Section
60-1401.02. Terms, defined.

60-1401.02 Terms, defined.

For purposes of sections 60-1401.01 to 60-1440 and 60-2601 to 60-2607, unless the context otherwise requires:

(1) Person means every natural person, firm, partnership, limited liability company, association, or corporation;

(2) Association means any two or more persons acting with a common purpose, regardless of the relative degrees of involvement, and includes, but is not limited to, the following persons so acting:

(a) A person and one or more of his or her family members. For purposes of this subdivision, family member means an individual related to the person by blood, marriage, adoption, or legal guardianship as the person's spouse, child, parent, brother, sister, grandchild, grandparent, ward, or legal guardian or any individual so related to the person's spouse; and

(b) Two or more persons living in the same dwelling unit, whether or not related to each other;

(3) Motor vehicle dealer means any person, other than a bona fide consumer, actively and regularly engaged in the act of selling, leasing for a period of thirty or more days, or exchanging new or used motor vehicles, trailers, and manufactured homes who buys, sells, exchanges, causes the sale of, or offers or attempts to sell new or used motor vehicles. Such person is a motor vehicle dealer and subject to sections 60-1401.01 to 60-1440. Motor vehicle dealer does not include a lessor who was not involved in or associated with the selection, location, acquisition, or supply of a motor vehicle which is the subject of a lease agreement;

(4) Trailer dealer means any person, other than a bona fide consumer, actively and regularly engaged in the business of selling or exchanging new or used trailers and manufactured homes;

(5) Wrecker or salvage dealer means any person who acquires one or more motor vehicles or trailers for the purpose of dismantling them for the purpose of reselling the parts or reselling the vehicles as scrap;

(6) Motor vehicle means any vehicle for which evidence of title is required as a condition precedent to registration under the laws of this state but does not include trailers. Motor vehicle also means any engine, transmission, or rear axle, regardless of whether attached to a vehicle chassis, that is manufactured for installation in any motor-driven vehicle with a gross vehicle weight rating of more than sixteen thousand pounds for which motor-driven vehicle evidence of title is required as a condition precedent to registration under the laws of this state;

(7) Used motor vehicle means every motor vehicle which has been sold, bargained, exchanged, or given away or for which title has been transferred from the person who first acquired it from the manufacturer, importer, dealer, or agent of the manufacturer or importer. A new motor vehicle is not considered a used motor vehicle until it has been placed in use by a bona fide consumer, notwithstanding the number of transfers of the motor vehicle;

(8) New motor vehicle means all motor vehicles which are not included within the definition of a used motor vehicle in this section;

(9) Trailer means semitrailers and trailers as defined in sections 60-348 and 60-354, respectively, which are required to be licensed as commercial trailers, other vehicles without motive power constructed so as to permit their being used as conveyances upon the public streets and highways and so constructed as not to be attached to real estate and to permit the vehicle to be used for human habitation by one or more persons, and camping trailers, slide-in campers, fold-down campers, and fold-down tent trailers. Machinery and equipment to which wheels are attached and designed for being towed by a motor vehicle are excluded from the provisions of sections 60-1401.01 to 60-1440;

(10) Motorcycle dealer means any person, other than a bona fide consumer, actively and regularly engaged in the business of selling or exchanging new or used motorcycles;

(11) Motorcycle means every motor vehicle, except a tractor, having a seat or saddle for use of the rider and designed to travel on not more than three wheels in contact with the ground and for which evidence of title is required as a condition precedent to registration under the laws of this state;

(12) Auction means a sale of motor vehicles and trailers of types required to be registered in this state, except such vehicles as are eligible for registration pursuant to section 60-3,198, sold or offered for sale at which the price offered is increased by the prospective buyers who bid against one another, the highest bidder becoming the purchaser. The holding of a farm auction or an occasional motor vehicle or trailer auction of not more than two auctions in a calendar year does not constitute an auction subject to sections 60-1401.01 to 60-1440;

(13) Auction dealer means any person engaged in the business of conducting an auction for the sale of motor vehicles and trailers;

(14) Supplemental motor vehicle, trailer, motorcycle, or motor vehicle auction dealer means any person holding either a motor vehicle, trailer, motorcycle, or motor vehicle auction dealer's license engaging in the business authorized by such license at a place of business that is more than three hundred feet from any part of the place of business designated in the dealer's original license but which is located within the city or county described in such original license;

(15) Motor vehicle, motorcycle, or trailer salesperson means any person who, for a salary, commission, or compensation of any kind, is employed directly by only one specified licensed Nebraska motor vehicle dealer, motorcycle dealer, or trailer dealer, except when the salesperson is working for two or more dealerships with common ownership, to sell, purchase, or exchange or to negotiate for the sale, purchase, or exchange of motor vehicles, motorcycles, or trailers. A person owning any part of more than one dealership may be a salesperson for each of such dealerships. For purposes of this section, common ownership means that there is at least an eighty percent interest in each dealership by one or more persons having ownership in such dealership;

(16) Manufacturer means any person, resident or nonresident of this state, who is engaged in the business of distributing, manufacturing, or assembling new motor vehicles, trailers, or motorcycles and also has the same meaning as the term franchisor as used in sections 60-1401.01 to 60-1440;

(17) Factory representative means a representative employed by a person who manufactures or assembles motor vehicles, motorcycles, or trailers, or by a factory branch, for the purpose of promoting the sale of its motor vehicles, motorcycles, or trailers to, or for supervising or contacting, its dealers or prospective dealers in this state;

(18) Distributor means a person, resident or nonresident of this state, who in whole or in part sells or distributes new motor vehicles, trailers, or motorcycles to dealers or who maintains distributors or representatives who sell or distribute motor vehicles, trailers, or motorcycles to dealers and also has the same meaning as the term franchisor as used in sections 60-1401.01 to 60-1440;

(19) Finance company means any person engaged in the business of financing sales of motor vehicles, motorcycles, or trailers, or purchasing or acquiring promissory notes, secured instruments, or other documents by which the motor vehicles, motorcycles, or trailers are pledged as security for payment of obligations arising from such sales and who may find it necessary to engage in the activity of repossession and the sale of the motor vehicles, motorcycles, or trailers so pledged;

(20) Franchise means a contract between two or more persons when all of the following conditions are included:

(a) A commercial relationship of definite duration or continuing indefinite duration is involved;

(b) The franchisee is granted the right to offer and sell motor vehicles manufactured or distributed by the franchisor;

(c) The franchisee, as an independent business, constitutes a component of the franchisor's distribution system;

(d) The operation of the franchisee's business is substantially associated with the franchisor's trademark, service mark, trade name, advertising, or other commercial symbol designating the franchisor; and

(e) The operation of the franchisee's business is substantially reliant on the franchisor for the continued supply of motor vehicles, parts, and accessories;

(21) Franchisee means a new motor vehicle dealer who receives motor vehicles from the franchisor under a franchise and who offers and sells such motor vehicles to the general public;

(22) Franchisor means a person who manufactures or distributes motor vehicles and who may enter into a franchise;

(23) Community means a franchisee's area of responsibility as stipulated in the franchise;

(24) Line-make means the motor vehicles that are offered for sale, lease, or distribution under a common name, trademark, service mark, or brand name of the franchisor or manufacturer of the motor vehicle;

(25) Consumer care means the performance, for the public, of necessary maintenance and repairs to motor vehicles;

(26) Sale, selling, and equivalent expressions mean the attempted act or acts either as principal, agent, or salesperson or in any capacity whatsoever of

selling, bartering, exchanging, or otherwise disposing of or negotiating or offering or attempting to negotiate the sale, purchase, or exchange of or interest in any motor vehicle, trailer, or motorcycle, including the leasing of any motor vehicle, trailer, or motorcycle for a period of thirty or more days with a right or option to purchase under the terms of the lease;

(27) Established place of business means a permanent location within this state, easily accessible to the public, owned or leased by the applicant or a licensee for at least the term of the license year, and conforming with applicable zoning laws, at which the licensee conducts the business for which he or she is licensed and may be contacted by the public during posted reasonable business hours which shall be not less than forty hours per week. The established place of business shall have the following facilities: (a) Office space in a building or mobile home, which space shall be clean, dry, safe, and well lighted and in which shall be kept and maintained all books, records, and files necessary for the conduct of the licensed business, which premises, books, records, and files shall be available for inspection during regular business hours by any peace officer or investigator employed or designated by the board. Dealers shall, upon demand of the board's investigator, furnish copies of records so required when conducting any investigation of a complaint; (b) a sound and well-maintained sign which is legible from a public road and displayed with letters not less than eight inches in height and one contiguous area to display ten or more motor vehicles, motorcycles, or trailers in a presentable manner; (c) adequate repair facilities and tools to properly and actually service warranties on motor vehicles, motorcycles, or trailers sold at such place of business and to make other repairs arising out of the conduct of the licensee's business or, in lieu of such repair facilities, the licensee may enter into a contract for the provision of such service and file a copy thereof annually with the board and shall furnish to each buyer a written statement as to where such service will be provided as required by section 60-1417. The service facility shall be located in the same county as the licensee unless the board specifically authorizes the facility to be located elsewhere. Such facility shall maintain regular business hours and shall have suitable repair equipment and facilities to service and inspect the type of vehicles sold by the licensee. Investigators of the board may certify ongoing compliance with the service and inspection facilities or repair facilities; and (d) an operating telephone connected with a public telephone exchange and located on the premises of the established place of business with a telephone number listed by the public telephone exchange and available to the public during the required posted business hours. A mobile truck equipped with repair facilities to properly perform warranty functions and other repairs shall be deemed adequate repair facilities for trailers. The requirements of this subdivision shall apply to the place of business authorized under a supplemental motor vehicle, motorcycle, or trailer dealer's license;

(28) Retail, when used to describe a sale, means a sale to any person other than a licensed dealer of any kind within the definitions of this section;

(29) Factory branch means a branch office maintained in this state by a person who manufactures, assembles, or distributes motor vehicles, motorcycles, or trailers for the sale of such motor vehicles, motorcycles, or trailers to distributors or dealers or for directing or supervising, in whole or in part, its representatives in this state;

(30) Distributor representative means a representative employed by a distributor or distributor branch for the same purpose as set forth in the definition of factory representative in this section;

(31) Board means the Nebraska Motor Vehicle Industry Licensing Board;

(32) Scrap metal processor means any person engaged in the business of buying vehicles, motorcycles, or parts thereof for the purpose of remelting or processing into scrap metal or who otherwise processes ferrous or nonferrous metallic scrap for resale. No scrap metal processor shall sell vehicles or motorcycles without obtaining a wrecker or salvage dealer license;

(33) Designated family member means the spouse, child, grandchild, parent, brother, or sister of the owner of a new motor vehicle dealership who, in the case of the owner's death, is entitled to inherit the ownership interest in the new motor vehicle dealership under the terms of the owner's will, who has been nominated in any other written instrument, or who, in the case of an incapacitated owner of such dealership, has been appointed by a court as the legal representative of the new motor vehicle dealer's property;

(34) Bona fide consumer means an owner of a motor vehicle, motorcycle, or trailer who has acquired such vehicle for use in business or for pleasure purposes, who has been granted a certificate of title on such motor vehicle, motorcycle, or trailer, and who has registered such motor vehicle, motorcycle, or trailer, all in accordance with the laws of the residence of the owner, except that no owner who sells more than eight registered motor vehicles, motorcycles, or trailers within a twelve-month period shall qualify as a bona fide consumer;

(35) Violator means a person acting without a license or registration as required by sections 60-1401.01 to 60-1440;

(36) Manufactured home means a structure, transportable in one or more sections, which in the traveling mode is eight body feet or more in width or forty body feet or more in length or when erected on site is three hundred twenty or more square feet and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities and includes the plumbing, heating, air conditioning, and electrical systems contained in the structure, except that manufactured home includes any structure that meets all of the requirements of this subdivision other than the size requirements and with respect to which the manufacturer voluntarily files a certification required by the United States Secretary of Housing and Urban Development and complies with the standards established under the National Manufactured Housing Construction and Safety Standards Act of 1974, as such act existed on September 1, 2001, 42 U.S.C. 5401 et seq.; and

(37) Dealer's agent means a person who acts as a buying agent for one or more motor vehicle dealers, motorcycle dealers, or trailer dealers.

Nothing in sections 60-1401.01 to 60-1440 shall apply to the State of Nebraska or any of its agencies or subdivisions. No insurance company, finance company, public utility company, fleet owner, or other person coming into possession of any motor vehicle, motorcycle, or trailer, as an incident to its regular business, who sells or exchanges the motor vehicle, motorcycle, or

trailer shall be considered a dealer except persons whose regular business is leasing or renting motor vehicles, motorcycles, or trailers.

Source: Laws 1971, LB 768, § 2; Laws 1972, LB 1335, § 1; Laws 1974, LB 754, § 1; Laws 1978, LB 248, § 3; Laws 1983, LB 234, § 18; Laws 1984, LB 825, § 12; Laws 1989, LB 280, § 1; Laws 1993, LB 121, § 388; Laws 1993, LB 200, § 1; Laws 1995, LB 564, § 2; Laws 1996, LB 1035, § 1; Laws 1998, LB 903, § 3; Laws 2000, LB 1018, § 1; Laws 2003, LB 498, § 1; Laws 2003, LB 563, § 34; Laws 2005, LB 274, § 256; Laws 2008, LB797, § 3; Laws 2009, LB50, § 1.
Effective date August 30, 2009.

ARTICLE 19

ABANDONED MOTOR VEHICLES

Section
60-1901. Abandoned vehicle, defined.

60-1901 Abandoned vehicle, defined.

(1) A motor vehicle is an abandoned vehicle:

(a) If left unattended, with no license plates or valid In Transit stickers issued pursuant to the Motor Vehicle Registration Act affixed thereto, for more than six hours on any public property;

(b) If left unattended for more than twenty-four hours on any public property, except a portion thereof on which parking is legally permitted;

(c) If left unattended for more than forty-eight hours, after the parking of such vehicle has become illegal, if left on a portion of any public property on which parking is legally permitted;

(d) If left unattended for more than seven days on private property if left initially without permission of the owner, or after permission of the owner is terminated;

(e) If left for more than thirty days in the custody of a law enforcement agency after the agency has sent a letter to the last-registered owner under section 60-1903.01; or

(f) If removed from private property by a municipality pursuant to a municipal ordinance.

(2) An all-terrain vehicle or minibike is an abandoned vehicle:

(a) If left unattended for more than twenty-four hours on any public property, except a portion thereof on which parking is legally permitted;

(b) If left unattended for more than forty-eight hours, after the parking of such vehicle has become illegal, if left on a portion of any public property on which parking is legally permitted;

(c) If left unattended for more than seven days on private property if left initially without permission of the owner, or after permission of the owner is terminated;

(d) If left for more than thirty days in the custody of a law enforcement agency after the agency has sent a letter to the last-registered owner under section 60-1903.01; or

(e) If removed from private property by a municipality pursuant to a municipal ordinance.

(3) For purposes of this section:

(a) Public property means any public right-of-way, street, highway, alley, or park or other state, county, or municipally owned property; and

(b) Private property means any privately owned property which is not included within the definition of public property.

(4) No motor vehicle subject to forfeiture under section 28-431 shall be an abandoned vehicle under this section.

Source: Laws 1971, LB 295, § 1; Laws 1999, LB 90, § 1; Laws 2004, LB 560, § 41; Laws 2005, LB 274, § 263; Laws 2009, LB60, § 1. Effective date August 30, 2009.

Cross References

Motor Vehicle Registration Act, see section 60-301.

ARTICLE 21
MINIBIKES OR MOTORCYCLES

(b) MOTORCYCLE SAFETY EDUCATION

Section
60-2132. Motorcycle Safety Education Fund; created; use; investment.

(b) MOTORCYCLE SAFETY EDUCATION

60-2132 Motorcycle Safety Education Fund; created; use; investment.

There is hereby created a Motorcycle Safety Education Fund in the state treasury which shall consist of money transferred pursuant to sections 39-2215 and 60-4,115 and such money as may be appropriated by the Legislature. The fund shall be administered by the department. The fund shall be used for the administration of the Motorcycle Safety Education Act, to reimburse approved schools, businesses, or organizations for conducting approved basic motorcycle safety courses, to provide educational assistance, to prepare sites for offering the basic motorcycle safety course, to reimburse approved schools, businesses, or organizations for conducting approved advanced motorcycle safety courses, and to promote motorcycle safety. 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 1981, LB 22, § 11; Laws 1983, LB 469, § 3; Laws 1984, LB 1089, § 5; Laws 1985, Second Spec. Sess., LB 5, § 2; R.S.1943, (1984), § 60-2116; Laws 1986, LB 1004, § 14; Laws 1989, LB 285, § 137; Laws 1994, LB 1066, § 50; Laws 2009, LB219, § 3. Operative date July 1, 2009.

Cross References

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

CHAPTER 66
OILS, FUELS, AND ENERGY

Article.
9. Solar Energy and Wind Energy. 66-911.01.
13. Ethanol. 66-1334 to 66-1345.04.
14. International Fuel Tax Agreement Act. 66-1406.02.
15. Petroleum Release Remedial Action. 66-1518 to 66-1521.
17. Biopower Steering Committee. Repealed.
18. State Natural Gas Regulation Act. 66-1801 to 66-1867.

ARTICLE 9
SOLAR ENERGY AND WIND ENERGY

Section
66-911.01. Solar energy system; wind energy conversion system; wind measurement equipment; land right or option to secure a land right; requirements.

66-911.01 Solar energy system; wind energy conversion system; wind measurement equipment; land right or option to secure a land right; requirements.

An instrument creating a land right or an option to secure a land right in real property or the vertical space above real property for a solar energy system, for a wind energy conversion system, or for wind measurement equipment shall be created in writing, and the instrument, or an abstract, shall be filed, duly recorded, and indexed in the office of the register of deeds of the county in which the real property subject to the instrument is located. The instrument shall include, but the contents are not limited to:

(1) The names of the parties;

(2) A legal description of the real property involved;

(3) The nature of the interest created;

(4) The consideration paid for the transfer;

(5) A description of the improvements the developer intends to make on the real property, including, but not limited to: Roads; transmission lines; substations; wind turbines; and meteorological towers;

(6) A description of any decommissioning security as defined in section 76-3001 or local requirements related to decommissioning; and

(7) The terms or conditions, if any, under which the interest may be revised or terminated.

Source: Laws 1997, LB 140, § 8; Laws 2009, LB568, § 5.
Effective date August 30, 2009.

ARTICLE 13
ETHANOL

Section
66-1334. Agricultural Alcohol Fuel Tax Fund; created; use; investment.
66-1337. Board; administrative powers.
66-1345.04. Transfer to Ethanol Production Incentive Cash Fund; legislative intent.

66-1334 Agricultural Alcohol Fuel Tax Fund; created; use; investment.

(1) The Agricultural Alcohol Fuel Tax Fund is hereby created. No part of the funds deposited in the fund or of federal funds or other funds solicited in conjunction with research or demonstration programs shall lapse to the General Fund. Transfers from the Agricultural Alcohol Fuel Tax Fund to the Ethanol Production Incentive Cash Fund may be made at the direction of the Legislature. In addition to such unexpended balance appropriation, there is hereby appropriated such amounts as are deposited in the Agricultural Alcohol Fuel Tax Fund in each year. The fund shall be administered by the board. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(2) The fund shall be used for the following purposes:

(a) Establishment, with cooperation of private industry, of procedures and processes necessary to the manufacture and marketing of fuel containing agricultural ethyl alcohol;

(b) Establishment of procedures for entering blended fuel into the marketplace by private enterprise;

(c) Analysis of the marketing process and testing of marketing procedures to assure acceptance in the private marketplace of blended fuel and byproducts resulting from the manufacturing process;

(d) Cooperation with private industry to establish privately owned agricultural ethyl alcohol manufacturing plants in Nebraska to supply demand for blended fuel;

(e) Sponsoring research and development of industrial and commercial uses for agricultural ethyl alcohol and for byproducts resulting from the manufacturing process;

(f) Promotion of state and national air quality improvement programs and influencing federal legislation that requires or encourages the use of fuels oxygenated by the inclusion of agricultural ethyl alcohol or its derivatives;

(g) Promotion of the use of renewable agricultural ethyl alcohol as a partial replacement for imported oil and for the energy and economic security of the nation;

(h) Participation in development and passage of national legislation dealing with research, development, and promotion of United States production of fuels oxygenated by the inclusion of agricultural ethyl alcohol or its derivatives, access to potential markets, tax incentives, imports of foreign-produced fuel, and related concerns that may develop in the future; and

(i) As the board may otherwise direct to fulfill the goals set forth under the Ethanol Development Act, including monitoring contracts for existing ethanol program commitments consummated pursuant to the law in existence prior to September 1, 1993, and solicitation of federal funds.

Source: Laws 1993, LB 364, § 5; Laws 1994, LB 1066, § 54; Laws 2004, LB 983, § 58; Laws 2009, LB316, § 16.
Effective date May 20, 2009.

Cross References

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

66-1337 Board; administrative powers.

The board may rent office space and employ such personnel as may be necessary for the performance of its duties. The board may employ the services of experts and consultants and expend funds necessary to acquire title to commodities pursuant to section 66-1340, to promote air quality improvement programs, or to otherwise carry out the board's duties under the Ethanol Development Act.

Source: Laws 1993, LB 364, § 8; Laws 2009, LB154, § 13.
Effective date August 30, 2009.

66-1345.04 Transfer to Ethanol Production Incentive Cash Fund; legislative intent.

(1) The State Treasurer shall transfer from the General Fund to the Ethanol Production Incentive Cash Fund, on or before the end of each of fiscal years 1995-96 and 1996-97, $8,000,000 per fiscal year.

(2) It is the intent of the Legislature that the following General Fund amounts be appropriated to the Ethanol Production Incentive Cash Fund in each of the following years:

(a) For each of fiscal years 1997-98 and 1998-99, $7,000,000 per fiscal year;

(b) For fiscal year 1999-2000, $6,000,000;

(c) For fiscal year 2000-01, $5,000,000;

(d) For fiscal year 2001-02 and for each of fiscal years 2003-04 through 2006-07, $1,500,000;

(e) For each of fiscal years 2005-06 and 2006-07, $2,500,000 in addition to the amount in subdivision (2)(d) of this section;

(f) For fiscal year 2007-08, $5,500,000;

(g) For each of fiscal years 2008-09 through 2011-12, $2,500,000;

(h) For each of fiscal years 2005-06 and 2006-07, $5,000,000 in addition to the other amounts in this section;

(i) For fiscal year 2007-08, $15,500,000 in addition to the other amounts in this section;

(j) For fiscal year 2009-10, $8,250,000 in addition to the other amounts in this section; and

(k) For fiscal year 2010-11, $3,000,000 in addition to the other amounts in this section.

Source: Laws 1995, LB 377, § 4; Laws 1999, LB 605, § 5; Laws 2001, LB 536, § 6; Laws 2002, Second Spec. Sess., LB 1, § 3; Laws 2005, LB 90, § 19; Laws 2006, LB 968, § 1; Laws 2007, LB322, § 16; Laws 2009, LB316, § 17.
Effective date May 20, 2009.

ARTICLE 14
INTERNATIONAL FUEL TAX AGREEMENT ACT

Section
66-1406.02. License; director; powers.

66-1406.02 License; director; powers.

(1) The director may suspend, revoke, cancel, or refuse to issue or renew a license under the International Fuel Tax Agreement Act:

(a) If the applicant's or licensee's registration certificate issued pursuant to the International Registration Plan Act has been suspended, revoked, or canceled or the director refused to issue or renew such certificate;

(b) If the applicant or licensee is in violation of sections 75-392 to 75-399;

(c) If the applicant's or licensee's security has been canceled;

(d) If the applicant or licensee failed to provide additional security as required;

(e) If the applicant or licensee failed to file any report or return required by the motor fuel laws, filed an incomplete report or return required by the motor fuel laws, did not file any report or return required by the motor fuel laws electronically, or did not file a report or return required by the motor fuel laws on time;

(f) If the applicant or licensee failed to pay taxes required by the motor fuel laws due within the time provided;

(g) If the applicant or licensee filed any false report, return, statement, or affidavit, required by the motor fuel laws, knowing it to be false;

(h) If the applicant or licensee would no longer be eligible to obtain a license; or

(i) If the applicant or licensee committed any other violation of the International Fuel Tax Agreement Act or the rules and regulations adopted and promulgated under the act.

(2) Prior to taking any action pursuant to subsection (1) of this section, the director shall notify and advise the applicant or licensee of the proposed action and the reasons for such action in writing, by registered or certified mail, to his or her last-known business address as shown on the application or license. The notice shall also include an advisement of the procedures in subsection (3) of this section.

(3) The applicant or licensee may, within thirty days after the mailing of the notice, petition the director in writing for a hearing to contest the proposed action. The hearing shall be commenced in accordance with the rules and regulations adopted and promulgated by the Department of Motor Vehicles. If a petition is filed, the director shall, within twenty days after receipt of the petition, set a hearing date at which the applicant or licensee may show cause why the proposed action should not be taken. The director shall give the applicant or licensee reasonable notice of the time and place of the hearing. If the director's decision is adverse to the applicant or licensee, the applicant or licensee may appeal the decision in accordance with the Administrative Procedure Act.

(4) Except as provided in subsection (2) of section 60-3,205 and subsection (8) of this section, the filing of the petition shall stay any action by the director until a hearing is held and a final decision and order is issued.

(5) Except as provided in subsection (2) of section 60-3,205 and subsection (8) of this section, if no petition is filed at the expiration of thirty days after the date on which the notification was mailed, the director may take the proposed action described in the notice.

(6) Except as provided in subsection (2) of section 60-3,205 and subsection (8) of this section, if, in the judgment of the director, the applicant or licensee has complied with or is no longer in violation of the provisions for which the director took action under this section, the director may reinstate the license without delay. An applicant for reinstatement, issuance, or renewal of a license within three years after the date of suspension, revocation, cancellation, or refusal to issue or renew shall submit a fee of one hundred dollars to the director. The director shall remit the fee to the State Treasurer for credit to the Highway Cash Fund.

(7) Suspension of, revocation of, cancellation of, or refusal to issue or renew a license by the director shall not relieve any person from making or filing the reports or returns required by the motor fuel laws in the manner or within the time required.

(8) Any person who receives notice from the director of action taken pursuant to subsection (1) of this section shall, within three business days, return such registration certificate and license plates issued pursuant to section 60-3,198 to the department. If any person fails to return the registration certificate and license plates to the department, the department shall notify the Nebraska State Patrol that any such person is in violation of this section.

Source: Laws 1998, LB 1056, § 5; Laws 2003, LB 563, § 38; Laws 2006, LB 853, § 22; Laws 2007, LB358, § 11; Laws 2009, LB331, § 13. Operative date August 30, 2009.

Cross References

Administrative Procedure Act, see section 84-920.
International Registration Plan Act, see section 60-3,192.

ARTICLE 15
PETROLEUM RELEASE REMEDIAL ACTION

Section
66-1518. Rules and regulations; schedule of rates; use.
66-1519. Petroleum Release Remedial Action Cash Fund; created; use; investment.
66-1521. Petroleum release remedial action fee; amount; license required; filing; violation; penalty; Motor Fuel Tax Enforcement and Collection Division of the Department of Revenue; powers and duties; Petroleum Release Remedial Action Collection Fund; created; use; investment.

66-1518 Rules and regulations; schedule of rates; use.

(1) The Environmental Quality Council shall adopt and promulgate rules and regulations governing reimbursements authorized under the Petroleum Release Remedial Action Act. Such rules and regulations shall include:

(a) Procedures regarding the form and procedure for application for payment or reimbursement from the fund, including the requirement for timely filing of applications;

(b) Procedures for the requirement of submitting cost estimates for phases or stages of remedial actions, procurement requirements to be followed by responsible persons, and requirements for reuse of fixtures and tangible personal property by responsible persons during a remedial action;

(c) Procedures for investigation of claims for payment or reimbursement;

(d) Procedures for determining the amount and type of costs that are eligible for payment or reimbursement from the fund;

(e) Procedures for auditing persons who have received payments from the fund;

(f) Procedures for reducing reimbursements made for a remedial action for failure by the responsible person to comply with applicable statutory or regulatory requirements. Reimbursement may be reduced as much as one hundred percent; and

(g) Other procedures necessary to carry out the act.

(2) The Director of Environmental Quality shall (a) estimate the cost to complete remedial action at each petroleum contaminated site where the responsible party has been ordered by the department to begin remedial action, and, based on such estimates, determine the total cost that would be incurred in completing all remedial actions ordered; (b) determine the total estimated cost of all approved remedial actions; (c) determine the total dollar amount of all pending claims for payment or reimbursement; (d) determine the total of all funds available for reimbursement of pending claims; and (e) include the determinations made pursuant to this subsection in the department's annual report to the Legislature.

(3) The Department of Environmental Quality shall make available to the public a current schedule of reasonable rates for equipment, services, material, and personnel commonly used for remedial action. The department shall consider the schedule of reasonable rates in reviewing all costs for the remedial action which are submitted in a plan. The rates shall be used to determine the amount of reimbursement for the eligible and reasonable costs of the remedial action, except that (a) the reimbursement for the costs of the remedial action shall not exceed the actual eligible and reasonable costs incurred by the responsible person or his or her designated representative and (b) reimbursement may be made for costs which exceed or are not included on the schedule of reasonable rates if the application for such reimbursement is accompanied by sufficient evidence for the department to determine and the department does determine that such costs are reasonable.

Source: Laws 1989, LB 289, § 18; Laws 1991, LB 409, § 11; Laws 1993, LB 3, § 39; Laws 1994, LB 1349, § 9; Laws 1996, LB 1226, § 6; Laws 1997, LB 517, § 2; Laws 1998, LB 1161, § 27; Laws 1999, LB 270, § 1; Laws 2001, LB 461, § 2; Laws 2009, LB154, § 14. Effective date August 30, 2009.

66-1519 Petroleum Release Remedial Action Cash Fund; created; use; investment.

(1) There is hereby created the Petroleum Release Remedial Action Cash Fund to be administered by the department. Revenue from the following sources shall be remitted to the State Treasurer for credit to the fund:

(a) The fees imposed by sections 66-1520 and 66-1521;

(b) Money paid under an agreement, stipulation, cost-recovery award under section 66-1529.02, or settlement; and

(c) Money received by the department in the form of gifts, grants, reimbursements, property liquidations, or appropriations from any source intended to be used for the purposes of the fund.

(2) Money in the fund may be spent for: (a) Reimbursement for the costs of remedial action by a responsible person or his or her designated representative and costs of remedial action undertaken by the department in response to a release first reported after July 17, 1983, and on or before June 30, 2012, including reimbursement for damages caused by the department or a person acting at the department's direction while investigating or inspecting or during remedial action on property other than property on which a release or suspected release has occurred; (b) payment of any amount due from a third-party claim; (c) fee collection expenses incurred by the State Fire Marshal; (d) direct expenses incurred by the department in carrying out the Petroleum Release Remedial Action Act; (e) other costs related to fixtures and tangible personal property as provided in section 66-1529.01; (f) interest payments as allowed by section 66-1524; (g) claims approved by the State Claims Board authorized under section 66-1531; (h) a grant to a city of the metropolitan class in the amount of three hundred thousand dollars, provided no later than September 15, 2005, to carry out the federal Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. 4851 et seq., as such act existed on October 1, 2003; and (i) methyl tertiary butyl ether testing, to be conducted randomly at terminals within the state for up to two years ending June 30, 2003. The amount expended on the testing shall not exceed forty thousand dollars. The testing shall be conducted by the Department of Agriculture. The department may enter into contractual arrangements for such purpose. The results of the tests shall be made available to the Department of Environmental Quality.

(3) Transfers may be made from the Petroleum Release Remedial Action Cash Fund to the General Fund at the direction of the Legislature. Transfers may be made from the Petroleum Release Remedial Action Cash Fund to the Water Policy Task Force Cash Fund at the direction of the Legislature. The State Treasurer shall transfer one million five hundred thousand dollars from the Petroleum Release Remedial Action Cash Fund to the Ethanol Production Incentive Cash Fund on July 1 of each of the following years: 2004 through 2011.

(4) Any money in the Petroleum Release Remedial Action Cash Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1989, LB 289, § 19; Laws 1991, LB 409, § 12; Laws 1993, LB 237, § 1; Laws 1994, LB 1066, § 57; Laws 1996, LB 1226, § 7; Laws 1998, LB 1161, § 28; Laws 1999, LB 270, § 2; Laws 2001, LB 461, § 3; Laws 2002, LB 1003, § 41; Laws 2002, LB 1310, § 7; Laws 2003, LB 367, § 2; Laws 2004, LB 962, § 105; Laws 2004, LB 1065, § 9; Laws 2005, LB 40, § 4; Laws 2008, LB1145, § 1; Laws 2009, LB154, § 15.
Effective date August 30, 2009.

Cross References

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

66-1521 Petroleum release remedial action fee; amount; license required; filing; violation; penalty; Motor Fuel Tax Enforcement and Collection Division of the Department of Revenue; powers and duties; Petroleum Release Remedial Action Collection Fund; created; use; investment.

(1) A petroleum release remedial action fee is hereby imposed upon the producer, refiner, importer, distributor, wholesaler, or supplier who engages in the sale, distribution, delivery, and use of petroleum within this state, except that the fee shall not be imposed on petroleum that is exported. The fee shall also be imposed on diesel fuel which is indelibly dyed. The amount of the fee shall be nine-tenths of one cent per gallon on motor vehicle fuel as defined in section 66-482 and three-tenths of one cent per gallon on diesel fuel as defined in section 66-482. The amount of the fee shall be used first for payment of claims approved by the State Claims Board pursuant to section 66-1531; second, up to three million dollars of the fee per year shall be used for reimbursement of owners and operators under the Petroleum Release Remedial Action Act for investigations of releases ordered pursuant to section 81-15,124; and third, the remainder of the fee shall be used for any other purpose authorized by section 66-1519. The fee shall be paid by all producers, refiners, importers, distributors, wholesalers, and suppliers subject to the fee by filing a monthly return on or before the twenty-fifth day of the calendar month following the monthly period to which it relates. The pertinent provisions, specifically including penalty provisions, of the motor fuel laws as defined in section 66-712 shall apply to the administration and collection of the fee except for the treatment given refunds. There shall be a refund allowed on any fee paid on petroleum which was taxed and then exported, destroyed, or purchased for use by the United States Government or its agencies. The department may also adjust for all errors in the payment of the fee. In each calendar year, no claim for refund related to the fee can be for an amount less than ten dollars.

(2) No producer, refiner, importer, distributor, wholesaler, or supplier shall engage in the sale, distribution, delivery, or use of petroleum in this state without having first obtained a petroleum release remedial action license. Application for a license shall be made to the Motor Fuel Tax Enforcement and Collection Division of the Department of Revenue upon a form prepared and furnished by the division. If the applicant is an individual, the application shall include the applicant's social security number. Failure to obtain a license prior to engaging in the sale, distribution, delivery, or use of petroleum shall be a Class IV misdemeanor. The division may suspend or cancel the license of any producer, refiner, importer, distributor, wholesaler, or supplier who fails to pay the fee imposed by subsection (1) of this section in the same manner as licenses are suspended or canceled pursuant to section 66-720.

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

(4) The division shall deduct and withhold from the petroleum release remedial action fee collected pursuant to this section an amount sufficient to reimburse the direct costs of collecting and administering the petroleum release remedial action fee. Such costs shall not exceed one hundred fifty thousand dollars for each fiscal year. The one hundred fifty thousand dollars shall be

prorated, based on the number of months the fee is collected, whenever the fee is collected for only a portion of a year. The amount deducted and withheld for costs shall be deposited in the Petroleum Release Remedial Action Collection Fund which is hereby created. The Petroleum Release Remedial Action Collection Fund shall be appropriated to the Department of Revenue. 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.

(5) The division shall collect the fee imposed by subsection (1) of this section.

Source: Laws 1989, LB 289, § 21; Laws 1991, LB 409, § 14; Laws 1991, LB 627, § 139; Laws 1994, LB 1066, § 58; Laws 1994, LB 1160, § 120; Laws 1997, LB 752, § 153; Laws 1998, LB 1161, § 31; Laws 2000, LB 1067, § 31; Laws 2004, LB 983, § 66; Laws 2009, LB165, § 1.
Operative date July 1, 2009.

Cross References

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

ARTICLE 17
BIOPOWER STEERING COMMITTEE

Section
66-1701. Repealed. Laws 2009, LB 246, § 2.

66-1701 Repealed. Laws 2009, LB 246, § 2.

ARTICLE 18
STATE NATURAL GAS REGULATION ACT

Section
66-1801. Act, how cited.
66-1802. Terms, defined.
66-1839. Municipal Rate Negotiations Revolving Loan Fund; created; use; administration; audit; investment; loan repayment.
66-1865. Jurisdictional utility; application and proposed rate schedules; filing; commission; powers.
66-1866. Jurisdictional utility; prior filing not subject to negotiations; application for infrastructure system replacement cost recovery charge; duties; public advocate; duties; commission; powers; change in rate schedules.
66-1867. Jurisdictional utility; prior filing subject to negotiations; application for infrastructure system replacement cost recovery charge; duties; affected cities; powers; commission; powers; change in rate schedules.

66-1801 Act, how cited.

Sections 66-1801 to 66-1867 shall be known and may be cited as the State Natural Gas Regulation Act.

Source: Laws 2003, LB 790, § 1; Laws 2006, LB 1249, § 2; Laws 2009, LB658, § 1.
Effective date August 30, 2009.

66-1802 Terms, defined.

For purposes of the State Natural Gas Regulation Act:

(1) Agricultural ratepayer means a ratepayer whose usage of natural gas does not qualify the ratepayer as a high-volume ratepayer and (a) whose principal use of natural gas is for agricultural crop or livestock production, irrigation pumping, crop drying, or animal feed or food production or (b) whose service is provided on an interruptible basis;

(2) Appropriate pretax revenue means the revenue necessary to produce net operating income equal to:

(a) The jurisdictional utility's weighted cost of capital multiplied by the net original cost of eligible infrastructure system replacements, including recognition of accumulated deferred income taxes and accumulated depreciation associated with eligible infrastructure system replacements which are included in an infrastructure system replacement cost recovery charge;

(b) Recovery of state, federal, and local income or excise taxes applicable to such income; and

(c) Recovery of depreciation expenses;

(3) BTU means the amount of energy necessary to raise the temperature of one pound of water one degree Fahrenheit;

(4) City means any city or village in the State of Nebraska;

(5) Commission means the Public Service Commission;

(6) Eligible infrastructure system replacement means jurisdictional utility plant projects that:

(a) Do not increase revenue by directly connecting the infrastructure system replacement to new customers;

(b) Are in service and used and required to be used;

(c) Were not included in the jurisdictional utility's rate base in its most recent general rate proceeding; and

(d) May enhance the capacity of the system but are only eligible for infrastructure system replacement cost recovery to the extent the jurisdictional utility plant project constitutes a replacement of existing infrastructure;

(7) Gas gathering system means a natural gas pipeline system used primarily for transporting natural gas from a wellhead, or from a metering point for natural gas produced by one or more wells, to a point of entry into a main transmission line;

(8) General rate filing means any filing which requests changes in overall revenue requirements for a jurisdictional utility but does not include a filing for an infrastructure system replacement cost recovery charge;

(9) High-volume ratepayer means a ratepayer whose natural gas requirements equal or exceed five hundred therms per day as determined by average daily consumption;

(10) Infrastructure system replacement cost recovery charge revenue means revenue produced through an infrastructure system replacement cost recovery charge exclusive of revenue from all other rates and charges;

(11) Interstate pipeline means any corporation, company, individual, or association of persons or their trustees, lessees, or receivers engaged in natural gas transportation subject to the jurisdiction of the Federal Energy Regulatory

Commission under the federal Natural Gas Act, 15 U.S.C. 717 et seq., as such act existed on January 1, 2003;

(12) Intrastate natural gas utility business means all of that portion of the business of a natural gas public utility over which the commission has jurisdiction under the State Natural Gas Regulation Act;

(13) Jurisdictional utility means a natural gas public utility subject to the jurisdiction of the commission. Jurisdictional utility does not mean a natural gas public utility which is not subject to the jurisdiction of the commission pursuant to section 66-1803;

(14) Jurisdictional utility plant projects means only the following:

(a) Mains, valves, service lines, regulator stations, vaults, and other pipeline system components installed to comply with state or federal safety requirements as replacements for existing facilities;

(b) Main relining projects, service line insertion projects, joint encapsulation projects, and other similar projects extending the useful life or enhancing the integrity of pipeline system components undertaken to comply with state or federal safety requirements; and

(c) Facility relocations required due to construction or improvement of a highway, road, street, public way, or other public work by or on behalf of the United States, this state, a political subdivision of this state, or another entity having the power of eminent domain, if the costs related to such relocations have not been reimbursed to the jurisdictional utility;

(15) Natural gas public utility means any corporation, company, individual, or association of persons or their trustees, lessees, or receivers that owns, controls, operates, or manages, except for private use, any equipment, plant, or machinery, or any part thereof, for the conveyance of natural gas through pipelines in or through any part of this state. Natural gas public utility does not mean a natural gas utility owned or operated by a city or a metropolitan utilities district. Natural gas public utility does not include any activity of an otherwise jurisdictional corporation, company, individual, or association of persons or their trustees, lessees, or receivers as to the marketing or sale of compressed natural gas for end use as motor vehicle fuel. Natural gas public utility does not include any gas gathering system or interstate pipeline;

(16) Rate means every compensation, charge, fare, toll, tariff, rental, and classification, or any of them, demanded, observed, charged, or collected by any jurisdictional utility for any service;

(17) Rate area means the geographic area within the state served by a single natural gas public utility through a common pipeline system from the same natural gas supply source within the common system for which the utility has similar costs for serving ratepayers of the same class; and

(18) Therm is equivalent to one hundred thousand BTUs.

Source: Laws 2003, LB 790, § 2; Laws 2009, LB658, § 2.
Effective date August 30, 2009.

66-1839 Municipal Rate Negotiations Revolving Loan Fund; created; use; administration; audit; investment; loan repayment.

(1) The Municipal Rate Negotiations Revolving Loan Fund is created. The fund shall be used to make loans to cities for rate negotiations under section

66-1838 or negotiations or litigation under section 66-1867. Only one loan may be made for each rate filing made by a jurisdictional utility within the scope of each section. Money in the Municipal Natural Gas Regulation Revolving Loan Fund that is not necessary to finance rate proceedings initiated prior to May 31, 2003, shall be transferred to the Municipal Rate Negotiations Revolving Loan Fund on May 31, 2003, and repayments of loans or other obligations owing to the Municipal Natural Gas Regulation Revolving Loan Fund on May 31, 2003, shall be deposited in the Municipal Rate Negotiations Revolving Loan Fund upon receipt. Any obligations against or commitments of money from the Municipal Natural Gas Regulation Revolving Loan Fund on May 31, 2003, shall be obligations or commitments of the Municipal Rate Negotiations Revolving Loan Fund.

(2) The Municipal Rate Negotiations Revolving Loan Fund shall be administered by the commission which shall adopt and promulgate rules and regulations to carry out this section. The rules and regulations shall include:

(a) Loan application procedures and forms; and

(b) Fund-use monitoring and quarterly accounting of fund use.

(3) Applicants for a loan from the fund shall provide a budget statement which specifies the proposed use of the loan proceeds. Such proceeds may only be used for the costs and expenses incurred by the city to analyze rate filings for the purposes specified in section 66-1838 or 66-1867. Such costs and expenses may include the cost of rate consultants and attorneys and any other necessary costs related to the negotiation process or litigation under section 66-1867. Disbursements from the fund shall be audited by the commission. The affected jurisdictional utility may petition the commission to initiate a proceeding to determine whether the disbursements from the fund were expended by the negotiating cities consistent with the requirements of this section.

(4) The fund shall be audited as part of the regular audit of the commission's budget, and copies of the audit shall be available to all cities and any jurisdictional utility. Audits conducted pursuant to this section are public records.

(5) Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. If the fund balance exceeds four hundred thousand dollars, the income on the money in the fund shall be credited to the permanent school fund until the balance of the Municipal Rate Negotiations Revolving Loan Fund falls below such amount.

(6) A city which receives a loan under this section shall be responsible to provide for the opportunity for all other cities engaged in the same negotiations with the same jurisdictional utility to participate in all negotiations. Such city shall not exclude any other city from the information or benefits accruing from the use of loan funds.

(7) Upon the conclusion of negotiations, regardless of the result, the loan shall be repaid by the jurisdictional utility to the commission within thirty days after the date upon which it is billed by the commission. The utility shall recover the amount paid on the loan by a special surcharge on ratepayers who are or will be affected by the rate increase request. These ratepayers may be billed on their monthly statements for a period not to exceed twelve months,

and the surcharge may be shown as a separate item on the statements as a charge for rate negotiation expenses.

Source: Laws 2003, LB 790, § 39; Laws 2009, LB658, § 3.
Effective date August 30, 2009.

Cross References

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

66-1865 Jurisdictional utility; application and proposed rate schedules; filing; commission; powers.

(1) Beginning January 1, 2010, a jurisdictional utility may file an application and proposed rate schedules with the commission to establish or change infrastructure system replacement cost recovery charge rate schedules that will allow for the adjustment of the jurisdictional utility's rates and charges to provide for the recovery of costs for eligible infrastructure system replacements. The commission shall not approve any infrastructure system replacement cost recovery charge rate schedules if such schedules would produce total annualized infrastructure system replacement cost recovery charge revenue below the lesser of one million dollars or one-half percent of the jurisdictional utility's base revenue level approved by the commission in the jurisdictional utility's most recent general rate proceeding. The commission shall not approve any infrastructure system replacement cost recovery charge rate schedules if such schedules would produce total annualized infrastructure system replacement cost recovery charge revenue exceeding ten percent of the jurisdictional utility's base revenue level approved by the commission in the jurisdictional utility's most recent general rate proceeding. Any infrastructure system replacement cost recovery charge rate schedules and any future changes thereto shall be calculated and implemented in accordance with the State Natural Gas Regulation Act. Infrastructure system replacement cost recovery charge revenue shall be subject to a refund based upon a finding and order of the commission to the extent provided in subsections (6) and (8) of section 66-1866 or as approved by the affected cities to the extent provided in subsection (6) and subdivision (7)(c) of section 66-1867.

(2) The commission shall not approve any infrastructure system replacement cost recovery charge rate schedules for any jurisdictional utility that has not had a general rate proceeding decided or dismissed by issuance of a commission order within the sixty months immediately preceding the application by the jurisdictional utility for an infrastructure system replacement cost recovery charge.

(3) A jurisdictional utility shall not collect an infrastructure system replacement cost recovery charge rate for a period exceeding sixty months after its initial approval unless within such sixty-month period the jurisdictional utility has filed for or is the subject of a new general rate proceeding, except that the infrastructure system replacement cost recovery charge rate may be collected until the effective date of new rate schedules established as a result of the new general rate proceeding or until the general rate proceeding is otherwise decided or dismissed by issuance of a commission order without new rates being established.

Source: Laws 2009, LB658, § 4.
Effective date August 30, 2009.

66-1866 Jurisdictional utility; prior filing not subject to negotiations; application for infrastructure system replacement cost recovery charge; duties; public advocate; duties; commission; powers; change in rate schedules.

(1) This section applies to applications for an infrastructure system replacement cost recovery charge by a jurisdictional utility whose last general rate filing was not the subject of negotiations with affected cities as provided for in section 66-1838.

(2) When a jurisdictional utility governed by this section files an application with the commission seeking to establish or change any infrastructure system replacement cost recovery charge rate schedules, it shall submit to the commission with the application proposed infrastructure system replacement cost recovery charge rate schedules and supporting documentation regarding the calculation of the proposed infrastructure system replacement cost recovery charge rate schedules, including (a) a list of eligible projects, (b) a description of the projects, (c) the location of the projects, (d) the purpose of the projects, (e) the dates construction began and ended, (f) the total expenses for each project at completion, and (g) the extent to which such expenses are eligible for inclusion in the calculation of the infrastructure system replacement cost recovery charge.

(3)(a) When an application, along with any associated proposed rate schedules and documentation, is filed pursuant to subsection (2) of this section, the public advocate shall conduct an examination of the proposed infrastructure system replacement cost recovery charge rate schedules.

(b) The public advocate shall cause an examination to be made of information regarding the jurisdictional utility to confirm that the underlying costs are in accordance with the State Natural Gas Regulation Act and to confirm proper calculation of the proposed infrastructure system replacement cost recovery charge rates and rate schedules. The commission shall require a report regarding such examination to be prepared and filed with the commission not later than sixty days after the application is filed. No other revenue requirement or ratemaking issue shall be examined in consideration of the application or associated proposed rate schedules filed pursuant to the act unless the consideration of such affects the determination of the validity of the proposed infrastructure system replacement cost recovery charge rate schedules.

(c) The commission shall hold a hearing on the application and any associated rate schedules at which the public advocate shall present his or her report and shall act as trial staff before the commission. The commission shall issue an order to become effective not later than one hundred twenty days after the application is filed, except that the commission may, for good cause, extend such period for an additional thirty days.

(d) If the commission finds that an application complies with the requirements of the act, the commission shall enter an order authorizing the jurisdictional utility to impose an infrastructure system replacement cost recovery charge rate that is sufficient to recover appropriate pretax revenue, as determined by the commission pursuant to the act.

(4) A jurisdictional utility may apply for a change in any infrastructure system replacement cost recovery charge rate schedules approved pursuant to this section no more than once in any twelve-month period. Any such application for a change shall be pursued in the manner provided for in this section.

(5) In determining the appropriate pretax revenue, the commission shall consider the following factors:

(a) The net original cost of eligible infrastructure system replacements. For purposes of this section, the net original cost means the original cost of eligible infrastructure system replacements minus associated retirements of existing infrastructure;

(b) The accumulated deferred income taxes associated with the eligible infrastructure system replacements;

(c) The accumulated depreciation associated with the eligible infrastructure system replacements;

(d) The state, federal, and local income tax or excise tax rates at the time of such determination;

(e) The jurisdictional utility's actual regulatory capital structure as determined during the most recent general rate proceeding of the jurisdictional utility;

(f) The actual cost rates for the jurisdictional utility's debt and preferred stock as determined during the most recent general rate proceeding of the jurisdictional utility;

(g) The jurisdictional utility's cost of common equity as determined during the most recent general rate proceeding of the jurisdictional utility; and

(h) The depreciation rates applicable to the eligible infrastructure system replacements at the time of the most recent general rate proceeding of the jurisdictional utility.

(6)(a) The monthly infrastructure system replacement cost recovery charge rate shall be allocated among the jurisdictional utility's classes of customers in the same manner as costs for the same type of facilities were allocated among classes of customers in the jurisdictional utility's most recent general rate proceeding. An infrastructure system replacement cost recovery charge rate shall be assessed to customers as a monthly fixed charge and not based on volumetric consumption. Such monthly charge shall not increase more than fifty cents per residential customer over the base rates in effect at the time of the initial filing for any infrastructure system replacement cost recovery charge rate schedules. Thereafter, each subsequent filing shall not increase the monthly charge by more than fifty cents per residential customer over that charge in existence at the time of the most recent application for any infrastructure system replacement cost recovery charge rate schedules.

(b) At the end of each twelve-month period during which the infrastructure system replacement cost recovery charge rate schedules are in effect, the jurisdictional utility shall reconcile the differences between the revenue resulting from the infrastructure system replacement cost recovery charge and the appropriate pretax revenue as found by the commission for that period and shall submit the reconciliation and any proposed infrastructure system replacement cost recovery charge rate schedules adjustment to the commission for approval to recover or refund the difference, as appropriate, through adjustments of the infrastructure system replacement cost recovery charge rate.

(7)(a) A jurisdictional utility that has implemented any infrastructure system replacement cost recovery charge rate schedules pursuant to the act shall cease to collect such charges when new base rates and charges become effective for

the jurisdictional utility following a commission order establishing customer rates in a general rate proceeding.

(b) In any subsequent general rate proceeding involving a jurisdictional utility which is collecting charges pursuant to any infrastructure system replacement cost recovery charge rate schedules, the commission shall reconcile any previously unreconciled infrastructure system replacement cost recovery charge revenue as necessary to ensure that the revenue matches as closely as possible to the appropriate pretax revenue as found by the commission for that period.

(8) In the event the commission disallows, during a subsequent general rate proceeding, recovery of costs associated with eligible infrastructure system replacements previously included in any infrastructure system replacement cost recovery charge rate schedules, the commission shall order the jurisdictional utility to make such rate adjustments as necessary to recognize and account for any such overcollections.

(9) Nothing in this section shall be construed to limit the authority of the commission to review and consider infrastructure system replacement costs along with other costs during any general rate proceeding of any jurisdictional utility.

Source: Laws 2009, LB658, § 5.
Effective date August 30, 2009.

66-1867 Jurisdictional utility; prior filing subject to negotiations; application for infrastructure system replacement cost recovery charge; duties; affected cities; powers; commission; powers; change in rate schedules.

(1) This section applies to applications for an infrastructure system replacement cost recovery charge by a jurisdictional utility whose last general rate filing was the subject of negotiations with affected cities as provided for in section 66-1838.

(2) When a jurisdictional utility governed by this section files an application with the commission seeking to establish or change any infrastructure system replacement cost recovery charge rate schedules, it shall submit proposed infrastructure system replacement cost recovery charge rate schedules and supporting documentation regarding the calculation of the proposed infrastructure system replacement cost recovery charge rate schedules with the application and shall provide written notice to each city that will be affected by the proposed infrastructure system replacement cost recovery charge rates simultaneously with the filing with the commission. Such notice shall identify the cities that will be affected by the filing. The jurisdictional utility shall file copies of the notice with the commission and shall file with the affected cities the information prescribed by this section with each city affected by the proposed infrastructure system replacement cost recovery charge in electronic or digital form or, upon request, in paper form.

(3) The jurisdictional utility shall file with the cities and the commission the infrastructure system replacement cost recovery charge rate schedules and supporting documentation regarding the calculation of the proposed infrastructure system replacement cost recovery charge rate schedules, including (a) a list of eligible projects, (b) a description of the projects, (c) the location of the projects, (d) the purpose of the projects, (e) the dates construction began and ended, (f) the total expenses for each project at completion, and (g) the extent to

which such expenses are eligible for inclusion in the calculation of the infrastructure system replacement cost recovery charge rate.

(4)(a) Affected cities shall have a period of thirty days after the date of such filing within which to adopt a resolution evidencing their intent to negotiate an infrastructure system replacement cost recovery charge rate with the jurisdictional utility. A copy of the resolution in support of negotiations adopted by each city under this section or a copy of the resolution of the rejection of the offer of negotiations shall be provided to the commission and the jurisdictional utility within seven days after its adoption.

(b) If the commission receives resolutions adopted prior to the expiration of the thirty-day period provided for in subdivision (a) of this subsection evidencing the intent from cities representing more than fifty percent of the ratepayers within the affected cities to negotiate with the jurisdictional utility an infrastructure system replacement cost recovery charge rate, the commission shall certify the case for negotiation between such cities and the jurisdictional utility and shall take no action upon the application and filings regarding such charge until the negotiation period and any stipulated extension has expired or an agreement on rates is submitted, whichever occurs first.

(c) If the commission receives copies of resolutions from cities representing more than fifty percent of the ratepayers within the affected cities which expressly reject negotiations, the infrastructure system replacement cost recovery charge rate review shall proceed immediately from the date when the commission makes such a determination in the manner provided for in section 66-1866.

(d) If commission certification to pursue negotiations is entered, the cities that have adopted resolutions to negotiate and the jurisdictional utility shall enter into good faith negotiations over the proposed infrastructure system replacement cost recovery charge rate.

(e) Negotiations between the cities and the jurisdictional utility shall continue for a period not to exceed thirty days after the date of the commission's certification to pursue negotiations, except that the parties may mutually agree to extend such period to a future date certain and shall provide such stipulation to the commission.

(f) If the cities and the jurisdictional utility reach agreement upon the proposed infrastructure system replacement cost recovery charge rate schedules, such agreement shall be put into writing and filed with the commission. If cities representing more than fifty percent of the ratepayers within the cities affected by the proposed infrastructure system replacement cost recovery charge rate schedules enter into an agreement upon such charges and the agreement is filed with and approved by the commission, such infrastructure system replacement cost recovery charge rate schedules shall be effective and binding upon all of the jurisdictional utility's ratepayers within the affected cities. The commission shall enter its order either approving or rejecting such infrastructure system replacement cost recovery charge rate schedules within thirty days after the date of the filing of the agreement with the commission.

(g) Any agreement filed with the commission shall be presumed in the public interest, and absent any clear evidence on the face of the agreement that it is contrary to the standards and provisions of the State Natural Gas Regulation Act, the agreement shall be approved by the commission.

(h) If the negotiations fail to result in an agreement upon any infrastructure system replacement cost recovery charge rate schedules within the time permitted by this section for such negotiations, the jurisdictional utility may formally notify the commission of this fact and the matter shall be submitted for determination by the commission as a contested proceeding with the affected cities as one party and the jurisdictional utility as the other. The affected cities and the jurisdictional utility shall submit any documents, data, or information in support of the city's or jurisdictional utility's position to the commission in a report to be filed not later than fourteen days after the commission receives notice that negotiations have failed and formally notifies the parties that it will be hearing the matter as a contested case. The commission shall hold a hearing in the case not later than thirty-five days after the receipt of the reports of both parties. In determining the appropriate pretax revenue of the jurisdictional utility, the commission shall consider the factors set out in subsection (5) of section 66-1866. A final determination by the commission shall be rendered by the commission within twenty-one days after the adjournment of the hearing.

(i) If information filed pursuant to subdivision (h) of this subsection is not considered a public record within the meaning of sections 84-712 to 84-712.09, such information may be submitted to the commission by the jurisdictional utility or affected cities for the limited purpose of consideration by the commission under this section subject to a protective order issued by the commission.

(j) Within thirty days after any infrastructure system replacement cost recovery charge rate schedules approved by the commission pursuant to this section become effective, copies of all documents relating to such infrastructure system replacement cost recovery charge rate schedules, except those determined to be confidential under rules and regulations adopted and promulgated by the commission or that may be withheld from the public pursuant to subdivision (h) or (j) of this subsection, shall be available for public inspection in every office and facility open to the general public of the jurisdictional utility in this state.

(5) A jurisdictional utility may apply for a change in any infrastructure system replacement cost recovery charge rate schedules approved pursuant to this section no more than once in any twelve-month period. Any such application for a change shall be pursued in the manner provided for in this section.

(6)(a) The monthly infrastructure system replacement cost recovery charge rate shall be allocated among the jurisdictional utility's classes of customers in the same manner as costs for the same type of facilities were allocated among classes of customers in the jurisdictional utility's most recent general rate proceeding. An infrastructure system replacement cost recovery charge rate shall be assessed to customers as a monthly fixed charge and not based on volumetric consumption. Such monthly charge shall not increase more than fifty cents per residential customer over the base rates in effect at the time of the initial filing for any infrastructure system replacement cost recovery charge rate schedules. Thereafter, each subsequent filing shall not increase the monthly charge by more than fifty cents per residential customer over that charge in existence at the time of the most recent application for any infrastructure system replacement cost recovery charge rate schedules.

(b) At the end of each twelve-month period during which the infrastructure system replacement cost recovery charge rate schedules are in effect, the jurisdictional utility shall reconcile the differences between the revenue result-

ing from an infrastructure system replacement cost recovery charge and the appropriate pretax revenue for that period and shall submit the reconciliation and any proposed infrastructure system replacement cost recovery charge rate schedules adjustment to the affected cities for approval to recover or refund the difference, as appropriate, through adjustments of the infrastructure system replacement cost recovery charge rate. Review and approval of such reconciliation or adjustment shall proceed in the manner set out in the commission order on the initial application for an infrastructure system replacement cost recovery charge rate.

(7)(a) A jurisdictional utility that has implemented any infrastructure system replacement cost recovery charge rate schedules pursuant to this section shall cease to collect such charges when new base rates and charges become effective for the jurisdictional utility following a commission order establishing or approving customer rates in a subsequent general rate proceeding.

(b) In any subsequent general rate proceeding involving a jurisdictional utility which is collecting charges pursuant to any infrastructure system replacement cost recovery charge rate schedules, the new general rates shall reflect a reconciliation of any previously unreconciled infrastructure system replacement cost recovery charge revenue as necessary to ensure that the revenue matches as closely as possible to the appropriate pretax revenue for that period as determined in the general rate proceeding.

(c) If, during a subsequent general rate proceeding, the recovery of certain costs associated with eligible infrastructure system replacements are disallowed, the new general rates approved shall include such adjustments as are necessary to recognize and account for any overcollections.

(8) Nothing in this section shall be construed to limit the authority of the commission or affected cities engaged in negotiations regarding a general rate filing with a jurisdictional utility to review and consider infrastructure system replacement cost recovery charge rates along with other costs during any general rate proceeding of such jurisdictional utility.

Source: Laws 2009, LB658, § 6.
Effective date August 30, 2009.

CHAPTER 68
PUBLIC ASSISTANCE

ARTICLE 7
DEPARTMENT DUTIES

68-717 Department of Health and Human Services; assume responsibility for public assistance programs.

The Department of Health and Human Services shall assume the responsibility for all public assistance, including aid to families with dependent children, emergency assistance, assistance to the aged, blind, or disabled, medically handicapped children's services, commodities, the Supplemental Nutrition Assistance Program, and medical assistance.

Source: Laws 1982, LB 522, § 33; Laws 1983, LB 604, § 23; Laws 1985, LB 249, § 4; Laws 1989, LB 362, § 8; Laws 1996, LB 1044, § 301; Laws 2007, LB296, § 244; Laws 2009, LB288, § 17. Operative date August 30, 2009.

ARTICLE 9
MEDICAL ASSISTANCE ACT

Section
68-961. Medical Home Advisory Council; created; members; chairperson; expenses; removal; duties.
68-962. Autism Treatment Program Act; act, how cited.
68-963. Purpose of Autism Treatment Program Act.
68-964. Autism Treatment Program; created; administration; funding.
68-965. Autism Treatment Program Cash Fund; created; use; investment.
68-966. Department; apply for medical assistance program waiver or amendment; legislative intent.
68-967. Comprehensive treatment of pediatric feeding disorders; amendment to state medicaid plan; department; duties.

68-901 Medical Assistance Act; act, how cited.

Sections 68-901 to 68-967 shall be known and may be cited as the Medical Assistance Act.

Source: Laws 2006, LB 1248, § 1; Laws 2008, LB830, § 1; Laws 2009, LB27, § 1; Laws 2009, LB288, § 18; Laws 2009, LB342, § 1; Laws 2009, LB396, § 1.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB27, section 1, with LB288, section 18, LB342, section 1, and LB396, section 1, to reflect all amendments.

Note: Changes made by LB27 became effective May 27, 2009. Changes made by LB288 became operative May 30, 2009. Changes made by LB342 and LB396 became effective August 30, 2009.

68-906 Medical assistance; state accepts federal provisions.

For purposes of paying medical assistance under the Medical Assistance Act and sections 68-1002 and 68-1006, the State of Nebraska accepts and assents to all applicable provisions of Title XIX and Title XXI of the federal Social Security Act. Any reference in the Medical Assistance Act to the federal Social Security Act or other acts or sections of federal law shall be to such federal acts or sections as they existed on January 1, 2009.

Source: Laws 1965, c. 397, § 6, p. 1278; Laws 1993, LB 808, § 2; Laws 1996, LB 1044, § 324; Laws 1998, LB 1063, § 7; Laws 2000, LB 1115, § 10; Laws 2005, LB 301, § 4; R.S.Supp.,2005, § 68-1021; Laws 2006, LB 1248, § 6; Laws 2007, LB185, § 1; Laws 2008, LB797, § 4; Laws 2009, LB288, § 19.
Operative date May 30, 2009.

68-908 Department; powers and duties.

(1) The department shall administer the medical assistance program.

(2) The department may (a) enter into contracts and interagency agreements, (b) adopt and promulgate rules and regulations, (c) adopt fee schedules, (d) apply for and implement waivers and managed care plans for eligible recipients, and (e) perform such other activities as necessary and appropriate to carry out its duties under the Medical Assistance Act.

(3) The department shall maintain the confidentiality of information regarding applicants for or recipients of medical assistance and such information shall only be used for purposes related to administration of the medical assistance program and the provision of such assistance or as otherwise permitted by federal law.

(4)(a) The department shall prepare an annual summary and analysis of the medical assistance program for legislative and public review, including, but not limited to, a description of eligible recipients, covered services, provider reim-

bursement, program trends and projections, program budget and expenditures, the status of implementation of the Medicaid Reform Plan, and recommendations for program changes.

(b) The department shall provide a draft report of such summary and analysis to the Medicaid Reform Council no later than September 15 of each year. The council shall conduct a public meeting no later than October 1 of each year to discuss and receive public comment regarding such report. The council shall provide any comments and recommendations regarding such report in writing to the department no later than November 1 of each year. The department shall submit a final report of such summary and analysis to the Governor, the Legislature, and the council no later than December 1 of each year. Such final report shall include a response to each written recommendation provided by the council.

Source: Laws 1965, c. 397, § 8, p. 1278; Laws 1967, c. 413, § 2, p. 1278; Laws 1982, LB 522, § 43; Laws 1996, LB 1044, § 325; R.S.1943, (2003), § 68-1023; Laws 2006, LB 1248, § 8; Laws 2007, LB296, § 247; Laws 2009, LB288, § 20.
Operative date May 30, 2009.

68-911 Medical assistance; mandated and optional coverage; department; submit state plan amendment or waiver.

(1) Medical assistance shall include coverage for health care and related services as required under Title XIX of the federal Social Security Act, including, but not limited to:

(a) Inpatient and outpatient hospital services;

(b) Laboratory and X-ray services;

(c) Nursing facility services;

(d) Home health services;

(e) Nursing services;

(f) Clinic services;

(g) Physician services;

(h) Medical and surgical services of a dentist;

(i) Nurse practitioner services;

(j) Nurse midwife services;

(k) Pregnancy-related services;

(l) Medical supplies; and

(m) Early and periodic screening and diagnosis and treatment services for children.

(2) In addition to coverage otherwise required under this section, medical assistance may include coverage for health care and related services as permitted but not required under Title XIX of the federal Social Security Act, including, but not limited to:

(a) Prescribed drugs;

(b) Intermediate care facilities for the mentally retarded;

(c) Home and community-based services for aged persons and persons with disabilities;

(d) Dental services;

(e) Rehabilitation services;

(f) Personal care services;

(g) Durable medical equipment;

(h) Medical transportation services;

(i) Vision-related services;

(j) Speech therapy services;

(k) Physical therapy services;

(l) Chiropractic services;

(m) Occupational therapy services;

(n) Optometric services;

(o) Podiatric services;

(p) Hospice services;

(q) Mental health and substance abuse services;

(r) Hearing screening services for newborn and infant children; and

(s) Administrative expenses related to administrative activities, including outreach services, provided by school districts and educational service units to students who are eligible or potentially eligible for medical assistance.

(3) No later than July 1, 2009, the department shall submit a state plan amendment or waiver to the federal Centers for Medicare and Medicaid Services to provide coverage under the medical assistance program for community-based secure residential and subacute behavioral health services for all eligible recipients, without regard to whether the recipient has been ordered by a mental health board under the Nebraska Mental Health Commitment Act to receive such services.

Source: Laws 1965, c. 397, § 4, p. 1277; Laws 1967, c. 413, § 1, p. 1278; Laws 1969, c. 542, § 1, p. 2193; Laws 1993, LB 804, § 1; Laws 1993, LB 808, § 1; Laws 1996, LB 1044, § 315; Laws 1998, LB 1063, § 5; Laws 1998, LB 1073, § 60; Laws 2002, Second Spec. Sess., LB 8, § 1; R.S.1943, (2003), § 68-1019; Laws 2006, LB 1248, § 11; Laws 2009, LB603, § 1.
Operative date May 23, 2009.

Cross References

Nebraska Mental Health Commitment Act, see section 71-901.

68-915 Eligibility.

The following persons shall be eligible for medical assistance:

(1) Dependent children as defined in section 43-504;

(2) Aged, blind, and disabled persons as defined in sections 68-1002 to 68-1005;

(3) Children under nineteen years of age who are eligible under section 1905(a)(i) of the federal Social Security Act;

(4) Persons who are presumptively eligible as allowed under sections 1920 and 1920B of the federal Social Security Act;

(5) Children under nineteen years of age with a family income equal to or less than two hundred percent of the Office of Management and Budget income poverty guideline, as allowed under Title XIX and Title XXI of the federal Social Security Act, without regard to resources, and pregnant women with a family income equal to or less than one hundred eighty-five percent of the Office of Management and Budget income poverty guideline, as allowed under Title XIX and Title XXI of the federal Social Security Act, without regard to resources. Children described in this subdivision and subdivision (6) of this section shall remain eligible for six consecutive months from the date of initial eligibility prior to redetermination of eligibility. The department may review eligibility monthly thereafter pursuant to rules and regulations adopted and promulgated by the department. The department may determine upon such review that a child is ineligible for medical assistance if such child no longer meets eligibility standards established by the department;

(6) For purposes of Title XIX of the federal Social Security Act as provided in subdivision (5) of this section, children with a family income as follows:

(a) Equal to or less than one hundred fifty percent of the Office of Management and Budget income poverty guideline with eligible children one year of age or younger;

(b) Equal to or less than one hundred thirty-three percent of the Office of Management and Budget income poverty guideline with eligible children over one year of age and under six years of age; or

(c) Equal to or less than one hundred percent of the Office of Management and Budget income poverty guideline with eligible children six years of age or older and less than nineteen years of age;

(7) Persons who are medically needy caretaker relatives as allowed under 42 U.S.C. 1396d(a)(ii);

(8) As allowed under 42 U.S.C. 1396a(a)(10)(A)(ii), disabled persons as defined in section 68-1005 with a family income of less than two hundred fifty percent of the Office of Management and Budget income poverty guideline and who, but for earnings in excess of the limit established under 42 U.S.C. 1396d(q)(2)(B), would be considered to be receiving federal Supplemental Security Income. The department shall apply for a waiver to disregard any unearned income that is contingent upon a trial work period in applying the Supplemental Security Income standard. Such disabled persons shall be subject to payment of premiums as a percentage of family income beginning at not less than two hundred percent of the Office of Management and Budget income poverty guideline. Such premiums shall be graduated based on family income and shall not be less than two percent or more than ten percent of family income; and

(9) As allowed under 42 U.S.C. 1396a(a)(10)(A)(ii), persons who:

(a) Have been screened for breast and cervical cancer under the Centers for Disease Control and Prevention breast and cervical cancer early detection program established under Title XV of the federal Public Health Service Act, 42 U.S.C. 300k et seq., in accordance with the requirements of section 1504 of such act, 42 U.S.C. 300n, and who need treatment for breast or cervical cancer, including precancerous and cancerous conditions of the breast or cervix;

(b) Are not otherwise covered under creditable coverage as defined in section 2701(c) of the federal Public Health Service Act, 42 U.S.C. 300gg(c);

(c) Have not attained sixty-five years of age; and

(d) Are not eligible for medical assistance under any mandatory categorically needy eligibility group.

Eligibility shall be determined under this section using an income budgetary methodology that determines children's eligibility at no greater than two hundred percent of the Office of Management and Budget income poverty guideline and adult eligibility using adult income standards no greater than the applicable categorical eligibility standards established pursuant to state or federal law. The department shall determine eligibility under this section pursuant to such income budgetary methodology and subdivision (1)(q) of section 68-1713.

Source: Laws 1965, c. 397, § 5, p. 1278; Laws 1984, LB 1127, § 4; Laws 1988, LB 229, § 1; Laws 1995, LB 455, § 6; Laws 1996, LB 1044, § 323; Laws 1998, LB 1063, § 6; Laws 1999, LB 594, § 34; Laws 2001, LB 677, § 1; Laws 2002, Second Spec. Sess., LB 8, § 2; Laws 2003, LB 411, § 2; Laws 2005, LB 301, § 3; R.S.Supp.,2005, § 68-1020; Laws 2006, LB 1248, § 15; Laws 2007, LB296, § 249; Laws 2007, LB351, § 3; Laws 2009, LB603, § 2.
Operative date August 30, 2009.

68-934 False Medicaid Claims Act; act, how cited.

Sections 68-934 to 68-947 shall be known and may be cited as the False Medicaid Claims Act.

Source: Laws 1996, LB 1155, § 67; R.S.1943, (2003), § 68-1037.01; Laws 2004, LB 1084, § 1; R.S.Supp.,2004, § 68-1073; Laws 2006, LB 1248, § 34; Laws 2009, LB288, § 21.
Operative date May 30, 2009.

68-940 Penalties or damages; considerations; liability; costs and attorney's fees.

(1) In determining the amount of any penalties or damages awarded under the False Medicaid Claims Act, the following shall be taken into account:

(a) The nature of claims and the circumstances under which they were presented;

(b) The degree of culpability and history of prior offenses of the person presenting the claims;

(c) Coordination of the total penalties and damages arising from the same claims, goods, or services, whether based on state or federal statute; and

(d) Such other matters as justice requires.

(2)(a) Any person who presents a false medicaid claim is subject to civil liability as provided in section 68-936, except when the court finds that:

(i) The person committing the violation of the False Medicaid Claims Act furnished officials of the state responsible for investigating violations of the act with all information known to such person about the violation within thirty days after the date on which the defendant first obtained the information;

(ii) Such person fully cooperated with any state investigation of such violation; and

(iii) At the time such person furnished the state with the information about the violation, no criminal prosecution, civil action, or administrative action had commenced under the act with respect to such violation and the person did not have actual knowledge of the existence of an investigation into such violation.

(b) The court may assess not more than two times the amount of the false medicaid claims submitted because of the action of a person coming within the exception under subdivision (2)(a) of this section, and such person is also liable for the state's costs and attorney's fees for a civil action brought to recover any penalty or damages.

(3) Amounts recovered under the False Medicaid Claims Act shall be remitted to the State Treasurer for credit to the Health and Human Services Cash Fund, except that (a) amounts recovered for the state's costs and attorney's fees pursuant to subdivision (2)(b) of this section and sections 68-936 and 68-939 shall be remitted to the State Treasurer for credit to the State Medicaid Fraud Control Unit Cash Fund and (b) the State Treasurer shall distribute civil penalties in accordance with Article VII, section 5, of the Constitution of Nebraska.

Source: Laws 1996, LB 1155, § 70; Laws 1997, LB 307, § 111; R.S.1943, (2003), § 68-1037.04; Laws 2004, LB 1084, § 7; R.S.Supp.,2004, § 68-1079; Laws 2006, LB 1248, § 40; Laws 2007, LB296, § 261; Laws 2009, LB288, § 22.
Operative date May 30, 2009.

68-940.01 State Medicaid Fraud Control Unit Cash Fund; created; use; investment.

The State Medicaid Fraud Control Unit Cash Fund is created. The fund shall be maintained by the Department of Justice and administered by the Attorney General. The fund shall consist of any recovery for the state's costs and attorney's fees received pursuant to subdivision (2)(b) of section 68-940 and sections 68-936 and 68-939, except criminal penalties, whether such recovery is by way of verdict, judgment, compromise, or settlement in or out of court, or other final disposition of any case or controversy under such subdivision or sections. Money in the fund shall be used to pay the salaries and related expenses of the Department of Justice for the state medicaid fraud control unit. 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 2009, LB288, § 23.
Operative date May 30, 2009.

Cross References

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

68-948 Medicaid Reform Council; established; members; duties; expenses; terms; vacancies; department; provide information.

(1) The Medicaid Reform Council is established. The council shall consist of ten persons appointed by the Governor. The chairperson of the Health and Human Services Committee of the Legislature or his or her designee shall serve as a nonvoting, ex officio member of the council. The council shall include, but not be limited to, at least one representative from each of the following:

Providers, recipients of medical assistance, advocates for such recipients, business representatives, insurers, and elected officials. The Governor shall appoint the chairperson of the council. Members of the council may be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177.

(2) The council shall (a) oversee and advise the department regarding implementation of reforms to the medical assistance program, including, but not limited to, reforms such as those contained in the Medicaid Reform Plan, (b) conduct public meetings at least quarterly and other meetings at the call of the chairperson of the council, in consultation with the department, and (c) provide comments and recommendations to the department regarding the administration of the medical assistance program and any proposed changes to such program.

(3) The department shall provide the council with any reports, data, analysis, or other such information upon which the department relied, which provided a basis for the department's proposed reforms, or which the department otherwise intends to present to the council at least two weeks prior to the quarterly meeting.

(4) Beginning June 30, 2010, the terms of the existing members of the council shall be extended as follows: One-half of the members shall serve for two-year terms and one-half of the members shall serve for four-year terms as determined by the Governor. Thereafter all members shall serve for four-year terms. Members may be reappointed at the discretion of the Governor. Appointments to the council occurring as a result of replacement of an existing member at the expiration of the member's term or due to resignation of an existing member shall be made by the Governor.

Source: Laws 2006, LB 1248, § 48; Laws 2007, LB296, § 262; Laws 2009, LB288, § 24.
Operative date August 30, 2009.

68-957 Medical Home Pilot Program Act; act, how cited; purpose; termination.

Sections 68-957 to 68-961 shall be known and may be cited as the Medical Home Pilot Program Act. The Medical Home Pilot Program Act terminates on June 30, 2014. The purposes of the act are to improve health care access and health outcomes for patients and to contain costs of the medical assistance program.

Source: Laws 2009, LB396, § 2.
Effective date August 30, 2009.
Termination date June 30, 2014.

68-958 Medical Home Pilot Program Act; terms, defined.

For purposes of the Medical Home Pilot Program Act:

(1) Division means the Division of Medicaid and Long-Term Care of the Department of Health and Human Services;

(2) Medical home means a provider of primary health care services to patients that meets the requirements for participation in the medical home pilot program established under section 68-960;

(3) Patient means a recipient of medical assistance under the Medical Assistance Act; and

(4) Primary care physician means a physician licensed under the Uniform Credentialing Act and practicing in the area of general medicine, family medicine, pediatrics, or internal medicine.

Source: Laws 2009, LB396, § 3.
Effective date August 30, 2009.
Termination date June 30, 2014.

Cross References

Uniform Credentialing Act, see section 38-101.

68-959 Medical home pilot program; designation; division; duties; evaluation; report.

(1) No later than January 1, 2012, the division shall design and implement a medical home pilot program, in consultation with the Medical Home Advisory Council, in one or more geographic regions of the state to provide access to medical homes for patients. The division shall apply for any available federal or other funds for the program. The division shall establish necessary and appropriate reimbursement policies and incentives under such program to accomplish the purposes of the Medical Home Pilot Program Act. The reimbursement policies:

(a) Shall require the provision of a medical home for clients;

(b) Shall be designed to increase the availability of primary health care services to clients;

(c) May provide an increased reimbursement rate to providers who provide primary health care services to clients outside of regular business hours or on weekends; and

(d) May provide a postevaluation incentive payment.

(2) No later than June 1, 2014, the division shall evaluate the medical home pilot program and report the results of such evaluation to the Governor and the Health and Human Services Committee of the Legislature. Such report shall include an evaluation of health outcomes and cost savings achieved, recommendations for improvement, recommendations regarding continuation and expansion of the program, and such other information as deemed necessary by the division or requested by the committee.

Source: Laws 2009, LB396, § 4.
Effective date August 30, 2009.
Termination date June 30, 2014.

68-960 Medical home; duties.

A medical home shall:

(1) Provide comprehensive, coordinated health care for patients and consistent, ongoing contact with patients throughout their interactions with the health care system, including, but not limited to, electronic contacts and ongoing care coordination and health maintenance tracking for patients;

(2) Provide primary health care services for patients and appropriate referral to other health care professionals or behavioral health professionals as needed;

(3) Focus on the ongoing prevention of illness and disease;

(4) Encourage active participation by a patient and the patient's family, guardian, or authorized representative, when appropriate, in health care decisionmaking and care plan development;

(5) Encourage the appropriate use of specialty care services and emergency room services by patients; and

(6) Provide other necessary and appropriate health care services and supports to accomplish the purposes of the Medical Home Pilot Program Act.

Source: Laws 2009, LB396, § 5.
Effective date August 30, 2009.
Termination date June 30, 2014.

68-961 Medical Home Advisory Council; created; members; chairperson; expenses; removal; duties.

(1) The Medical Home Advisory Council is created. The council shall consist of seven voting members appointed by the Governor as follows:

(a) Two licensed primary care physicians actively practicing in the area of general and family medicine;

(b) Two licensed primary care physicians actively practicing in the area of pediatrics;

(c) Two licensed primary care physicians actively practicing in the area of internal medicine; and

(d) One representative from a licensed hospital in Nebraska.

(2) The chairperson of the Health and Human Services Committee of the Legislature or another member of the committee designated by the chairperson shall serve as an ex officio, nonvoting member of the council.

(3) The council shall annually select one of its appointed members to serve as chairperson of the council for a one-year term. Appointed members of the council shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177. The division shall provide administrative support to the council.

(4) The Governor may remove appointed members of the council for good cause upon written notice and an opportunity to be heard. Any appointed member of the council who ceases to meet the requirements for appointment to the council shall cease to be a member of the council. A vacancy on the council shall be filled in the same manner as provided for the original appointment.

(5) The Governor shall make initial appointments to the council no later than October 1, 2009. The council shall conduct its initial organizational meeting no later than October 31, 2009.

(6) The council shall (a) guide and assist the division in the design and implementation of the medical home pilot program and (b) promote the use of best practices to ensure access to medical homes for patients and accomplish the purposes of the Medical Home Pilot Program Act.

Source: Laws 2009, LB396, § 6.
Effective date August 30, 2009.
Termination date June 30, 2014.

68-962 Autism Treatment Program Act; act, how cited.

Sections 68-962 to 68-966 shall be known and may be cited as the Autism Treatment Program Act.

Source: Laws 2007, LB482, § 1; R.S.1943, (2008), § 85-1,138; Laws 2009, LB27, § 2.
Effective date May 27, 2009.

68-963 Purpose of Autism Treatment Program Act.

The purpose of the Autism Treatment Program Act is to provide for the development and administration of a waiver or an amendment to an existing waiver under the medical assistance program established in section 68-903.

Source: Laws 2007, LB482, § 2; R.S.1943, (2008), § 85-1,139; Laws 2009, LB27, § 3.
Effective date May 27, 2009.

68-964 Autism Treatment Program; created; administration; funding.

The Autism Treatment Program is created. The program shall be administered by the department.

Source: Laws 2007, LB482, § 3; R.S.1943, (2008), § 85-1,140; Laws 2009, LB27, § 4.
Effective date May 27, 2009.

68-965 Autism Treatment Program Cash Fund; created; use; investment.

(1) The Autism Treatment Program Cash Fund is created. The fund shall include revenue transferred from the Nebraska Health Care Cash Fund and revenue received from gifts, grants, bequests, donations, other similar donation arrangements, or other contributions from public or private sources. The department shall administer the fund. The Autism Treatment Program Cash Fund shall be used as the state's matching share for the waiver established under section 68-966 and for expenses incurred in the administration of the Autism Treatment Program. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(2) The program shall utilize private funds deposited in the Autism Treatment Program Cash Fund and funds transferred by the Legislature from the Nebraska Health Care Cash Fund to the Autism Treatment Program Cash Fund. Transfers from the Nebraska Health Care Cash Fund in any fiscal year shall be contingent upon the receipt of private matching funds for such program, with no less than one dollar of private funds received for every two dollars transferred from the Nebraska Health Care Cash Fund. No donations from a provider of services under Title XIX of the federal Social Security Act shall be deposited into the Autism Treatment Program Cash Fund.

Source: Laws 2007, LB482, § 4; R.S.1943, (2008), § 85-1,141; Laws 2009, LB27, § 5.
Effective date May 27, 2009.

Cross References

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

68-966 Department; apply for medical assistance program waiver or amendment; legislative intent.

(1) The department shall apply for a waiver or an amendment to an existing waiver under the medical assistance program established in section 68-903 for the purpose of providing medical assistance for intensive early intervention services based on behavioral principles for children with a medical diagnosis of an autism spectrum disorder or an educational verification of autism. Such waiver shall not be construed to create an entitlement to services provided under such waiver.

(2) It is the intent of the Legislature that such waiver (a) require means testing for and cost-sharing by recipient families, (b) limit eligibility only to children for whom such services have been initiated prior to the age of nine years, (c) limit the number of children served according to available funding, (d) require demonstrated progress toward the attainment of treatment goals as a condition for continued receipt of medical assistance benefits for such treatment, (e) be developed in consultation with the Health and Human Services Committee of the Legislature and the federal Centers for Medicare and Medicaid Services and with the input of parents and families of children with autism spectrum disorders and organizations advocating on behalf of such persons, and (f) be submitted to the federal Centers for Medicare and Medicaid Services as soon as practicable, but no later than September 1, 2009.

Source: Laws 2007, LB482, § 5; R.S.1943, (2008), § 85-1,142; Laws 2009, LB27, § 6.
Effective date May 27, 2009.

68-967 Comprehensive treatment of pediatric feeding disorders; amendment to state medicaid plan; department; duties.

(1) On or before July 1, 2010, the Department of Health and Human Services shall submit an application to the Centers for Medicare and Medicaid Services of the United States Department of Health and Human Services amending the state medicaid plan to provide for medicaid payments for the comprehensive treatment of pediatric feeding disorders through interdisciplinary treatment.

(2) For purposes of this section, interdisciplinary treatment means the collaboration of medicine, psychology, nutrition science, speech therapy, occupational therapy, social work, and other appropriate medical and behavioral disciplines in an integrated program.

(3) This section terminates on January 1, 2015, unless extended by action of the Legislature.

Source: Laws 2009, LB342, § 2.
Effective date August 30, 2009.
Termination date January 1, 2015.

ARTICLE 10

ASSISTANCE, GENERALLY

(b) PROCEDURE AND PENALTIES

Section
68-1016. Assistance; appeals; procedure.
68-1017. Assistance; violations; penalties.
68-1017.01. Supplemental Nutrition Assistance Program; violations; penalties.

Section
68-1017.02. Supplemental Nutrition Assistance Program; department; duties; report; contents; person ineligible; when.

(h) NON-UNITED-STATES CITIZENS

68-1070. Non-United-States citizens; assistance; eligibility.

(b) PROCEDURE AND PENALTIES

68-1016 Assistance; appeals; procedure.

The chief executive officer of the Department of Health and Human Services, or his or her designated representative, shall provide for granting an opportunity for a fair hearing to any individual whose claim for assistance to the aged, blind, or disabled, aid to dependent children, emergency assistance, medical assistance, commodities, or Supplemental Nutrition Assistance Program benefits is denied, is not granted in full, or is not acted upon with reasonable promptness. An appeal shall be taken by filing with the department a written notice of appeal setting forth the facts on which the appeal is based. The department shall thereupon, in writing, notify the appellant of the time and place for hearing which shall be not less than one week nor more than six weeks from the date of such notice. Hearings shall be before the duly authorized agent of the department. On the basis of evidence adduced, the duly authorized agent shall enter a final order on such appeal, which order shall be transmitted to the appellant.

Source: Laws 1965, c. 394, § 4, p. 1262; Laws 1969, c. 540, § 1, p. 2190; Laws 1982, LB 522, § 41; Laws 1989, LB 362, § 9; Laws 1996, LB 1044, § 313; Laws 1998, LB 1073, § 57; Laws 2007, LB296, § 270; Laws 2009, LB288, § 25.
Operative date August 30, 2009.

68-1017 Assistance; violations; penalties.

Any person, including vendors and providers of medical assistance and social services, who, by means of a willfully false statement or representation, or by impersonation or other device, obtains or attempts to obtain, or aids or abets any person to obtain or to attempt to obtain (1) an assistance certificate of award to which he or she is not entitled, (2) any commodity, any foodstuff, any food coupon, any Supplemental Nutrition Assistance Program coupon, electronic benefit, or electronic benefit card, or any payment to which such individual is not entitled or a larger payment than that to which he or she is entitled, (3) any payment made on behalf of a recipient of medical assistance or social services, or (4) any other benefit administered by the Department of Health and Human Services, or who violates any statutory provision relating to assistance to the aged, blind, or disabled, aid to dependent children, social services, or medical assistance, commits an offense and shall upon conviction be punished as follows: (a) If the aggregate value of all funds or other benefits obtained or attempted to be obtained is less than five hundred dollars, the person so convicted shall be guilty of a Class III misdemeanor; or (b) if the aggregate value of all funds and other benefits obtained or attempted to be obtained is five hundred dollars or more, the person so convicted shall be guilty of a Class IV felony.

Source: Laws 1965, c. 394, § 5, p. 1262; Laws 1969, c. 541, § 1, p. 2192; Laws 1977, LB 39, § 127; Laws 1984, LB 1127, § 2; Laws 1996,

LB 1044, § 314; Laws 1998, LB 1073, § 58; Laws 2007, LB296, § 271; Laws 2009, LB288, § 26.
Operative date August 30, 2009.

68-1017.01 Supplemental Nutrition Assistance Program; violations; penalties.

(1) A person commits an offense if he or she knowingly uses, alters, or transfers any Supplemental Nutrition Assistance Program coupons, electronic benefits, or electronic benefit cards or any authorizations to participate in the Supplemental Nutrition Assistance Program in any manner not authorized by law. An offense under this subsection shall be a Class III misdemeanor if the value of the Supplemental Nutrition Assistance Program coupons, electronic benefits, electronic benefit cards, or authorizations is less than five hundred dollars and shall be a Class IV felony if the value is five hundred dollars or more.

(2) A person commits an offense if he or she knowingly (a) possesses any Supplemental Nutrition Assistance Program coupons, electronic benefits, or electronic benefit cards or any authorizations to participate in the Supplemental Nutrition Assistance Program when such individual is not authorized by law to possess them, (b) redeems Supplemental Nutrition Assistance Program coupons, electronic benefits, or electronic benefit cards when he or she is not authorized by law to redeem them, or (c) redeems Supplemental Nutrition Assistance Program coupons, electronic benefits, or electronic benefit cards for purposes not authorized by law. An offense under this subsection shall be a Class III misdemeanor if the value of the Supplemental Nutrition Assistance Program coupons, electronic benefits, electronic benefit cards, or authorizations is less than five hundred dollars and shall be a Class IV felony if the value is five hundred dollars or more.

(3) A person commits an offense if he or she knowingly possesses blank authorizations to participate in the Supplemental Nutrition Assistance Program when such possession is not authorized by law. An offense under this subsection shall be a Class IV felony.

(4) When any Supplemental Nutrition Assistance Program coupons, electronic benefits, or electronic benefit cards or any authorizations to participate in the Supplemental Nutrition Assistance Program of various values are obtained in violation of this section pursuant to one scheme or a continuing course of conduct, whether from the same or several sources, such conduct may be considered as one offense, and the values aggregated in determining the grade of the offense.

Source: Laws 1984, LB 1127, § 3; Laws 1998, LB 1073, § 59; Laws 2009, LB288, § 27.
Operative date August 30, 2009.

68-1017.02 Supplemental Nutrition Assistance Program; department; duties; report; contents; person ineligible; when.

(1)(a) The Department of Health and Human Services shall apply for and utilize to the maximum extent possible, within limits established by the Legislature, any and all appropriate options available to the state under the federal Supplemental Nutrition Assistance Program and regulations adopted under such program to maximize the number of Nebraska residents being served

under such program within such limits. The department shall seek to maximize federal funding for such program and minimize the utilization of General Funds for such program and shall employ the personnel necessary to determine the options available to the state and issue the report to the Legislature required by subdivision (b) of this subsection.

(b) The department shall report annually to the Health and Human Services Committee of the Legislature by December 1 on efforts by the department to carry out the provisions of this subsection. Such report shall provide the committee with all necessary and appropriate information to enable the committee to conduct a meaningful evaluation of such efforts. Such information shall include, but not be limited to, a clear description of various options available to the state under the federal Supplemental Nutrition Assistance Program, the department's evaluation of and any action taken by the department with respect to such options, the number of persons being served under such program, and any and all costs and expenditures associated with such program.

(c) The Health and Human Services Committee of the Legislature, after receipt and evaluation of the report required in subdivision (b) of this subsection, shall issue recommendations to the department on any further action necessary by the department to meet the requirements of this section.

(2)(a) Within the limits specified in this subsection, the State of Nebraska opts out of the provision of the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996, as such act existed on January 1, 2009, that eliminates eligibility for the Supplemental Nutrition Assistance Program for any person convicted of a felony involving the possession, use, or distribution of a controlled substance.

(b) A person shall be ineligible for Supplemental Nutrition Assistance Program benefits under this subsection if he or she (i) has had three or more felony convictions for the possession or use of a controlled substance or (ii) has been convicted of a felony involving the sale or distribution of a controlled substance or the intent to sell or distribute a controlled substance. A person with one or two felony convictions for the possession or use of a controlled substance shall only be eligible to receive Supplemental Nutrition Assistance Program benefits under this subsection if he or she is participating in or has completed a state-licensed or nationally accredited substance abuse treatment program since the date of conviction. The determination of such participation or completion shall be made by the treatment provider administering the program.

Source: Laws 2003, LB 667, § 22; Laws 2005, LB 301, § 2; Laws 2008, LB171, § 1; Laws 2009, LB288, § 28.
Operative date August 30, 2009.

(h) NON-UNITED-STATES CITIZENS

68-1070 Non-United-States citizens; assistance; eligibility.

(1) If the following non-United-States citizens meet the income and other requirements for participation in the medical assistance program established pursuant to the Medical Assistance Act, in the program for financial assistance pursuant to section 43-512, in the Supplemental Nutrition Assistance Program administered by the State of Nebraska pursuant to the federal Food and Nutrition Act of 2008 as the act existed on January 1, 2009, or in the program

for assistance to the aged, blind, and disabled, such persons shall be eligible for such program or benefits:

(a) Non-United-States citizens lawfully admitted, regardless of the date entry was granted, into the United States for permanent residence;

(b) Refugees admitted under section 207 of the federal Immigration and Naturalization Act, non-United-States citizens granted asylum under section 208 of such federal act, and non-United-States citizens whose deportation is withheld under section 243(h) of such federal act, regardless of the date of entry into the United States; and

(c) Individuals for whom coverage is mandated under federal law.

(2) Individuals eligible for the Supplemental Nutrition Assistance Program under this section shall receive any Supplemental Nutrition Assistance Program coupons or electronic benefits or a state voucher which can be used only for food products authorized under the federal Food and Nutrition Act of 2008 as the act existed on January 1, 2009, in the amount of the Supplemental Nutrition Assistance Program benefit for which this individual was otherwise eligible but for the citizenship provisions of Public Law 104-193, 110 Stat. 2105 (1996).

(3) The income and resources of any individual who assists a non-United-States citizen to enter the United States by signing an affidavit of support shall be deemed available in determining the non-United-States citizen's eligibility for assistance until the non-United-States citizen becomes a United States citizen.

Source: Laws 1997, LB 864, § 6; Laws 1998, LB 1073, § 61; Laws 2006, LB 1248, § 70; Laws 2009, LB288, § 29.
Operative date August 30, 2009.

Cross References

Medical Assistance Act, see section 68-901.

ARTICLE 17
WELFARE REFORM

(a) WELFARE REFORM ACT

(a) WELFARE REFORM ACT

68-1713 Department of Health and Human Services; implementation of policies; transitional health care benefits.

(1) The Department of Health and Human Services shall implement the following policies:

(a) Permit Work Experience in Private for-Profit Enterprises;

(b) Permit Job Search;

(c) Permit Employment to be Considered a Program Component;

(d) Make Sanctions More Stringent to Emphasize Participant Obligations;

(e) Alternative Hearing Process;

(f) Permit Adults in Two-Parent Households to Participate in Activities Based on Their Self-Sufficiency Needs;

(g) Eliminate Exemptions for Individuals with Children Between the Ages of 12 Weeks and Age Six;

(h) Providing Poor Working Families with Transitional Child Care to Ease the Transition from Welfare to Self-Sufficiency;

(i) Provide Transitional Health Care for 12 Months After Termination of ADC if funding for such transitional medical assistance is available under Title XIX of the federal Social Security Act, as amended, as described in section 68-906;

(j) Require Adults to Ensure that Children in the Family Unit Attend School;

(k) Encourage Minor Parents to Live with Their Parents;

(l) Establish a Resource Limit of $4,000 for a single individual and $6,000 for two or more individuals for ADC;

(m) Exclude the Value of One Vehicle Per Family When Determining ADC Eligibility;

(n) Exclude the Cash Value of Life Insurance Policies in Calculating Resources for ADC;

(o) Establish the Supplemental Nutrition Assistance Program as a Continuous Benefit with Eligibility Reevaluated with Yearly Redeterminations;

(p) Establish a Budget the Gap Methodology Whereby Countable Earned Income is Subtracted from the Standard of the Need and Payment is Based on the Difference or Maximum Payment Level, Whichever is Less. That this Gap be Established at a Level that Encourages Work but at Least at a Level that Ensures that Those Currently Eligible for ADC do not Lose Eligibility Because of the Adoption of this Methodology;

(q) Adopt an Earned Income Disregard of Twenty Percent of Gross Earnings in the ADC Program and One Hundred Dollars in the Related Medical Assistance Program;

(r) Disregard Financial Assistance Received Intended for Books, Tuition, or Other Self-Sufficiency Related Use;

(s) Culture: Eliminate the 100-Hour Rule, The Quarter of Work Requirement, and The 30-Day Unemployed/Underemployed Period for ADC-UP Eligibility; and

(t) Make ADC a Time-Limited Program.

(2) The Department of Health and Human Services shall (a) apply for a waiver to allow for a sliding-fee schedule for the population served by the caretaker relative program or (b) pursue other public or private mechanisms, to provide for transitional health care benefits to individuals and families who do not qualify for cash assistance. It is the intent of the Legislature that transitional health care coverage be made available on a sliding-scale basis to individuals and families with incomes up to one hundred eighty-five percent of the federal poverty level if other health care coverage is not available.

Source: Laws 1994, LB 1224, § 13; Laws 1995, LB 455, § 10; Laws 1996, LB 1044, § 357; Laws 1997, LB 864, § 13; Laws 2002, Second

Spec. Sess., LB 8, § 3; Laws 2006, LB 994, § 77; Laws 2007, LB351, § 6; Laws 2009, LB288, § 30.
Operative date August 30, 2009.

68-1721 Principal wage earner and other nonexempt members of applicant family; duties.

(1) Under the self-sufficiency contract developed under section 68-1719, the principal wage earner and other nonexempt members of the applicant family shall be required to participate in one or more of the following approved activities, including, but not limited to, education, job skills training, work experience, job search, or employment.

(2) Education shall consist of the general education development program, high school, Adult Basic Education, English as a Second Language, postsecondary education, or other education programs approved in the contract.

(3) Job skills training shall include vocational training in technical job skills and equivalent knowledge. Activities shall consist of formalized, technical job skills training, apprenticeships, on-the-job training, or training in the operation of a microbusiness enterprise. The types of training, apprenticeships, or training positions may include, but need not be limited to, the ability to provide services such as home repairs, automobile repairs, respite care, foster care, personal care, and child care. Job skills training shall be prioritized and approved for occupations that facilitate economic self-sufficiency.

(4) The purpose of work experience shall be to improve the employability of applicants by providing work experience and training to assist them to move promptly into regular public or private employment. Work experience shall mean unpaid work in a public, private, for-profit, or nonprofit business or organization. Work experience placements shall take into account the individual's prior training, skills, and experience. A placement shall not exceed six months.

(5) Job search shall assist adult members of recipient families in finding their own jobs. The emphasis shall be placed on teaching the individual to take responsibility for his or her own job development and placement.

(6) Employment shall consist of work for pay. The employment may be full-time or part-time but shall be adequate to help the recipient family reach economic self-sufficiency.

(7) For purposes of creating the self-sufficiency contract and meeting the applicant's work activity requirement, an applicant shall be allowed to engage in vocational training that leads to an associate degree, a diploma, or a certificate for a minimum of twenty hours per week for up to thirty-six months. This subsection terminates on September 30, 2012.

Source: Laws 1994, LB 1224, § 21; Laws 1995, LB 455, § 14; Laws 2006, LB 994, § 78; Laws 2007, LB351, § 8; Laws 2009, LB458, § 1.
Effective date August 30, 2009.

CHAPTER 69
PERSONAL PROPERTY

Article.
5. Reduced Cigarette Ignition Propensity Act. 69-501 to 69-511.
13. Disposition of Unclaimed Property.
(a) Uniform Disposition of Unclaimed Property Act. 69-1317.
24. Guns.
(a) Handguns. 69-2404 to 69-2410.
(c) Concealed Handgun Permit Act. 69-2427 to 69-2448.
26. Assistive Technology Regulation Act. 69-2603.

ARTICLE 5
REDUCED CIGARETTE IGNITION PROPENSITY ACT

Section
69-501. Act, how cited.
69-502. Terms, defined.
69-503. Cigarettes; testing; requirements; performance standard; manufacturer; duties; civil penalty; State Fire Marshal; powers and duties.
69-504. Manufacturer; written certification; contents; fee; Reduced Cigarette Ignition Propensity Fund; created; use; investment; altered cigarettes; retesting required.
69-505. Marking; inspections.
69-506. Violations; civil penalty; seizure and destruction; additional remedies; Attorney General; powers and duties.
69-507. Tax Commissioner; power to inspect; notice to State Fire Marshal.
69-508. Attorney General; enforcement powers.
69-509. Act; exemptions.
69-510. Termination of act; conditions; preemption of local law.
69-511. State Fire Marshal; rules and regulations.

69-501 Act, how cited.

Sections 69-501 to 69-511 shall be known and may be cited as the Reduced Cigarette Ignition Propensity Act.

Source: Laws 2009, LB198, § 1.
Operative date January 1, 2010.

69-502 Terms, defined.

For purposes of the Reduced Cigarette Ignition Propensity Act:

(1) Agent means any person authorized by the Tax Commissioner to purchase and affix stamps or cigarette tax meter impressions on packages of cigarettes under sections 77-2601 to 77-2615;

(2) Cigarette has the same meaning as in section 77-2601;

(3) Consumer testing means an assessment of cigarettes that is conducted by a manufacturer, or under the control or direction of a manufacturer, for the purpose of evaluating consumer acceptance of the cigarettes;

(4) Manufacturer means:

(a) Any entity which manufactures or otherwise produces cigarettes or causes cigarettes to be manufactured or produced anywhere that such manufacturer intends to sell in this state, including cigarettes intended to be sold in the United States through an importer;

(b) The first purchaser anywhere that intends to resell in the United States cigarettes manufactured anywhere that the original manufacturer or maker does not intend to be sold in the United States; or

(c) Any entity that becomes a successor of an entity described in subdivision (4)(a) or (b) of this section;

(5) Quality control and quality assurance program means the laboratory procedures implemented to ensure that operator bias, systematic and nonsystematic methodological errors, and equipment-related problems do not affect the results of the testing. Such a program ensures that the testing repeatability remains within the required repeatability values stated in section 69-503 for all test trials used to certify cigarettes in accordance with the act;

(6) Repeatability means the range of values within which the repeat results of cigarette test trials from a single laboratory will fall ninety-five percent of the time;

(7) Retail dealer means any person, other than a manufacturer or wholesale dealer, engaged in selling cigarettes or tobacco products;

(8) Sale means any transfer for consideration, exchange, barter, gift, offer for sale, or distribution in any manner or by any means whatsoever;

(9) Sell means to sell or to offer or agree to do the same; and

(10) Wholesale dealer means any person, other than a manufacturer, who sells cigarettes or tobacco products to retail dealers or other persons for purposes of resale and any person who owns, operates, or maintains one or more cigarette or tobacco product vending machines in, at, or upon premises owned or occupied by any other person.

Source: Laws 2009, LB198, § 2.
Operative date January 1, 2010.

69-503 Cigarettes; testing; requirements; performance standard; manufacturer; duties; civil penalty; State Fire Marshal; powers and duties.

(1) Except as provided in subsection (7) of this section, no cigarettes may be sold or offered for sale in this state or offered for sale or sold to persons located in this state unless the cigarettes have been tested in accordance with the following test method and meet the performance standard specified in this section, a written certification has been filed by the manufacturer with the State Fire Marshal in accordance with section 69-504, and the cigarettes have been marked in accordance with section 69-505. Testing shall be as follows:

(a) Testing of cigarettes shall be conducted in accordance with the American Society of Testing and Materials Standard E2187-04, Standard Test Method for Measuring the Ignition Strength of Cigarettes;

(b) Testing shall be conducted on ten layers of filter paper;

(c) No more than twenty-five percent of the cigarettes tested in a test trial in accordance with this subsection shall exhibit full-length burns. Forty replicate tests shall comprise a complete test trial for each cigarette tested;

(d) The performance standard required by this subsection shall only be applied to a complete test trial;

(e) Written certifications shall be based upon testing conducted by a laboratory that has been accredited pursuant to standard ISO/IEC 17025 of the International Organization for Standardization or other comparable accreditation standard required by the State Fire Marshal;

(f) Laboratories conducting testing in accordance with this subsection shall implement a quality control and quality assurance program that includes a procedure that will determine the repeatability of the testing results. The repeatability value shall be no greater than 0.19;

(g) This subsection does not require additional testing if cigarettes are tested consistent with the Reduced Cigarette Ignition Propensity Act for any other purpose; and

(h) Testing performed or sponsored by the State Fire Marshal to determine a cigarette's compliance with the performance standard required by this section shall be conducted in accordance with this subsection.

(2) Each cigarette listed in a certification submitted pursuant to section 69-504 that uses lowered permeability bands in the cigarette paper to achieve compliance with the performance standard set forth in this section shall have at least two nominally identical bands on the paper surrounding the tobacco column. At least one complete band shall be located at least fifteen millimeters from the lighting end of the cigarette. For cigarettes on which the bands are positioned by design, there shall be at least two bands fully located at least fifteen millimeters from the lighting end and ten millimeters from the filter end of the tobacco column, or ten millimeters from the labeled end of the tobacco column for nonfiltered cigarettes.

(3) A manufacturer of a cigarette that the State Fire Marshal determines cannot be tested in accordance with the test method prescribed in subdivision (1)(a) of this section shall propose a test method and performance standard for the cigarette to the State Fire Marshal. If the State Fire Marshal determines that another state has enacted reduced cigarette ignition propensity standards that include a test method and performance standard that are the same as those contained in the Reduced Cigarette Ignition Propensity Act and the State Fire Marshal finds that the officials responsible for implementing those requirements have approved the proposed alternative test method and performance standard for a particular cigarette proposed by a manufacturer as meeting the fire safety standards of that state's law or regulation under a legal provision comparable to this section, then the State Fire Marshal shall authorize that manufacturer to employ the alternative test method and performance standard to certify that cigarette for sale in this state, unless the State Fire Marshal demonstrates a reasonable basis why the alternative test should not be accepted under the act. All other applicable requirements of this section shall apply to the manufacturer.

(4) Each manufacturer shall maintain copies of the reports of all tests conducted on all cigarettes offered for sale for a period of three years and shall make copies of these reports available to the State Fire Marshal and the Attorney General upon written request. Any manufacturer who fails to make copies of these reports available within sixty days after receiving a written request shall be subject to a civil penalty not to exceed ten thousand dollars for

each day after the sixtieth day that the manufacturer does not make such copies available.

(5) The State Fire Marshal may adopt a subsequent American Society of Testing and Materials Standard Test Method for Measuring the Ignition Strength of Cigarettes upon a finding that such subsequent method does not result in a change in the percentage of full-length burns exhibited by any tested cigarette when compared to the percentage of full-length burns the same cigarette would exhibit when tested in accordance with the American Society of Testing and Materials Standard E2187-04 and the performance standard in subdivision (1)(c) of this section.

(6) The State Fire Marshal shall review the effectiveness of this section and report every three years to the Legislature the State Fire Marshal's findings and, if appropriate, recommendations for legislation to improve the effectiveness of this section. The report and legislative recommendations shall be submitted no later than November 15 each three-year period.

(7) The requirements of subsection (1) of this section shall not prohibit wholesale or retail dealers from selling their existing inventory of cigarettes on or after January 1, 2010, if the wholesale or retail dealer can establish that state tax stamps were affixed to the cigarettes prior to such date and if the wholesale or retail dealer can establish that the inventory was purchased prior to such date in comparable quantity to the inventory purchased during the same period of the prior year.

(8) The Reduced Cigarette Ignition Propensity Act shall be implemented in accordance with the implementation and substance of the New York Fire Safety Standards for Cigarettes as such standards existed on January 1, 2009.

Source: Laws 2009, LB198, § 3.
Operative date January 1, 2010.

69-504 Manufacturer; written certification; contents; fee; Reduced Cigarette Ignition Propensity Fund; created; use; investment; altered cigarettes; retesting required.

(1) Each manufacturer shall submit to the State Fire Marshal a written certification attesting that:

(a) Each cigarette listed in the certification has been tested in accordance with section 69-503; and

(b) Each cigarette listed in the certification meets the performance standard set forth in section 69-503.

(2) Each cigarette listed in the certification shall be described with the following information:

(a) Brand or trade name on the package;

(b) Style, such as light or ultra light;

(c) Length in millimeters;

(d) Circumference in millimeters;

(e) Flavor, such as menthol or chocolate, if applicable;

(f) Filter or nonfilter;

(g) Package description, such as soft pack or box;

(h) Marking pursuant to section 69-505;

(i) The name, address, and telephone number of the laboratory, if different than the manufacturer, that conducted the test; and

(j) The date that the testing occurred.

(3) The State Fire Marshal shall make the certifications available to the Attorney General for purposes consistent with the Reduced Cigarette Ignition Propensity Act and the Department of Revenue for the purposes of ensuring compliance with this section.

(4) Each cigarette certified under this section shall be recertified every four years.

(5) At the time a manufacturer submits a written certification under this section, the manufacturer shall pay to the State Fire Marshal a fee of one thousand dollars for each brand family of cigarettes identified in the certification. The fee paid shall apply to all cigarettes listed in the brand family identified in the certification and shall include any new cigarette certified within the brand family during the four-year certification period.

(6) The Reduced Cigarette Ignition Propensity Fund is created. The fund shall consist of all certification fees submitted by manufacturers in addition to any other funds made available for such purpose. The State Fire Marshal shall use the fund to carry out the act. Fees collected pursuant to this section shall be remitted to the State Treasurer for credit to the fund. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(7) If a manufacturer has certified a cigarette pursuant to this section and thereafter makes any change to such cigarette that is likely to alter its compliance with the reduced cigarette ignition propensity standards required by the Reduced Cigarette Ignition Propensity Act, such cigarette shall not be sold or offered for sale in this state until the manufacturer retests the cigarette in accordance with the testing standards set forth in section 69-503 and maintains records of that retesting as required by section 69-503. Any altered cigarette which does not meet the performance standard set forth in section 69-503 shall not be sold in this state.

Source: Laws 2009, LB198, § 4.
Operative date January 1, 2010.

Cross References

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

69-505 Marking; inspections.

(1) Cigarettes that are certified by a manufacturer in accordance with section 69-504 shall be marked to indicate compliance with the requirements of section 69-503. The marking shall be either:

(a) Any marking in use and approved for sale in New York pursuant to the New York Fire Safety Standards for Cigarettes as such standards existed on January 1, 2009; or

(b) The letters ''FSC'' which signifies Fire Standards Compliant.

(2) The marking shall appear in eight-point type or larger and be permanently printed, stamped, engraved, or embossed on the package at or near the Universal Product Code.

(3) A manufacturer shall use only one marking and shall apply this marking uniformly for all packages, including, but not limited to, packs, cartons, and cases, and brands marketed by that manufacturer.

(4) Manufacturers certifying cigarettes in accordance with section 69-504 shall provide a copy of the certifications to all wholesale dealers and agents to which they sell cigarettes and shall also provide sufficient copies of an illustration of the package marking utilized by the manufacturer pursuant to this section for each retail dealer to which the wholesale dealers or agents sell cigarettes. Wholesale dealers and agents shall provide a copy of these package markings received from manufacturers to all retail dealers to which they sell cigarettes. Wholesale dealers, agents, and retail dealers shall permit the State Fire Marshal, the Department of Revenue, and their employees or peace officers of this state to inspect markings of cigarette packaging marked in accordance with this section.

Source: Laws 2009, LB198, § 5.
Operative date January 1, 2010.

69-506 Violations; civil penalty; seizure and destruction; additional remedies; Attorney General; powers and duties.

(1) A manufacturer, wholesale dealer, agent, or any other person or entity who knowingly sells or offers to sell cigarettes, other than through retail sale, in violation of section 69-503, shall be liable to a civil penalty not to exceed ten thousand dollars per each sale of such cigarettes for a first offense and shall be liable to a civil penalty not to exceed twenty-five thousand dollars for any subsequent offense per each sale of such cigarettes, except that this penalty against any such person or entity shall not exceed one hundred thousand dollars during any thirty-day period.

(2) A retail dealer who knowingly sells or offers to sell fewer than one thousand cigarettes in violation of section 69-503 shall be liable to a civil penalty not to exceed five hundred dollars for a first offense and shall be liable to a civil penalty not to exceed two thousand dollars for any subsequent offense for each such sale or offer for sale of such cigarettes. A retail dealer who knowingly sells or offers to sell one thousand or more cigarettes in violation of section 69-503 shall be liable to a civil penalty not to exceed one thousand dollars for a first offense and shall be liable to a civil penalty not to exceed five thousand dollars for any subsequent offense per each such sale or offer of sale of such cigarettes. The penalty against any retail dealer under this subsection shall not exceed twenty-five thousand dollars during any thirty-day period.

(3) In addition to any civil penalty, any corporation, partnership, sole proprietor, limited partnership, limited liability company, limited liability partnership, or association engaged in the manufacture of cigarettes that knowingly makes a false certification pursuant to section 69-504 shall be liable to a civil penalty of seventy-five thousand dollars for the first false certification and shall be liable to a civil penalty not to exceed one hundred fifty thousand dollars for each subsequent false certification.

(4) Any person violating any other provision of the Reduced Cigarette Ignition Propensity Act shall be liable to a civil penalty not to exceed one thousand dollars for a first offense and shall be liable to a civil penalty not to exceed five thousand dollars for any subsequent offense.

(5) Whenever any peace officer of this state or duly authorized representative of the State Fire Marshal or Tax Commissioner discovers any cigarettes (a) for which no certification has been filed as required by section 69-504 or (b) that have not been marked as required by section 69-505, such peace officer or representative may seize and take possession of such cigarettes. Cigarettes seized pursuant to this subsection shall be destroyed, except that prior to the destruction of any cigarette seized pursuant to this subsection the true holder of the trademark rights in the cigarette brand shall be permitted to inspect the cigarette.

(6) In addition to any other remedy provided by law, the Attorney General may file an action in a court of competent jurisdiction for a violation of the Reduced Cigarette Ignition Propensity Act, including petitioning (a) for preliminary or permanent injunctive relief against any manufacturer, importer, wholesale dealer, retail dealer, agent, or other person or entity to enjoin such entity from selling, offering to sell, or affixing tax stamps or cigarette tax meter impressions to any cigarette that does not comply with the requirements of the Reduced Cigarette Ignition Propensity Act or (b) to recover any costs or damages suffered by the state because of a violation of the act, including enforcement costs relating to the specific violation and attorney's fees. Each violation of the act or of rules or regulations adopted and promulgated under the act constitutes a separate civil violation for which the Attorney General may obtain relief. Upon obtaining judgment for injunctive relief under this subsection, the Attorney General shall provide a copy of the judgment to all wholesale dealers and agents to which the cigarette has been sold.

Source: Laws 2009, LB198, § 6.
Operative date January 1, 2010.

69-507 Tax Commissioner; power to inspect; notice to State Fire Marshal.

The Tax Commissioner, in the regular course of conducting inspections of wholesale dealers, agents, and retail dealers, as authorized under section 77-2605, may inspect cigarettes to determine if the cigarettes are marked as required by section 69-505. If the cigarettes are not marked as required, the Tax Commissioner shall notify the State Fire Marshal.

Source: Laws 2009, LB198, § 7.
Operative date January 1, 2010.

69-508 Attorney General; enforcement powers.

To enforce the provisions of the Reduced Cigarette Ignition Propensity Act, the Attorney General may examine the books, papers, invoices, and other records of any person in possession, control, or occupancy of any premises where cigarettes are placed, stored, sold, or offered for sale, as well as the stock of cigarettes on the premises. Every person in the possession, control, or occupancy of any premises where cigarettes are placed, sold, or offered for sale shall give the Attorney General the means, facilities, and opportunity for the examinations authorized by the act.

Source: Laws 2009, LB198, § 8.
Operative date January 1, 2010.

69-509 Act; exemptions.

Nothing in the Reduced Cigarette Ignition Propensity Act shall be construed to prohibit:

(1) Any person or entity from manufacturing or selling cigarettes that do not meet the requirements of section 69-503 if the cigarettes are or will be stamped for sale in another state or are packaged for sale outside the United States and that person or entity has taken reasonable steps to ensure that such cigarettes will not be sold or offered for sale to persons located in this state; or

(2) The use of cigarettes solely for the purpose of consumer testing utilizing only the quantity of cigarettes that is reasonably necessary for the assessment.

Source: Laws 2009, LB198, § 9.
Operative date January 1, 2010.

69-510 Termination of act; conditions; preemption of local law.

(1) The Reduced Cigarette Ignition Propensity Act shall terminate if a federal reduced cigarette ignition propensity standard that preempts the act is adopted and becomes effective.

(2) The Reduced Cigarette Ignition Propensity Act preempts any local law on the subject and no political subdivision shall enact or enforce any ordinance or other local law or regulation conflicting with any provision of the act or with any policy of this state expressed by the act, whether the policy is expressed by inclusion of a provision in the act or by exclusion of that subject from the act.

Source: Laws 2009, LB198, § 10.
Operative date January 1, 2010.

69-511 State Fire Marshal; rules and regulations.

The State Fire Marshal may adopt and promulgate rules and regulations necessary to carry out the Reduced Cigarette Ignition Propensity Act in accordance with the Administrative Procedure Act.

Source: Laws 2009, LB198, § 11.
Operative date August 30, 2009.

Cross References

Administrative Procedure Act, see section 84-920.

ARTICLE 13

DISPOSITION OF UNCLAIMED PROPERTY

(a) UNIFORM DISPOSITION OF UNCLAIMED PROPERTY ACT

(a) UNIFORM DISPOSITION OF UNCLAIMED PROPERTY ACT

69-1317 Abandoned property; trust funds; record; professional finder's fee; information withheld; when; proceeds of sale; transfers; Unclaimed Property Cash Fund; created; investment.

(a)(1) Except as otherwise provided in this subdivision, all funds received under the Uniform Disposition of Unclaimed Property Act, including the

proceeds from the sale of abandoned property under section 69-1316, shall be deposited by the State Treasurer in a separate trust fund from which he or she shall make prompt payment of claims allowed pursuant to the act and payment of any auditing expenses associated with the receipt of abandoned property. All funds received under section 69-1307.05 shall be deposited by the State Treasurer in a separate life insurance corporation demutualization trust fund, which is hereby created, from which he or she shall make prompt payment of claims regarding such funds allowed pursuant to the act. Transfers from the separate life insurance corporation demutualization trust fund to the General Fund may be made at the direction of the Legislature. Before making the deposit he or she shall record the name and last-known address of each person appearing from the holders' reports to be entitled to the abandoned property, the name and last-known address of each insured person or annuitant, and with respect to each policy or contract listed in the report of a life insurance corporation, its number, the name of the corporation, and the amount due. The record shall be available for public inspection during business hours.

The record shall not be subject to public inspection or available for copying, reproduction, or scrutiny by commercial or professional locators of property presumed abandoned who charge any service or finders' fee until twenty-four months after the names from the holders' reports have been published or officially disclosed. Records concerning the social security number, date of birth, amount due, and last-known address of an owner shall be treated as confidential and subject to the same confidentiality as tax return information held by the Department of Revenue, except that the Auditor of Public Accounts shall have unrestricted access to such records.

A professional finders' fee shall be limited to ten percent of the total dollar amount of the property presumed abandoned. To claim any such fee, the finder shall disclose to the owner the nature, location, and value of the property, provide notice of when such property was reported to the State Treasurer, and provide notice that the property may be claimed by the owner from the State Treasurer free of charge. To claim any such fee if the property has not yet been abandoned, the finder shall disclose to the owner the nature, location, and value of the property, provide notice of when such property will be reported to the State Treasurer, if known, and provide notice that, upon receipt of the property by the State Treasurer, such property may be claimed by the owner from the State Treasurer free of charge.

(2) The unclaimed property records of the State Treasurer, the unclaimed property reports of holders, and the information derived by an unclaimed property examination or audit of the records of a person or otherwise obtained by or communicated to the State Treasurer may be withheld from the public. Any record or information that may be withheld under the laws of this state or of the United States when in the possession of such a person may be withheld when revealed or delivered to the State Treasurer. Any record or information that is withheld under any law of another state when in the possession of that other state may be withheld when revealed or delivered by the other state to the State Treasurer.

Information withheld from the general public concerning any aspect of unclaimed property shall only be disclosed to an apparent owner of the property or to the escheat, unclaimed, or abandoned property administrators or officials of another state if that other state accords substantially reciprocal privileges to the State Treasurer.

(b)(1) On or after October 6, 1992, the State Treasurer shall periodically transfer any balance in excess of an amount not to exceed five hundred thousand dollars from the separate trust fund to the General Fund no less frequently than on or before November 1 and May 1 of each year, except that the total amount of all such transfers shall not exceed five million dollars.

(2)(i) On the next succeeding November 1 after five million dollars has been transferred to the General Fund in the manner described in subdivision (b)(1) of this section or (ii) on November 1, 1996, whichever occurs first, and on or before November 1 of each year thereafter, the State Treasurer shall transfer any balance in excess of an amount not to exceed five hundred thousand dollars from the separate trust fund to the permanent school fund.

(3) On July 15, 2003, the State Treasurer shall transfer two hundred thousand dollars from the separate trust fund to the General Fund and one hundred thousand dollars from the separate trust fund to the Treasury Management Cash Fund. On September 15, 2004, the State Treasurer shall transfer five hundred thousand dollars from the separate trust fund to the General Fund.

(c) Before making any deposit to the credit of the permanent school fund or the General Fund, the State Treasurer may deduct (1) any costs in connection with sale of abandoned property, (2) any costs of mailing and publication in connection with any abandoned property, and (3) reasonable service charges and place such funds in the Unclaimed Property Cash Fund which is hereby created. Transfers from the fund to the General Fund may be made at the direction of the Legislature. Any money in the Unclaimed Property 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 1969, c. 611, § 17, p. 2488; Laws 1971, LB 648, § 2; Laws 1977, LB 305, § 7; Laws 1978, LB 754, § 1; Laws 1986, LB 212, § 2; Laws 1992, Third Spec. Sess., LB 26, § 17; Laws 1994, LB 1048, § 8; Laws 1994, LB 1049, § 1; Laws 1994, LB 1066, § 63; Laws 1995, LB 7, § 67; Laws 1997, LB 57, § 1; Laws 2003, LB 424, § 4; Laws 2009, LB432, § 1.
Effective date August 30, 2009.

Cross References

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

ARTICLE 24

GUNS

(a) HANDGUNS

Section
69-2404. Certificate; application; fee.
69-2407. Certificate; contents; term; revocation.
69-2410. Importer, manufacturer, or dealer; sale or delivery; duties.

(c) CONCEALED HANDGUN PERMIT ACT

69-2427. Act, how cited.
69-2430. Application; form; contents; prohibited acts; penalty; permit issuance; denial; appeal.
69-2433. Applicant; requirements.

Section
69-2441. Permitholder; locations; restrictions; posting of prohibition; consumption of alcohol; prohibited.
69-2448. License or permit issued by other state or District of Columbia; how treated.

(a) HANDGUNS

69-2404 Certificate; application; fee.

Any person desiring to purchase, lease, rent, or receive transfer of a handgun shall apply with the chief of police or sheriff of the applicant's place of residence for a certificate. The application may be made in person or by mail. The application form and certificate shall be made on forms approved by the Superintendent of Law Enforcement and Public Safety. The application shall include the applicant's full name, address, date of birth, and country of citizenship. If the applicant is not a United States citizen, the application shall include the applicant's place of birth and his or her alien or admission number. If the application is made in person, the applicant shall also present a current Nebraska motor vehicle operator's license, state identification card, or military identification card, or if the application is made by mail, the application form shall describe the license or card used for identification and be notarized by a notary public who has verified the identification of the applicant through such a license or card. An applicant shall receive a certificate if he or she is twenty-one years of age or older and is not prohibited from purchasing or possessing a handgun by 18 U.S.C. 922. A fee of five dollars shall be charged for each application for a certificate to cover the cost of a criminal history record check.

Source: Laws 1991, LB 355, § 3; Laws 2006, LB 1227, § 2; Laws 2009, LB63, § 33.
Effective date May 28, 2009.

69-2407 Certificate; contents; term; revocation.

A certificate issued in accordance with section 69-2404 shall contain the holder's name, address, and date of birth and the effective date of the certificate. A certificate shall authorize the holder to acquire any number of handguns during the period that the certificate is valid. The certificate shall be valid throughout the state and shall become invalid three years after its effective date. If the chief of police or sheriff who issued the certificate determines that the applicant has become disqualified for the certificate under section 69-2404, he or she may immediately revoke the certificate and require the holder to surrender the certificate immediately. Revocation may be appealed pursuant to section 69-2406.

Source: Laws 1991, LB 355, § 6; Laws 2009, LB63, § 34.
Effective date May 28, 2009.

69-2410 Importer, manufacturer, or dealer; sale or delivery; duties.

No importer, manufacturer, or dealer licensed pursuant to 18 U.S.C. 923 shall sell or deliver any handgun to another person other than a licensed importer, manufacturer, dealer, or collector until he or she has:

(1)(a) Inspected a valid certificate issued to such person pursuant to sections 69-2401, 69-2403 to 69-2408, and 69-2409.01; and

(b) Inspected a valid identification containing a photograph of such person which appropriately and completely identifies such person; or

(2)(a) Obtained a completed consent form from the potential buyer or transferee, which form shall be established by the Nebraska State Patrol and provided by the licensed importer, manufacturer, or dealer. The form shall include the name, address, date of birth, gender, race, and country of citizenship of such potential buyer or transferee. If the potential buyer or transferee is not a United States citizen, the completed consent form shall contain the potential buyer's or transferee's place of birth and his or her alien or admission number;

(b) Inspected a valid identification containing a photograph of the potential buyer or transferee which appropriately and completely identifies such person;

(c) Requested by toll-free telephone call or other electromagnetic communication that the Nebraska State Patrol conduct a criminal history record check; and

(d) Received a unique approval number for such inquiry from the Nebraska State Patrol indicating the date and number on the consent form.

Source: Laws 1991, LB 355, § 9; Laws 1996, LB 1055, § 6; Laws 2006, LB 1227, § 5; Laws 2009, LB63, § 35.
Effective date May 28, 2009.

(c) CONCEALED HANDGUN PERMIT ACT

69-2427 Act, how cited.

Sections 69-2427 to 69-2448 shall be known and may be cited as the Concealed Handgun Permit Act.

Source: Laws 2006, LB 454, § 1; Laws 2009, LB430, § 9.
Effective date August 30, 2009.

69-2430 Application; form; contents; prohibited acts; penalty; permit issuance; denial; appeal.

(1) Application for a permit to carry a concealed handgun shall be made in person at any Nebraska State Patrol Troop Headquarters or office provided by the patrol for purposes of accepting such an application. The applicant shall present a current Nebraska motor vehicle operator's license, Nebraska-issued state identification card, or military identification card and shall submit two legible sets of fingerprints for a criminal history record information check pursuant to section 69-2431. The application shall be made on a form prescribed by the Superintendent of Law Enforcement and Public Safety. The application shall state the applicant's full name, motor vehicle operator's license number or state identification card number, address, and date of birth and contain the applicant's signature and shall include space for the applicant to affirm that he or she meets each and every one of the requirements set forth in section 69-2433. The applicant shall attach to the application proof of training and proof of vision as required in subdivision (3) of section 69-2433.

(2) A person applying for a permit to carry a concealed handgun who gives false information or offers false evidence of his or her identity is guilty of a Class IV felony.

(3)(a) Until January 1, 2010, the permit to carry a concealed handgun shall be issued by the Nebraska State Patrol within five business days after completion of the applicant's criminal history record information check, if the appli-

cant has complied with this section and has met all the requirements of section 69-2433.

(b) Beginning January 1, 2010, the permit to carry a concealed handgun shall be issued by the Nebraska State Patrol within forty-five days after the date an application for the permit has been made by the applicant if the applicant has complied with this section and has met all the requirements of section 69-2433.

(4) An applicant denied a permit to carry a concealed handgun may appeal to the district court of the judicial district of the county in which he or she resides or the county in which he or she applied for the permit pursuant to the Administrative Procedure Act.

Source: Laws 2006, LB 454, § 4; Laws 2009, LB63, § 36; Laws 2009, LB430, § 10.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB63, section 36, with LB430, section 10, to reflect all amendments.

Note: Changes made by LB63 became effective May 28, 2009. Changes made by LB430 became effective August 30, 2009.

Cross References

Administrative Procedure Act, see section 84-920.

69-2433 Applicant; requirements.

An applicant shall:

(1) Be at least twenty-one years of age;

(2) Not be prohibited from purchasing or possessing a handgun by 18 U.S.C. 922, as such section existed on January 1, 2005;

(3) Possess the same powers of eyesight as required under section 60-4,118 for a Class O operator's license. If an applicant does not possess a current Nebraska motor vehicle operator's license, the applicant may present a current optometrist's or ophthalmologist's statement certifying the vision reading obtained when testing the applicant. If such certified vision reading meets the vision requirements prescribed by section 60-4,118 for a Class O operator's license, the vision requirements of this subdivision shall have been met;

(4) Not have pled guilty to, not have pled nolo contendere to, or not have been convicted of a felony or a crime of violence under the laws of this state or under the laws of any other jurisdiction;

(5) Not have been found in the previous ten years to be a mentally ill and dangerous person under the Nebraska Mental Health Commitment Act or a similar law of another jurisdiction or not be currently adjudged mentally incompetent;

(6)(a) Have been a resident of this state for at least one hundred eighty days. For purposes of this section, resident does not include an applicant who maintains a residence in another state and claims that residence for voting or tax purposes except as provided in subdivision (b) of this subdivision; or

(b) If an applicant is a member of the United States Armed Forces, such applicant shall be considered a resident of this state for purposes of this section after he or she has been stationed at a military installation in this state pursuant to permanent duty station orders even though he or she maintains a residence in another state and claims that residence for voting or tax purposes;

(7) Have had no violations of any law of this state relating to firearms, unlawful use of a weapon, or controlled substances or of any similar laws of another jurisdiction in the ten years preceding the date of application;

(8) Not be on parole, probation, house arrest, or work release;

(9) Be a citizen of the United States; and

(10) Provide proof of training.

Source: Laws 2006, LB 454, § 7; Laws 2009, LB430, § 11. Effective date August 30, 2009.

Cross References

Nebraska Mental Health Commitment Act, see section 71-901.

69-2441 Permitholder; locations; restrictions; posting of prohibition; consumption of alcohol; prohibited.

(1)(a) A permitholder may carry a concealed handgun anywhere in Nebraska, except any: Police, sheriff, or Nebraska State Patrol station or office; detention facility, prison, or jail; courtroom or building which contains a courtroom; polling place during a bona fide election; meeting of the governing body of a county, public school district, municipality, or other political subdivision; meeting of the Legislature or a committee of the Legislature; financial institution; professional or semiprofessional athletic event; building, grounds, vehicle, or sponsored activity or athletic event of any public, private, denominational, or parochial elementary, vocational, or secondary school, a private postsecondary career school as defined in section 85-1603, a community college, or a public or private college, junior college, or university; place of worship; hospital, emergency room, or trauma center; political rally or fundraiser; establishment having a license issued under the Nebraska Liquor Control Act that derives over one-half of its total income from the sale of alcoholic liquor; place where the possession or carrying of a firearm is prohibited by state or federal law; a place or premises where the person, persons, entity, or entities in control of the property or employer in control of the property has prohibited permitholders from carrying concealed handguns into or onto the place or premises; or into or onto any other place or premises where handguns are prohibited by state law.

(b) A financial institution may authorize its security personnel to carry concealed handguns in the financial institution while on duty so long as each member of the security personnel, as authorized, is in compliance with the Concealed Handgun Permit Act and possesses a permit to carry a concealed handgun issued pursuant to the act.

(c) A place of worship may authorize its security personnel to carry concealed handguns on its property so long as each member of the security personnel, as authorized, is in compliance with the Concealed Handgun Permit Act and possesses a permit to carry a concealed handgun issued pursuant to the act and written notice is given to the congregation and, if the property is leased, the carrying of concealed handguns on the property does not violate the terms of any real property lease agreement between the place of worship and the lessor.

(2) If a person, persons, entity, or entities in control of the property or an employer in control of the property prohibits a permitholder from carrying a concealed handgun into or onto the place or premises and such place or premises are open to the public, a permitholder does not violate this section unless the person, persons, entity, or entities in control of the property or employer in control of the property has posted conspicuous notice that carrying a concealed handgun is prohibited in or on the place or premises or has made a

request, directly or through an authorized representative or management personnel, that the permitholder remove the concealed handgun from the place or premises.

(3) A permitholder carrying a concealed handgun in a vehicle or on his or her person while riding in or on a vehicle into or onto any parking area, which is open to the public, used by any location listed in subdivision (1)(a) of this section, does not violate this section if, prior to exiting the vehicle, the handgun is locked inside the glove box, trunk, or other compartment of the vehicle, a storage box securely attached to the vehicle, or, if the vehicle is a motorcycle, a hardened compartment securely attached to the motorcycle. This subsection does not apply to any parking area used by such location when the carrying of a concealed handgun into or onto such parking area is prohibited by federal law.

(4) An employer may prohibit employees or other persons who are permitholders from carrying concealed handguns in vehicles owned by the employer.

(5) A permitholder shall not carry a concealed handgun while he or she is consuming alcohol or while the permitholder has remaining in his or her blood, urine, or breath any previously consumed alcohol or any controlled substance as defined in section 28-401. A permitholder does not violate this subsection if the controlled substance in his or her blood, urine, or breath was lawfully obtained and was taken in therapeutically prescribed amounts.

Source: Laws 2006, LB 454, § 15; Laws 2007, LB97, § 1; Laws 2009, LB430, § 12.
Effective date August 30, 2009.

Cross References

Nebraska Liquor Control Act, see section 53-101.

69-2448 License or permit issued by other state or District of Columbia; how treated.

A valid license or permit to carry a concealed handgun issued by any other state or the District of Columbia shall be recognized as valid in this state under the Concealed Handgun Permit Act if (1) the holder of the license or permit is not a resident of Nebraska and (2) the Attorney General has determined that the standards for issuance of such license or permit by such state or the District of Columbia are equal to or greater than the standards imposed by the act. The Attorney General shall maintain and publish a list of such states and the District of Columbia which he or she has determined have standards equal to or greater than the standards imposed by the act.

Source: Laws 2009, LB430, § 13.
Effective date August 30, 2009.

ARTICLE 26

ASSISTIVE TECHNOLOGY REGULATION ACT

Section
69-2603. Assistive device, defined.

69-2603 Assistive device, defined.

Assistive device means any device, including a demonstrator, that a consumer purchases or accepts transfer of in this state which is used for a major life activity, including, but not limited to, manual wheelchairs, motorized wheel-

chairs, motorized scooters, and other aides that enhance the mobility of an individual; hearing instruments, telephone communication devices for the deaf (TTY), assistive listening devices, and other aides that enhance an individual's ability to hear; voice synthesized computer modules, optical scanners, talking software, braille printers, and other devices that enhance a sight-impaired individual's ability to communicate; environmental control units; and any other assistive device that enables a person with a disability to communicate, see, hear, or maneuver.

Source: Laws 1997, LB 802, § 3; Laws 2009, LB195, § 52.
Effective date August 30, 2009.

CHAPTER 70
POWER DISTRICTS AND CORPORATIONS

Article.
3. Right-of-Way for Pole Lines. 70-301, 70-310.
6. Public Power and Irrigation Districts. 70-603 to 70-681.
10. Nebraska Power Review Board. 70-1012, 70-1014.01.
19. Rural Community-Based Energy Development Act. 70-1903, 70-1904.
20. Net Metering. 70-2001 to 70-2005.
21. Public Power Infrastructure Protection Act. 70-2101 to 70-2105.

ARTICLE 3
RIGHT-OF-WAY FOR POLE LINES

Section
70-301. Right-of-way; acquisition; procedure; approval.
70-310. Repealed. Laws 2009, LB 238, § 10.

70-301 Right-of-way; acquisition; procedure; approval.

Any public power district, corporation, or municipality that engages in the generation or transmission, or both, of electric energy for sale to the public for light and power purposes, the production, storage, or distribution of hydrogen for use in fuel processes, or the production or distribution, or both, of ethanol for use as fuel may acquire right-of-way over and upon lands, except railroad right-of-way and depot grounds, for the construction of pole lines or underground lines necessary for the conduct of such business and for the placing of all poles and constructions for the necessary adjuncts thereto, in the same manner as railroad corporations may acquire right-of-way for the construction of railroads. Such district, corporation, or municipality shall give public notice of the proposed location of such pole lines or underground lines with a voltage capacity of thirty-four thousand five hundred volts or more which involves the acquisition of rights or interests in more than ten separately owned tracts by causing to be published a map showing the proposed line route in a legal newspaper of general circulation within the county where such line is to be constructed at least thirty days before negotiating with any person, firm, or corporation to acquire easements or property for such purposes and shall consider all objections which may be filed to such location. After securing approval from the Public Service Commission and having complied with sections 70-305 to 70-309 and 86-701 to 86-707, such public power districts, corporations, and municipalities shall have the right to condemn a right-of-way over and across railroad right-of-way and depot grounds for the purpose of crossing the same. The procedure to condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724.

Source: Laws 1927, c. 107, § 1, p. 295; C.S.1929, § 70-401; R.S.1943, § 70-301; Laws 1951, c. 101, § 104, p. 495; Laws 1969, c. 545, § 1, p. 2199; Laws 1973, LB 187, § 7; Laws 1986, LB 1230, § 33; Laws 2002, LB 1105, § 467; Laws 2005, LB 139, § 1; Laws 2009, LB238, § 8.
Effective date May 27, 2009.

70-310 Repealed. Laws 2009, LB 238, § 10.

ARTICLE 6
PUBLIC POWER AND IRRIGATION DISTRICTS

Section
70-603. District; organization; amendment of charter; petition.
70-604.01. Chartered territory; boundaries.
70-604.02. Operating area, defined.
70-604.05. District; noncompliance; complaint; hearing; notice; order; failure to comply; penalty.
70-637. Construction, repairs, and improvements; contracts; sealed bids; exceptions; notice; when.
70-670. Eminent domain; procedure; duties of Attorney General; costs.
70-681. Districts existing on August 30, 2009; director holding office when charter amended; how treated.

70-603 District; organization; amendment of charter; petition.

A district may be organized and may amend its charter under Chapter 70, article 6, by filing in the office of the Nebraska Power Review Board a petition in compliance with requirements set forth in Chapter 70, article 6, and receiving the approval of the petition by the Nebraska Power Review Board.

Source: Laws 1933, c. 86, § 3, p. 339; Laws 1937, c. 152, § 3, p. 579; C.S.Supp.,1941, § 70-703; Laws 1943, c. 145, § 1(1), p. 507; R.S.1943, § 70-603; Laws 1981, LB 181, § 7; Laws 1986, LB 949, § 4; Laws 2009, LB53, § 1.
Effective date August 30, 2009.

70-604.01 Chartered territory; boundaries.

(1) Except as the same may be further limited or expanded by requirements in Chapter 70, article 6, the chartered territory of any district organized pursuant to and existing by virtue of or subject to the provisions of Chapter 70, article 6, shall include the area in this state within which such district renders electric service of the nature defined in section 70-604.02 and termed its operating area. There may be included, within the chartered area of such district, areas which are outside the operating area as defined in section 70-604.02, but as to which inclusion is nevertheless authorized by other sections of Chapter 70, article 6.

(2) Subject to the requirements of section 70-662 and the approval of the Nebraska Power Review Board in accordance with sections 70-663 and 70-664, any district organized pursuant to Chapter 70, article 6, and engaged in the operation of electric generation, transmission, or distribution facilities or any combination thereof may, in the discretion of the board of directors of such district and upon a finding by the board of directors of such district that the inclusion or exclusion thereof would be consistent with the best interests of the district and its customers, either include within or exclude from the chartered area all municipalities which have a population of fewer than one thousand five hundred inhabitants and which are within a county where such district provides electric service but are not otherwise in such district's operating area.

Source: Laws 1967, c. 418, § 7, p. 1289; Laws 1986, LB 949, § 6; Laws 2009, LB53, § 2.
Effective date August 30, 2009.

70-604.02 Operating area, defined.

The operating area of a district, for purposes of establishing its chartered territory, is the geographical area in this state comprising:

(1) The district's retail distribution area, which is that area within which the district delivers electricity by distribution lines directly to those of its customers who consume the electricity; and

(2) The district's wholesale distribution area, which is the aggregate of those retail distribution areas of the public electric utilities which purchase electricity either directly or indirectly from the district for resale to their retail customers if the selling district has the responsibility, in whole or in part, of charging for and delivery of the electricity by transmission lines to the retail public electric utility distribution lines at one or more points of delivery pursuant to a power contract, having an original term of five years or more, to deliver firm power and energy that constitutes fifty percent or more of the purchasing public electric utility's annual energy requirements. To the extent that a selling district leases its plant or systems to another district to be operated by such other district, or produces electricity, hydrogen, or ethanol which other districts may purchase, and such other districts provide or operate the transmission lines to carry such electricity from the producer to such other districts, the retail and wholesale distribution areas of such other districts are not a part of the operating area of the selling district by reason alone of such leasing or production.

Source: Laws 1967, c. 418, § 8, p. 1289; Laws 1986, LB 1230, § 36; Laws 1986, LB 949, § 7; Laws 2005, LB 139, § 5; Laws 2009, LB53, § 3.
Effective date August 30, 2009.

70-604.05 District; noncompliance; complaint; hearing; notice; order; failure to comply; penalty.

When it appears that one or more districts are in noncompliance with the provisions of Chapter 70, article 6, the corporate amendments required to comply shall be made generally in accordance with the procedures and requirements contained in Chapter 70, article 6. In the absence of voluntary amendment any time subsequent to six months after the publication of the first federal decennial census published after August 30, 2009, any person residing in the geographical area of alleged noncompliance, or any district or any two or more districts, may file a complaint with the Nebraska Power Review Board against one or more other districts alleging the area of noncompliance of such other districts. Upon receipt of such complaint, the Nebraska Power Review Board shall issue an order directed to the alleged noncomplying district, granting a hearing and requiring it to show cause why an amended petition for creation eliminating such noncompliance should not be filed for approval. Thirty-three days' notice of hearing, which includes mailing time, shall be given to such alleged noncomplying district by either registered or certified mail. The alleged noncomplying district may appear by answer or by petition for amended petition for creation of the district. The burden of proof of noncompliance shall be upon the complainant and of proposed amendments upon the petitioner. If the Nebraska Power Review Board finds that an amended petition for creation should be made and the alleged noncomplying district has not proposed an acceptable one, the Nebraska Power Review Board shall frame the amendment

to be approved after continuing the hearing to receive such evidence as may be offered by the parties having appeared before the Nebraska Power Review Board regarding the contents of the amendment to be framed by the Nebraska Power Review Board.

The members of the board of directors of any noncomplying district, including any district failing to comply with an amended petition as framed by the Nebraska Power Review Board, shall each be liable for a civil penalty of fifty dollars for each day of noncompliance which continues after thirty days following final adjudication of noncompliance. Such penalty shall be recovered in an action brought by the Attorney General in the district court for Lancaster County. Service of summons in such action may be had anywhere in the state. Any penalty collected pursuant to this section shall be remitted to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska. No member of any such board shall receive any compensation or reimbursement of expenses during the period for which he or she is liable for such penalty, nor shall he or she be eligible as a candidate for reelection.

Source: Laws 1967, c. 418, § 11, p. 1291; Laws 1969, c. 546, § 1, p. 2200; Laws 1981, LB 181, § 9; Laws 1986, LB 949, § 9; Laws 2009, LB53, § 4.
Effective date August 30, 2009.

70-637 Construction, repairs, and improvements; contracts; sealed bids; exceptions; notice; when.

(1) A district shall cause estimates of the costs to be made by some competent engineer or engineers before the district enters into any contract for:

(a) The construction, reconstruction, remodeling, building, alteration, maintenance, repair, extension, or improvement, for the use of the district, of any:

(i) Power plant or system;

(ii) Hydrogen production, storage, or distribution system;

(iii) Ethanol production or distribution system;

(iv) Irrigation works; or

(v) Part or section of a system or works described in subdivisions (i) through (iv) of this subdivision; or

(b) The purchase of any materials, machinery, or apparatus to be used in the projects described in subdivision (1)(a) of this section.

(2) If the estimated cost exceeds the sum of two hundred fifty thousand dollars, for those districts with a gross revenue of less than five hundred million dollars, or five hundred thousand dollars, for those districts with a gross revenue of five hundred million dollars or more, no such contract shall be entered into without advertising for sealed bids.

(3) Notwithstanding the provisions of subsection (2) of this section and sections 70-638 and 70-639, the board of directors of the district may negotiate directly with sheltered workshops pursuant to section 48-1503.

(4)(a) The provisions of subsection (2) of this section and sections 70-638 and 70-639 relating to sealed bids shall not apply to contracts entered into by a district in the exercise of its rights and powers relating to (i) radioactive material or the energy therefrom, (ii) any technologically complex or unique

equipment, (iii) equipment or supplemental labor procurement from an electric utility or from or through an electric utility alliance, or (iv) any maintenance or repair, if the requirements of subdivisions (b) and (c) of this subsection are met.

(b) A contract described in subdivision (a) of this subsection need not comply with subsection (2) of this section or section 70-638 or 70-639 if:

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

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

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

(c) Any contract for which the board has approved an engineer's certificate described in subdivision (b) of this subsection shall be advertised in three issues not less than seven days between issues in one or more newspapers of general circulation in the district and in such additional newspapers or trade or technical periodicals as may be selected by the board in order to give proper notice of its intention to enter into such contract, and any such contract shall not be entered into prior to twenty days after the last advertisement.

(5) The provisions of subsection (2) of this section and sections 70-638 and 70-639 shall not apply to contracts in excess of two hundred fifty thousand dollars, for those districts with a gross revenue of less than five hundred million dollars, or five hundred thousand dollars, for those districts with a gross revenue of five hundred million dollars or more, entered into for the purchase of any materials, machinery, or apparatus to be used in projects described in subdivision (1)(a) of this section if, after advertising for sealed bids:

(a) No responsive bids are received; or

(b) The board of directors of such district determines that all bids received are in excess of the fair market value of the subject matter of such bids.

(6) Notwithstanding any other provision of subsection (2) of this section or sections 70-638 and 70-639, a district may, without advertising or sealed bidding, purchase replacement parts or services relating to such replacement parts for any generating unit, transformer, or other transmission and distribution equipment from the original manufacturer of such equipment upon certification by an engineer or engineers that such manufacturer is the only available source of supply for such replacement parts or services and that such purchase is in compliance with standards established by the board. A written statement containing such certification and a description of the resulting purchase of replacement parts or services from the original manufacturer shall be submitted to the board by the engineer or engineers certifying the purchase for the board's approval. After such certification, but not necessarily before the board review, notice of any such purchase shall be published once a week for at least three consecutive weeks in one or more newspapers of general circulation in the district and published in such additional newspapers or trade or technical periodicals as may be selected by the board in order to give proper notice of such purchase.

(7) Notwithstanding any other provision of subsection (2) of this section or sections 70-638 and 70-639, a district may, without advertising or sealed bidding, purchase used equipment and materials on a negotiated basis upon certification by an engineer that such equipment is or such materials are in compliance with standards established by the board. A written statement containing such certification shall be submitted to the board by the engineer for the board's approval.

Source: Laws 1933, c. 86, § 10, p. 351; C.S.Supp.,1941, § 70-710; Laws 1943, c. 146, § 4, p. 523; R.S.1943, § 70-637; Laws 1955, c. 268, § 1, p. 847; Laws 1959, c. 316, § 6, p. 1161; Laws 1967, c. 423, § 1, p. 1299; Laws 1975, LB 63, § 1; Laws 1981, LB 34, § 2; Laws 1984, LB 152, § 1; Laws 1984, LB 540, § 11; Laws 1986, LB 1230, § 45; Laws 1998, LB 1129, § 2; Laws 1999, LB 566, § 2; Laws 2005, LB 139, § 14; Laws 2007, LB636, § 6; Laws 2008, LB939, § 3; Laws 2009, LB300, § 1.
Effective date August 30, 2009.

70-670 Eminent domain; procedure; duties of Attorney General; costs.

In addition to any other rights and powers hereinabove conferred upon any district organized under or subject to Chapter 70, article 6, each such district shall have and exercise the power of eminent domain to acquire from any person, firm, association, or private corporation any and all property owned, used, or operated, or useful for operation, in the generation, transmission, or distribution of electrical energy, including an existing electric utility system or any part thereof. The procedure to condemn property shall be exercised in the manner set forth in Chapter 76, article 7. In the case of the acquisition through the exercise of the power of eminent domain of an existing electric utility system or part thereof, the Attorney General shall, upon request of any district, represent such district in the institution and prosecution of condemnation proceedings. After acquisition of an existing electric utility system through the exercise of the power of eminent domain, the district shall reimburse the state for all costs and expenses incurred in the condemnation proceedings by the Attorney General. A district may agree to limit its exercise of the power of eminent domain to acquire a project which is a renewable energy generation facility producing electricity with wind and any related facilities.

Source: Laws 1933, c. 86, § 7, p. 349; Laws 1941, c. 138, § 1, p. 545; C.S.Supp.,1941, § 70-707; R.S.1943, § 70-670; Laws 1945, c. 157, § 5, p. 519; Laws 1951, c. 101, § 107, p. 497; Laws 1981, LB 181, § 33; Laws 2009, LB561, § 1.
Effective date August 30, 2009.

70-681 Districts existing on August 30, 2009; director holding office when charter amended; how treated.

In order to provide for orderly compliance with Chapter 70, article 6, districts existing on August 30, 2009, are hereby deemed to be properly constituted and incorporated and their directors duly elected and, notwithstanding any other provision of law, a district shall not be required to amend its charter in order to be in such compliance until six months after the publication of the first federal decennial census published after August 30, 2009. A director holding office at the time of any such amendment to a charter may continue to

serve until the expiration of his or her term of office if such director meets the qualifications of section 70-619 for holding office under the charter as so amended.

Source: Laws 1986, LB 949, § 15; Laws 2009, LB53, § 5.
Effective date August 30, 2009.

ARTICLE 10

NEBRASKA POWER REVIEW BOARD

Section
70-1012. Electric generation facilities and transmission lines; construction or acquisition; application; approval; when not required.
70-1014.01. Special generation application; approval; findings required.

70-1012 Electric generation facilities and transmission lines; construction or acquisition; application; approval; when not required.

Before any electric generation facilities or any transmission lines or related facilities carrying more than seven hundred volts are constructed or acquired by any supplier, an application, filed with the board and containing such information as the board shall prescribe, shall be approved by the board, except that such approval shall not be required (1) for the construction or acquisition of a transmission line extension or related facilities within a supplier's own service area or for the construction or acquisition of a line not exceeding one-half mile outside its own service area when all owners of electric lines located within one-half mile of the extension consent thereto in writing and such consents are filed with the board, (2) for any generation facility when the board finds that: (a) Such facility is being constructed or acquired to replace a generating plant owned by an individual municipality or registered group of municipalities with a capacity not greater than that of the plant being replaced, (b) such facility will generate less than twenty-five thousand kilowatts of electric energy at rated capacity, and (c) the applicant will not use the plant or transmission capacity to supply wholesale power to customers outside the applicant's existing retail service area or chartered territory, (3) for acquisition of transmission lines or related facilities, within the state, carrying one hundred fifteen thousand volts or less, if the current owner of the transmission lines or related facilities notifies the board of the lines or facilities involved in the transaction and the parties to the transaction, or (4) for the construction of a qualified facility as defined in section 70-2002.

Source: Laws 1963, c. 397, § 12, p. 1264; Laws 1979, LB 119, § 1; Laws 1981, LB 181, § 49; Laws 1984, LB 729, § 1; Laws 2009, LB436, § 6.
Effective date August 30, 2009.

70-1014.01 Special generation application; approval; findings required.

(1) Except as provided in subsection (2) of this section, an application by a municipality, a registered group of municipalities, a public power district, a public power and irrigation district, an electric cooperative, an electric membership association, or any other governmental entity for a facility that will generate not more than ten thousand kilowatts of electric energy at rated capacity and will generate electricity using solar, wind, biomass, landfill gas, methane gas, or hydropower generation technology or an emerging generation

technology, including, but not limited to, fuel cells and micro-turbines, shall be deemed a special generation application. Such application shall be approved by the board if the board finds that (a) the application qualifies as a special generation application, (b) the application will provide public benefits sufficient to warrant approval of the application, although it may not constitute the most economically feasible generation option, and (c) the application under consideration represents a separate and distinct project from any previous special generation application the applicant may have filed.

(2)(a) An application by a municipality, a registered group of municipalities, a public power district, a public power and irrigation district, an electric cooperative, an electric membership association, or any other governmental entity for a facility that will generate more than ten thousand kilowatts of electric energy at rated capacity and will generate electricity using renewable energy sources such as solar, wind, biomass, landfill gas, methane gas, or new hydropower generation technology or an emerging technology, including, but not limited to, fuel cells and micro-turbines, may be filed with the board if (i) the total production from all such renewable projects, excluding sales from such projects to other electric-generating entities, does not exceed ten percent of total energy sales as shown in the producer's Annual Electric Power Industry Report to the United States Department of Energy and (ii) the applicant's governing body conducts at least one advertised public hearing which affords the ratepayers of the applicant a chance to review and comment on the subject of the application.

(b) The application shall be approved by the board if the board finds that (i) the applicant is using renewable energy sources described in this subsection, (ii) total production from all renewable projects of the applicant does not exceed ten percent of the producer's total energy sales as described in subdivision (2)(a) of this section, and (iii) the applicant's governing body has conducted at least one advertised public hearing which affords its ratepayers a chance to review and comment on the subject of the application.

(3) A community-based energy development project organized pursuant to the Rural Community-Based Energy Development Act which intends to develop renewable energy sources for sale to one or more Nebraska electric utilities described in this section may also make an application to the board pursuant to subsection (2) of this section if (a) the purchasing electric utilities conduct a public hearing described in such subsection and (b) the power and energy from the renewable energy sources is sold exclusively to such electric utilities for a term of at least twenty years.

Source: Laws 2003, LB 65, § 3; Laws 2009, LB561, § 2.
Effective date August 30, 2009.

Cross References

Rural Community-Based Energy Development Act, see section 70-1901.

ARTICLE 19
RURAL COMMUNITY-BASED ENERGY DEVELOPMENT ACT

Section
70-1903. Terms, defined.
70-1904. C-BED project developer; electric utility; negotiation; power purchase agreement; development of project; restriction on transfer; eligibility for net energy billing; approval or certification; notice of change in ownership.

70-1903 Terms, defined.

For purposes of the Rural Community-Based Energy Development Act:

(1) C-BED project or community-based energy development project means a new wind energy project that:

(a) Has an ownership structure as follows:

(i) For a C-BED project that consists of more than two turbines, has one or more qualified owners with no single individual qualified owner owning directly or indirectly more than fifteen percent of the project and with at least thirty-three percent of the gross power purchase agreement payments flowing to the qualified owner or owners or local community; or

(ii) For a C-BED project that consists of one or two turbines, has one or more qualified owners with at least thirty-three percent of the gross power purchase agreement payments flowing to a qualified owner or owners or local community; and

(b) Has a resolution of support adopted:

(i) By the county board of each county in which the C-BED project is to be located; or

(ii) By the tribal council for a C-BED project located within the boundaries of an Indian reservation;

(2) Debt financing payments means principal, interest, and other typical financing costs paid by the C-BED project company to one or more third-party financial institutions for the financing or refinancing of the construction of the C-BED project. Debt financing payments does not include the repayment of principal at the time of a refinancing;

(3) Electric utility means an electric supplier that:

(a) Owns more than one hundred miles of one-hundred-fifteen-kilovolt or larger transmission lines in the State of Nebraska;

(b) Owns more than two hundred megawatts of electric generating facilities; and

(c) Has the obligation to directly serve more than two hundred megawatts of wholesale or retail electric load in the State of Nebraska;

(4) Gross power purchase agreement payments means the total amount of payments during the life of the agreement. For power purchase agreements entered into on or before December 31, 2011, if the qualified owners have a combined total of at least thirty-three percent of the equity ownership in the C-BED project, gross power purchase agreement payments shall be reduced by the debt financing payments; and

(5) Qualified owner means:

(a) A Nebraska resident;

(b) A limited liability company that is organized under the Limited Liability Company Act and that is made up of members who are Nebraska residents;

(c) A Nebraska nonprofit corporation organized under the Nebraska Nonprofit Corporation Act;

(d) An electric supplier as defined in section 70-1001.01, except that ownership in a single C-BED project is limited to no more than:

(i) Fifteen percent either directly or indirectly by a single electric supplier; and

(ii) A combined total of twenty-five percent ownership either directly or indirectly by multiple electric suppliers; or

(e) A tribal council.

Source: Laws 2007, LB629, § 3; Laws 2008, LB916, § 1; Laws 2009, LB561, § 3.
Effective date August 30, 2009.

Cross References

Limited Liability Company Act, see section 21-2601.
Nebraska Nonprofit Corporation Act, see section 21-1901.

70-1904 C-BED project developer; electric utility; negotiation; power purchase agreement; development of project; restriction on transfer; eligibility for net energy billing; approval or certification; notice of change in ownership.

(1) A C-BED project developer and an electric utility are authorized to negotiate in good faith mutually agreeable power purchase agreement terms.

(2) A qualified owner or any combination of qualified owners may develop a C-BED project with an equity partner that is not a qualified owner, if not more than sixty-seven percent of the gross power purchase agreement payments flow to the nonqualified owners.

(3) Except for an inherited interest, the transfer of a C-BED project to any person other than a qualified owner is prohibited during the initial ten years of the power purchase agreement.

(4) A C-BED project that is operating under a power purchase agreement is not eligible for any applicable net energy billing.

(5) A C-BED project shall be subject to approval by the Nebraska Power Review Board in accordance with Chapter 70, article 10, or shall receive certification as a qualifying facility in accordance with the federal Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2601 et seq., with written notice of such certification provided to the Nebraska Power Review Board.

(6) A C-BED project developer shall notify the electric utility that has a power purchase agreement with a C-BED project if there is a change in project ownership which makes the project no longer eligible as a C-BED project.

Source: Laws 2007, LB629, § 4; Laws 2008, LB916, § 2; Laws 2009, LB561, § 4.
Effective date August 30, 2009.

ARTICLE 20
NET METERING

Section

70-2001 Legislative findings.

The Legislature finds that it is in the public interest to:

(1) Encourage customer-owned renewable energy resources;

(2) Stimulate the economic growth of this state;

(3) Encourage diversification of the energy resources used in this state; and

(4) Maintain low-cost, reliable electric service.

Source: Laws 2009, LB436, § 1.
Effective date August 30, 2009.

70-2002 Terms, defined.

For purposes of sections 70-2001 to 70-2005:

(1) Customer-generator means an end-use electricity customer that generates electricity on the customer's side of the meter from a qualified facility;

(2) Interconnection agreement means an agreement between a local distribution utility and a customer-generator that establishes the financial, interconnection, safety, performance, and reliability requirements relating to the installation and operation of a qualified facility in accordance with the standards prescribed in sections 70-2001 to 70-2005;

(3) Local distribution system means the equipment and facilities used for the distribution of electric energy to the end-use electricity customer;

(4) Local distribution utility means the owner or operator of the local distribution system;

(5) Net excess generation means the net amount of energy, if any, by which the output of a qualified facility exceeds a customer-generator's total electricity requirements during a billing period;

(6) Net metering means a system of metering electricity in which a local distribution utility:

(a) Credits a customer-generator at the applicable retail rate for each kilowatt-hour produced by a qualified facility during a billing period up to the total of the customer-generator's electricity requirements during that billing period. A customer-generator may be charged a minimum monthly fee that is the same as other noncustomer-generators in the same rate class but shall not be charged any additional standby, capacity, demand, interconnection, or other fee or charge; and

(b) Compensates the customer-generator for net excess generation during the billing period at a rate equal to the local distribution utility's avoided cost of electric supply over the billing period. The monetary credits shall be applied to the bills of the customer-generator for the preceding billing period and shall offset the cost of energy owed by the customer-generator. If the energy portion of the customer-generator's bill is less than zero in any month, monetary credits shall be carried over to future bills of the customer-generator until the balance is zero. At the end of each annualized period, any excess monetary credits shall be paid out to coincide with the final bill of that period; and

(7) Qualified facility means a facility for the production of electrical energy that:

(a) Uses as its energy source either methane, wind, solar resources, biomass, hydropower resources, or geothermal resources;

(b) Is controlled by the customer-generator and is located on premises owned, leased, or otherwise controlled by the customer-generator;

(c) Interconnects and operates in parallel with the local distribution system;

(d) Is intended to meet or offset the customer-generator's requirements for electricity;

(e) Is not intended to offset or provide credits for electricity consumption at another location owned, operated, leased, or otherwise controlled by the customer-generator or for any other customer;

(f) Has a rated capacity at or below twenty-five kilowatts;

(g) Meets all applicable safety, performance, interconnection, and reliability standards established by the National Electrical Code filed with the Secretary of State and adopted by the State Electrical Board under subdivision (5) of section 81-2104, the National Electrical Safety Code, the Institute of Electrical and Electronics Engineers, and the Underwriters Laboratories, Inc.; and

(h) Is equipped to automatically isolate the qualified facility from the electrical system in the event of an electrical power outage or other conditions where the line is de-energized.

Source: Laws 2009, LB436, § 2.
Effective date August 30, 2009.

70-2003 Local distribution utility; interconnect qualified facility of customer-generator; interconnection agreement; requirements; powers and duties.

(1) A local distribution utility shall interconnect the qualified facility of any customer-generator that enters into an interconnection agreement with the local distribution utility, satisfies the requirements for a qualified facility and all other requirements of sections 70-2001 to 70-2005, and pays for costs incurred by the local distribution utility for equipment or services required for interconnection that would not be necessary if the qualified facility were not interconnected to the local distribution system, except as provided in subsection (2) of this section and as may be provided for in the utility's aid in construction policy.

(2) A local distribution utility shall provide at no additional cost to any customer-generator with a qualified facility a metering system that is capable of measuring the flow of electricity in both directions and may be accomplished through use of a single, bidirectional electric revenue meter that has only a single register for billing purposes, a smart metering system, or another meter configuration that can easily be read by the customer-generator.

(3) A local distribution utility may, at its own expense, install additional monitoring equipment to separately monitor the flow of electricity in each direction as may be necessary to accomplish the reporting requirements of sections 70-2001 to 70-2005.

(4) Subject to the requirements of sections 70-2001 to 70-2005 and the interconnection agreement, a local distribution utility shall provide net metering to any customer-generator with a qualified facility. The local distribution utility shall allow a customer-generator's retail electricity consumption to be offset by a qualified facility that is interconnected with the local distribution system. A qualified facility's net excess generation during a billing period, if any, shall be determined by the local distribution utility in accordance with section 70-2002 and shall be credited to the customer-generator at a rate equal

to the local distribution utility's avoided cost of electricity supply during the billing period, and the monetary credits shall be carried forward from billing period to billing period and credited against the customer-generator's retail electric bills in subsequent billing periods. Any excess monetary credits shall be paid out to coincide with the final bill at the end of each annualized period or within sixty days after the date the customer-generator terminates its retail service.

(5) A local distribution utility shall not be required to provide net metering to additional customer-generators, regardless of the output of the proposed generation unit, after the date during a calendar year on which the total generating capacity of all customer-generators using net metering served by such local distribution utility is equal to or exceeds one percent of the capacity necessary to meet the local distribution utility's average aggregate customer monthly peak demand forecast for that calendar year.

(6) No local distribution utility may require a customer-generator whose qualified facility meets the standards established under sections 70-2001 to 70-2005 to:

(a) Comply with additional safety or performance standards or pay additional charges for equipment or services for interconnection that are additional to those necessary to meet the standards established under sections 70-2001 to 70-2005;

(b) Perform or pay for additional tests; or

(c) Purchase additional liability insurance if all safety and interconnection requirements are met.

(7) Nothing in sections 70-2001 to 70-2005 prevents a local distribution utility from entering into other arrangements with customers desiring to install electric generating equipment or from providing net metering to customer-generators having renewable generation units with a rated capacity above twenty-five kilowatts.

Source: Laws 2009, LB436, § 3.
Effective date August 30, 2009.

70-2004 Customer-generator; inspection required; notice to local distribution utility; ownership of credits.

(1) A customer-generator shall request an inspection from the State Electrical Division pursuant to subsection (1) of section 81-2124 or subsection (1) of section 81-2125 and shall provide documentation of the completed inspection to the local distribution utility prior to interconnection with the local distribution system.

(2) A customer-generator is responsible for notifying the local distribution utility of its intent to install a qualified facility at least sixty days prior to its installation and is responsible for all costs associated with the qualified facility.

(3) A local distribution utility shall not be required to interconnect with a qualified facility that fails to meet or maintain the local distribution utility's requirements for safety, reliability, and interconnection.

(4) A customer-generator owns the renewable energy credits of the electricity its qualified facility generates.

Source: Laws 2009, LB436, § 4.
Effective date August 30, 2009.

70-2005 Annual net metering report; contents.

Beginning March 1, 2010, and on each March 1 thereafter, each local distribution utility shall produce and publish on its web site, or if no web site is available, in its main office, and provide to the Nebraska Power Review Board an annual net metering report that shall include the following information:

(1) The total number of qualified facilities;

(2) The total estimated rated generating capacity of qualified facilities;

(3) The total estimated net kilowatt-hours received from customer-generators; and

(4) The total estimated amount of energy produced by the customer-generators.

Source: Laws 2009, LB436, § 5.
Effective date August 30, 2009.

ARTICLE 21

PUBLIC POWER INFRASTRUCTURE PROTECTION ACT

Section
70-2101. Act, how cited.
70-2102. Legislative findings.
70-2103. Public power supplier, defined.
70-2104. Prohibited acts; penalty.
70-2105. Nuclear electrical generating facility; nuclear fuel; prohibited acts; penalty.

70-2101 Act, how cited.

Sections 70-2101 to 70-2105 shall be known and may be cited as the Public Power Infrastructure Protection Act.

Source: Laws 2009, LB238, § 3.
Effective date May 27, 2009.

70-2102 Legislative findings.

The Legislature finds that the public has an interest in the uninterrupted generation and transmission of electricity by public power suppliers in this state. The Legislature finds that it is in the public interest to protect facilities and infrastructure used in the generation, transmission, and distribution of electricity from damage as a result of knowingly unlawful and malicious acts.

Source: Laws 2009, LB238, § 4.
Effective date May 27, 2009.

70-2103 Public power supplier, defined.

For purposes of the Public Power Infrastructure Protection Act, public power supplier means a public power district organized under Chapter 70, article 6, a public power and irrigation district, a municipality, a registered group of municipalities, an electric cooperative, an electric membership association, a joint entity formed under the Interlocal Cooperation Act, a joint public agency

formed under the Joint Public Agency Act, an agency formed under the Municipal Cooperative Financing Act, or any other governmental entity providing electric service.

Source: Laws 2009, LB238, § 5.
Effective date May 27, 2009.

Cross References

Interlocal Cooperation Act, see section 13-801.
Joint Public Agency Act, see section 13-2501.
Municipal Cooperative Financing Act, see section 18-2401.

70-2104 Prohibited acts; penalty.

A person shall be guilty of a Class IV felony if he or she willfully and maliciously:

(1) Damages, injures, or destroys or attempts to damage, injure, or destroy:

(a) Any machine, appliance, facility, or apparatus owned by a public power supplier that is used for generating electricity; or

(b) Any facility or electric wire owned by a public power supplier that is used for the purpose of conducting, transforming, transmitting, or distributing electricity or any pole, bracket, insulator, or other appliance or apparatus owned by a public power supplier that supports or carries any electric wire owned by a public power supplier; or

(2) Does any act for the purpose of interrupting the generation, transmission, or distribution of electricity by a public power supplier.

Source: Laws 2009, LB238, § 6.
Effective date May 27, 2009.

70-2105 Nuclear electrical generating facility; nuclear fuel; prohibited acts; penalty.

(1) A person shall be guilty of a Class II felony if he or she willfully and maliciously (a) destroys or causes or attempts to cause damage or loss to a nuclear electrical generating facility or its components, including the electrical transmission lines or switching equipment used in direct connection with such a facility, or (b) takes, steals and carries away, or removes, alters, or otherwise renders unusable or unsafe the spent or unspent nuclear fuel used or stored in a nuclear electrical generating facility or nuclear storage facility.

(2) This section shall be construed to cover acts and omissions of persons employed at such nuclear facilities, persons otherwise rightfully upon the premises of such nuclear facilities, and all other persons. This section does not apply to acts or omissions carried out in accordance with official rules or directives relating to plant operation or within the scope of responsibility of judgment delegated to persons employed at such nuclear facilities.

Source: Laws 2009, LB238, § 7.
Effective date May 27, 2009.

CHAPTER 71
PUBLIC HEALTH AND WELFARE

Article.

ARTICLE 1
LICENSES; PROFESSIONAL AND OCCUPATIONAL

(o) PRACTICE OF MEDICINE AND SURGERY

Section

(o) PRACTICE OF MEDICINE AND SURGERY

71-1,106.01 Repealed. Laws 2009, LB 195, § 111.

ARTICLE 2
PRACTICE OF BARBERING

Section

71-201 Practice of barbering; barber shop; barber school; license required; renewal; disciplinary actions; prohibited acts.

No person shall practice or attempt to practice barbering without a license issued pursuant to the Barber Act by the board. It shall be unlawful to operate a barber shop unless it is at all times under the direct supervision and management of a licensed barber.

No person, partnership, limited liability company, or corporation shall operate a barber shop or barber school until a license has been obtained for that purpose from the board. If the applicant is an individual, the application shall include the applicant's social security number. No person shall lease space on the premises of a barber shop to engage in the practice of barbering as an independent contractor or a self-employed person without obtaining a booth rental permit as provided in section 71-219.05. All barber shop licenses and booth rental permits shall be issued on or before June 30 of each even-numbered year, shall be effective as of July 1 of each even-numbered year, shall be valid for two years, and shall expire on June 30 of the next succeeding even-numbered year.

Any barber shop which fails to renew its license or any person who fails to renew his or her booth rental permit on or before the expiration date may renew such license or booth rental permit by payment of the renewal fee and a late renewal fee established by the board within sixty days after such date or such other time period as the board establishes.

Any barber shop or barber school license and any booth rental permit may be suspended, revoked, or denied renewal by the board for violation of any provision of the statutes or any rule or regulation of the board pertaining to the operation or sanitation of barber shops, barber schools, or booths under a booth rental permit after due notice and hearing before the board.

No person, partnership, limited liability company, or corporation shall use the title of barber or barber shop or indicate in any way that such person or entity offers barbering services unless such person or entity is licensed pursuant

to the act. No person, partnership, limited liability company, or corporation shall hold itself out as a barber shop or indicate in any way that such person or entity offers barbering services unless such person or entity and the personnel who purport to offer barbering services in association with such person or entity are licensed pursuant to the act.

No person, partnership, limited liability company, or corporation shall display a barber pole or use a barber pole or the image of a barber pole in its advertising unless such person or entity is licensed to provide barbering services pursuant to the act and the display or use of such barber pole or barber pole image is to indicate that the person or entity is offering barbering services.

Source: Laws 1927, c. 163, § 1, p. 427; Laws 1929, c. 154, § 1, p. 533; C.S.1929, § 71-2001; R.S.1943, § 71-201; Laws 1957, c. 294, § 1, p. 1053; Laws 1963, c. 409, § 2, p. 1315; Laws 1965, c. 417, § 1, p. 1329; Laws 1971, LB 1020, § 1; Laws 1978, LB 722, § 1; Laws 1983, LB 87, § 14; Laws 1993, LB 121, § 421; Laws 1993, LB 226, § 1; Laws 1996, LB 1044, § 481; Laws 1997, LB 622, § 85; Laws 1997, LB 752, § 164; Laws 2009, LB195, § 53.
Effective date August 30, 2009.

71-208.02 School of barbering; registered instructors and assistants; qualifications.

(1) All instruction in barber schools shall be conducted by registered barber instructors or registered assistant barber instructors.

(2) A person shall be eligible for registration as a barber instructor if:

(a) He or she has completed at least eighteen hours of college credit at or above the postsecondary level, including at least three credit hours each in (i) methods of teaching, (ii) curriculum development, (iii) special vocational needs, (iv) educational psychology, (v) speech communications, and (vi) introduction to business;

(b) He or she has been a licensed and actively practicing barber for the one year immediately preceding application, except that for good cause the board may waive the requirement that the applicant be an actively practicing barber for one year or that such year immediately precede application;

(c) He or she has served as a registered assistant barber instructor under the supervision of an active, full-time, registered barber instructor, as provided in subsection (5) of this section, for one year immediately preceding application for registration, except that for good cause the board may waive the requirement that such year immediately precede application;

(d) He or she has passed an examination prescribed by the board; and

(e) He or she has paid the fees prescribed by section 71-219.

(3) One registered barber instructor or assistant barber instructor shall be employed for each fifteen students, or fraction thereof, enrolled in a barber school, except that each barber school shall have not less than two instructors, one of whom shall be a registered barber instructor, regardless of the number of students. Additional assistant barber instructors shall be permitted on a working ratio of two assistant barber instructors for every registered barber instructor. A barber school operated by a nonprofit organization which neither charges any tuition to its students nor makes any charge to the persons upon

whom work is performed shall not be required to have more than one instructor, regardless of the number of students, which instructor shall be a registered barber instructor.

(4) No student at a barber school shall be permitted to do any practical work upon any person unless a registered barber instructor or registered assistant barber instructor is on the premises and supervising the practical work being performed.

(5)(a) A person shall be eligible for registration as an assistant barber instructor if he or she has paid the fee prescribed by section 71-219, has been a licensed and actively practicing barber for one year, and is currently enrolled or will enroll at the first regular college enrollment date after registration under this section in an educational program leading to completion of the hours required under subsection (2) of this section.

(b) A person registered pursuant to subdivision (a) of this subsection shall serve as an assistant barber instructor under direct supervision, except that he or she may serve as an assistant barber instructor under indirect supervision if:

(i) He or she has completed nine college credit hours, including three credit hours each in methods of teaching, curriculum development, and special vocational needs; and

(ii) He or she has completed one year of instructor training under the direct inhouse supervision of an active, full-time, registered barber instructor or in lieu thereof has completed the requirements of a barber instructor course developed or approved by the board. The board may develop such courses or approve courses developed by educational institutions or other entities which meet requirements established by the board in rules and regulations.

(c) A report of college credits earned pursuant to subsection (2) of this section shall be submitted to the board at the end of each academic year. Registration as an assistant barber instructor shall be renewed in each even-numbered year and shall be valid for three years from the date of registration if the registrant pursues without interruption the educational program described in subsection (2) of this section. A registrant who fails to so maintain such program shall have his or her registration revoked. Any such registration that has been revoked shall be reinstated if all renewal fees have been paid and other registration requirements of this subsection are met.

(6) A person who is a registered barber instructor before September 9, 1993, may continue to practice as a registered barber instructor on and after such date without meeting the changes in the registration requirements of this section imposed by Laws 1993, LB 226. A person who is a registered assistant barber instructor before September 9, 1993, and who seeks to register as a barber instructor on or after September 9, 1993, may meet the requirements for registration as a barber instructor either as such requirements existed before such date or as such requirements exist on or after such date.

Source: Laws 1963, c. 409, § 11, p. 1320; Laws 1965, c. 417, § 4, p. 1330; Laws 1971, LB 22, § 1; Laws 1971, LB 1020, § 11; Laws 1983, LB 87, § 17; Laws 1993, LB 226, § 4; Laws 2009, LB195, § 54. Effective date August 30, 2009.

71-208.06 Registered barber instructor; license; expiration.

The license as a registered barber instructor shall be issued on or before June 30 of each even-numbered year effective as of July 1 of each even-numbered year and shall expire as provided in section 71-216. The license application shall include the applicant's social security number.

Source: Laws 1971, LB 1020, § 14; Laws 1997, LB 752, § 165; Laws 2009, LB195, § 55.
Effective date August 30, 2009.

71-216 Registered barber instructor, assistant barber instructor, or barber; barber school; renewal of registration or license; barber on inactive status; renewal of license; failure to renew for five years; effect.

Every registered barber instructor and licensed barber who continues in active practice or service shall on or before June 30 of each even-numbered year renew his or her license or registration and pay the required fee. Such license or registration shall be effective as of July 1 of each even-numbered year and shall terminate on June 30 of the next succeeding even-numbered year.

Every registered assistant barber instructor shall, subject to the requirements of section 71-208.02, renew his or her registration on or before its expiration date during the period of its validity established by such section and pay the required fee.

Every barber school shall on or before June 30 of each even-numbered year obtain renewal of its license and pay the required fee. Such renewal shall be effective as of July 1 of each even-numbered year and shall expire on June 30 of the next succeeding even-numbered year.

Any licensed barber, registered barber instructor, registered assistant barber instructor, or barber school which fails to renew his, her, or its license or registration on or before the expiration date may renew such license or registration by payment of the renewal fee and a late renewal fee established by the board within sixty days after such date or such other time period as the board establishes.

Any barber on inactive status or who withdraws from the active practice of barbering may renew his or her license within five years of its expiration date upon the payment of the required restoration fee. Any barber who fails to renew his or her license for five consecutive years shall be required to successfully complete the examination for issuance of a new license.

Source: Laws 1927, c. 163, § 13, p. 432; C.S.1929, § 71-2017; R.S.1943, § 71-216; Laws 1963, c. 409, § 20, p. 1323; Laws 1965, c. 417, § 5, p. 1331; Laws 1971, LB 1020, § 20; Laws 1975, LB 66, § 2; Laws 1978, LB 722, § 12; Laws 1983, LB 87, § 20; Laws 1993, LB 226, § 6; Laws 2009, LB195, § 56.
Effective date August 30, 2009.

71-219 Barbering fees; set by board; enumerated.

The board shall set the fees to be paid:

(1) By an applicant for an examination to determine his or her fitness to receive a license to practice barbering or a registration as a barber instructor and for the issuance of the license or registration;

(2) By an applicant for registration as an assistant barber instructor;

(3) For the renewal of a license to practice barbering and for restoration of an inactive license;

(4) For the renewal of a registration to practice as a barber instructor and for the restoration of an inactive registration;

(5) For renewal of a registration to practice as an assistant barber instructor;

(6) For late renewal of a license issued under the Barber Act;

(7) For an application for a license to establish a barber shop or barber school and for the issuance of a license;

(8) For the transfer of license or change of ownership of a barber shop or barber school;

(9) For renewal of a barber license, barber instructor registration, barber shop license, or barber school license;

(10) For an application for a temporary license to conduct classes of instruction in barbering;

(11) For an affidavit for purposes of reciprocity or for issuance of a certification of licensure for purposes of reciprocity;

(12) For an application for licensure without examination pursuant to section 71-239.01 and for the issuance of a license pursuant to such section;

(13) For issuance of a booth rental permit under section 71-219.05;

(14) For the sale of listings or labels; and

(15) For a returned check because of insufficient funds or no funds.

Source: Laws 1927, c. 163, § 16, p. 433; Laws 1929, c. 154, § 8, p. 537; C.S.1929, § 71-2020; Laws 1933, c. 121, § 1, p. 490; C.S.Supp.,1941, § 71-2020; R.S.1943, § 71-219; Laws 1953, c. 238, § 6, p. 827; Laws 1957, c. 294, § 7, p. 1056; Laws 1963, c. 409, § 23, p. 1324; Laws 1965, c. 417, § 6, p. 1332; Laws 1971, LB 1020, § 21; Laws 1972, LB 1183, § 4; Laws 1975, LB 66, § 3; Laws 1978, LB 722, § 14; Laws 1983, LB 87, § 23; Laws 1993, LB 226, § 7; Laws 2009, LB195, § 57.
Effective date August 30, 2009.

71-219.01 Application for license to operate barber school or college; form; contents; transfer; fees.

Application for a license to operate a barber school or college shall be made on a form furnished by the board. It shall contain such information relative to ownership, management, instructors, number of students, and other data concerning such business as may be required by the board. The board shall collect, in addition to the approval fee, a fee in an amount set by the board for every barber school opened after August 27, 1971. The fee for approval of a barber school or college, the fee for reinstatement of a delinquent license, and the fee for the transfer of license or change of ownership of a barber school or college shall be set by the board. No fee shall be collected if the change in ownership is caused by a present license owner incorporating.

Source: Laws 1971, LB 1020, § 22; Laws 1975, LB 66, § 6; Laws 1997, LB 622, § 91; Laws 2009, LB195, § 58.
Effective date August 30, 2009.

71-219.02 Application for license to establish a barber shop; form; contents; transfer; fees; inspection.

Application for a license to establish a barber shop shall be made on a form furnished by the board. It shall contain such information relative to ownership, management, sanitation, and other data concerning such business as may be required by the board. The board shall collect with such application, in addition to the license fee, a fee to be set by the board. A fee shall be collected for the transfer of license or change of ownership of a barber shop, but no fee shall be collected if the ownership results merely from a present license holder incorporating his or her business. Every barber shop shall be called upon by the state barber inspector at least once each licensing period for the purpose of inspection in order to be eligible for a permit to conduct a barber shop, and no license shall be issued unless all deficiencies found by inspection of such shop have been corrected.

Source: Laws 1975, LB 66, § 5; Laws 1978, LB 722, § 15; Laws 1997, LB 622, § 92; Laws 2009, LB195, § 59.
Effective date August 30, 2009.

71-219.05 Barber shop; booth rental permit; application; form; contents; issuance; notice of change of work address.

(1) Any barber who leases space on the premises of a barber shop to engage in the practice of barbering as an independent contractor or a self-employed person shall obtain a booth rental permit.

(2) An application for a booth rental permit shall be made on a form furnished by the board and shall include the applicant's name, barber license number, telephone number, and work address, whether the applicant is an independent contractor or a self-employed person, and such other information as the board deems necessary. The applicant's mailing address shall be the work address shown on the permit application.

(3) The board shall issue a booth rental permit upon receipt of an application containing the information required under subsection (2) of this section and the fee established pursuant to section 71-219.

(4) The holder of a booth rental permit shall provide the board with ten days' written notice before changing his or her work address.

Source: Laws 2009, LB195, § 60.
Effective date August 30, 2009.

71-223.01 Barber shops and barber schools; sanitary requirements; inspections.

The board shall by rules and regulations duly adopted prescribe sanitary requirements for barber shops and barber schools. The board or its employees shall regularly inspect all barber shops and barber schools in this state to insure compliance with such regulations. Such sanitary requirements and inspections shall include all activities, in addition to barbering as defined in section 71-202, taking place on the licensed premises. A written report of each such inspection made shall be submitted to the board. Each school or barber shop shall be called upon at least once each licensing period for the purpose of

inspection prior to the issuance of its license to be eligible for renewal of certification or registration.

Source: Laws 1963, c. 409, § 29, p. 1328; Laws 1971, LB 1020, § 28; Laws 1978, LB 722, § 18; Laws 1996, LB 1044, § 483; Laws 1997, LB 622, § 95; Laws 1999, LB 121, § 2; Laws 2009, LB195, § 61.
Effective date August 30, 2009.

71-224 Act, how cited.

Sections 71-201 to 71-248 shall be known and may be cited as the Barber Act.

Source: Laws 1927, c. 163, § 23, p. 436; C.S.1929, § 71-2027; R.S.1943, § 71-224; Laws 1971, LB 1020, § 31; Laws 1993, LB 226, § 11; Laws 2009, LB195, § 62.
Effective date August 30, 2009.

71-239 Foreign licenses; recognition; board; powers.

For purposes of recognizing licenses which have been issued in other states or countries to practice barbering as a licensed barber or registered barber instructor, the board may:

(1) Enter into a reciprocal agreement with any state which is certified to it by the proper examining board under the provisions of section 71-240; and

(2) Provide for licensure without examination as provided in section 71-239.01.

Source: Laws 1983, LB 87, § 2; Laws 1993, LB 226, § 13; Laws 2009, LB195, § 63.
Effective date August 30, 2009.

71-239.01 Foreign licenses; recognition; licensure without examination; application; form; contents; issuance; appeal.

(1) The board may issue a license without examination to a person licensed in a state, territory, or country with which the board has not entered into a reciprocal agreement under section 71-239 as provided in this section.

(2) An applicant for licensure without examination under subsection (1) of this section shall file with the board (a) an application on a form provided by the board, (b) a copy of the license issued by the state, territory, or country in which the applicant is licensed, (c) the applicant's social security number, (d) documents demonstrating that the requirements for licensure in such state, territory, or country are substantially equivalent to the requirements for licensure under the Barber Act, and (e) the fee required pursuant to section 71-219.

(3) The board shall review each application and the documents submitted under this section and determine within sixty days after receiving such application and documentation whether to issue a license without examination to the applicant. The board shall notify the applicant of its decision within ten days after the date of making the decision. If the board determines not to issue a license without examination to the applicant, he or she may appeal the decision of the board and the appeal shall be in accordance with the Administrative Procedure Act.

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

Source: Laws 2009, LB195, § 64.
Effective date August 30, 2009.

Cross References

Administrative Procedure Act, see section 84-920.

71-242 Reciprocal agreement; applicant for licensure or registration; requirements; failure to qualify; effect.

The board shall not enter into any reciprocal agreement with any state or country with reference to the practice of barbering as a licensed barber or registered barber instructor for which the board conducts examinations unless every person licensed or registered in such state or country when applying for a license to practice in this state shall show:

(1) That the requirements for licensure or registration were substantially equal to those in force in this state at the time such license was issued; or

(2) Upon due proof that such applicant has continuously practiced the practices or occupation for which application for a license is made at least three years immediately prior to such application.

The applicant shall also pay the fee set pursuant to section 71-219 and provide his or her social security number.

Except as provided in section 71-239.01, any applicant who fails to qualify for such exemption because his or her study or training outside this state does not fulfill the requirements of this section shall receive credit for the number of hours of study and training successfully completed in the particular state where he or she is registered or licensed, and he or she shall be qualified for the examination upon completion of such supplementary study and training in an accredited school of barbering in this state as the board finds necessary to substantially equal the study and training of a qualified person who has studied and trained in an accredited school in this state only. For the purposes of this section, each six months of practice outside of this state of the practices or occupation for which application for a license is made shall be deemed the equivalent of one hundred hours of study and training required in this state in order to qualify for the practice of barbering.

Source: Laws 1983, LB 87, § 5; Laws 1993, LB 226, § 14; Laws 1997, LB 752, § 167; Laws 2009, LB195, § 65.
Effective date August 30, 2009.

71-245 Reciprocal license; provisions applicable.

The provisions of the Barber Act, relating to applications, transmittal of the names of eligible candidates, certification of successful applicants, and issuance of licenses thereto, in the case of regular examinations, apply as far as applicable to applicants for a reciprocal license or for a license issued without examination pursuant to section 71-239.01.

Source: Laws 1983, LB 87, § 8; Laws 1997, LB 622, § 99; Laws 2009, LB195, § 66.
Effective date August 30, 2009.

ARTICLE 4
HEALTH CARE FACILITIES

71-401 Act, how cited.

Sections 71-401 to 71-464 shall be known and may be cited as the Health Care Facility Licensure Act.

Source: Laws 2000, LB 819, § 1; Laws 2001, LB 398, § 65; Laws 2004, LB 1005, § 41; Laws 2007, LB203, § 1; Laws 2009, LB288, § 31. Operative date August 30, 2009.

71-464 Itemized billing statement; duty to provide.

A health care facility or a health care practitioner facility, upon written request of a patient or a patient's representative, shall provide an itemized billing statement, including diagnostic codes, without charge to the patient or patient's representative. Such itemized billing statement shall be provided within fourteen days after the request.

Source: Laws 2009, LB288, § 32.
Operative date August 30, 2009.

ARTICLE 5
DISEASES

(f) HUMAN IMMUNODEFICIENCY VIRUS INFECTION

(f) HUMAN IMMUNODEFICIENCY VIRUS INFECTION

71-531 Test; written informed consent required; anonymous testing; exemptions.

(1)(a) No person may be tested for the presence of the human immunodeficiency virus infection unless he or she has given written informed consent for the performance of such test. The written informed consent shall provide an explanation of human immunodeficiency virus infection and the meaning of both positive and negative test results.

(b) If a person signs a general consent form for the performance of medical tests or procedures which informs the person that a test for the presence of the human immunodeficiency virus infection may be performed and that the person may refuse to have such test performed, the signing of an additional consent for the specific purpose of consenting to a test related to human immunodeficiency virus is not required during the time in which the general consent form is in effect.

(2) If a person is unable to provide consent, the person's legal representative may provide consent. If the person's legal representative cannot be located or is unavailable, a health care provider may authorize the test when the test results are necessary for diagnostic purposes to provide appropriate medical care.

(3) A person seeking a human immunodeficiency virus test shall have the right to remain anonymous. A health care provider shall confidentially refer such person to a site which provides anonymous testing.

(4) This section shall not apply to:

(a) The performance by a health care provider or a health facility of a human immunodeficiency virus test when the health care provider or health facility procures, processes, distributes, or uses a human body part for a purpose specified under the Uniform Anatomical Gift Act and such test is necessary to assure medical acceptability of such gift for the purposes intended;

(b) The performance by a health care provider or a health facility of a human immunodeficiency virus test when such test is performed with the consent and written authorization of the person being tested and such test is for insurance underwriting purposes, written information about the human immunodeficiency virus is provided, including, but not limited to, the identification and reduction of risks, the person is informed of the result of such test, and when the result is positive, the person is referred for posttest counseling;

(c) The performance of a human immunodeficiency virus test by licensed medical personnel of the Department of Correctional Services when the subject of the test is committed to such department. Posttest counseling shall be required for the subject if the test is positive. A person committed to the Department of Correctional Services shall be informed by the department (i) if he or she is being tested for the human immunodeficiency virus, (ii) that education shall be provided to him or her about the human immunodeficiency virus, including, but not limited to, the identification and reduction of risks, and (iii) of the test result and the meaning of such result;

(d) Human immunodeficiency virus home collection kits licensed by the federal Food and Drug Administration; or

(e) The performance of a human immunodeficiency virus test performed pursuant to section 29-2290 or sections 71-507 to 71-513 or 71-514.01 to 71-514.05.

Source: Laws 1994, LB 819, § 5; Laws 1997, LB 194, § 1; Laws 2009, LB288, § 33.
Operative date May 30, 2009.

Cross References

Uniform Anatomical Gift Act, see section 71-4812.

ARTICLE 6
VITAL STATISTICS

Section
71-604. Birth certificate; preparation and filing.
71-604.05. Birth certificate; restriction on filing; social security number required; exception; use; release of data to Social Security Administration.
71-605. Death certificate; cause of death; sudden infant death syndrome; how treated; cremation, disinterment, or transit permits; how executed; filing; requirements.

71-604 Birth certificate; preparation and filing.

(1) A certificate for each live birth which occurs in the State of Nebraska shall be filed on a standard Nebraska certificate form. Such certificate shall be filed with the department within five business days after the birth.

(2) When a birth occurs in an institution or en route thereto, the person in charge of the institution or his or her authorized designee shall obtain the personal data, prepare the certificate which shall include the name, title, and address of the attendant, certify that the child was born alive at the place and time and on the date stated either by standard procedure or by an approved electronic process, and file the certificate. The physician, physician assistant, or other person in attendance shall provide the medical information required for the certificate within seventy-two hours after the birth.

(3) When a birth occurs outside an institution, the certificate of birth shall be prepared and filed by one of the following:

(a) The physician or physician assistant in attendance at or immediately after the birth;

(b) The father, the mother, or, in the absence of the father and the inability of the mother, the person in charge of the premises where the birth occurred; or

(c) Any other person in attendance at or immediately after the birth.

Source: Laws 1919, c. 190, tit. VI, art. II, div. IX, § 5, p. 781; Laws 1921, c. 253, § 1, p. 863; C.S.1922, § 8232; Laws 1927, c. 166, § 2, p. 448; C.S.1929, § 71-2404; R.S.1943, § 71-604; Laws 1965, c. 418, § 2, p. 1335; Laws 1985, LB 42, § 2; Laws 1989, LB 344, § 9; Laws 1994, LB 886, § 3; Laws 1997, LB 307, § 135; Laws 2007, LB296, § 403; Laws 2009, LB195, § 67.
Effective date August 30, 2009.

71-604.05 Birth certificate; restriction on filing; social security number required; exception; use; release of data to Social Security Administration.

(1) The department shall not file (a) a certificate of live birth, (b) a certificate of delayed birth registration for a registrant who is under twenty-five years of age when an application for such certificate is filed, (c) a certificate of live birth filed after adoption of a Nebraska-born person who is under twenty-five years of age or a person born outside of the jurisdiction of the United States, or (d) a certificate of live birth issued pursuant to section 71-628 unless the social security number or numbers issued to the parents are furnished by the person seeking to register the birth. No such certificate may be amended to show paternity unless the social security number of the father is furnished by the person requesting the amendment. The social security number shall not be required if no social security number has been issued to the parent or if the social security number is unknown.

(2) Social security numbers (a) shall be recorded on the birth certificate but shall not be considered part of the birth certificate and (b) shall only be used for the purpose of enforcement of child support orders in Nebraska as permitted by Title IV-D of the federal Social Security Act, as amended, or as permitted by section 7(a) of the federal Privacy Act of 1974, as amended.

(3) The department may release data to the Social Security Administration which is necessary to obtain a social security number and which is contained on the birth certificate of any individual who has applied for or is receiving medicaid or Supplemental Nutrition Assistance Program benefits. The department shall make such data available only for the purpose of obtaining a social security number for the individual.

(4) The department shall provide to the Social Security Administration each parent's name and social security number collected in the birth certification process as required by the federal Taxpayer Relief Act of 1997.

Source: Laws 1991, LB 703, § 28; Laws 1993, LB 536, § 62; Laws 1996, LB 1044, § 516; Laws 1997, LB 307, § 136; Laws 1998, LB 1073, § 89; Laws 2004, LB 1005, § 55; Laws 2007, LB296, § 405; Laws 2009, LB288, § 34.
Operative date August 30, 2009.

71-605 Death certificate; cause of death; sudden infant death syndrome; how treated; cremation, disinterment, or transit permits; how executed; filing; requirements.

(1) The funeral director and embalmer in charge of the funeral of any person dying in the State of Nebraska shall cause a certificate of death to be filled out with all the particulars contained in the standard form adopted and promulgated by the department. Such standard form shall include a space for veteran status and the period of service in the armed forces of the United States and a statement of the cause of death made by a person holding a valid license as a physician or physician assistant who last attended the deceased. The standard form shall also include the deceased's social security number. Death and fetal death certificates shall be completed by the funeral directors and embalmers and physicians or physician assistants for the purpose of filing with the department and providing child support enforcement information pursuant to section 43-3340.

(2) The physician or physician assistant shall have the responsibility and duty to complete and sign in his or her own handwriting or by electronic means pursuant to section 71-603.01, within twenty-four hours from the time of death, that part of the certificate of death entitled medical certificate of death. In the case of a death when no person licensed as a physician or physician assistant was in attendance, the funeral director and embalmer shall refer the case to the county attorney who shall have the responsibility and duty to complete and sign the death certificate in his or her own handwriting or by electronic means pursuant to section 71-603.01.

No cause of death shall be certified in the case of the sudden and unexpected death of a child between the ages of one week and three years until an autopsy is performed at county expense by a qualified pathologist pursuant to section 23-1824. The parents or guardian shall be notified of the results of the autopsy by their physician, physician assistant, community health official, or county coroner within forty-eight hours. The term sudden infant death syndrome shall be entered on the death certificate as the principal cause of death when the term is appropriately descriptive of the pathology findings and circumstances surrounding the death of a child.

If the circumstances show it possible that death was caused by neglect, violence, or any unlawful means, the case shall be referred to the county attorney for investigation and certification. The county attorney shall, within twenty-four hours after taking charge of the case, state the cause of death as ascertained, giving as far as possible the means or instrument which produced the death. All death certificates shall show clearly the cause, disease, or sequence of causes ending in death. If the cause of death cannot be determined within the period of time stated above, the death certificate shall be filed to

establish the fact of death. As soon as possible thereafter, and not more than six weeks later, supplemental information as to the cause, disease, or sequence of causes ending in death shall be filed with the department to complete the record. For all certificates stated in terms that are indefinite, insufficient, or unsatisfactory for classification, inquiry shall be made to the person completing the certificate to secure the necessary information to correct or complete the record.

(3) A completed death certificate shall be filed with the department within five business days after the date of death. If it is impossible to complete the certificate of death within five business days, the funeral director and embalmer shall notify the department of the reason for the delay and file the certificate as soon as possible.

(4) Before any dead human body may be cremated, a cremation permit shall first be signed by the county attorney, or by his or her authorized representative as designated by the county attorney in writing, of the county in which the death occurred on a form prescribed and furnished by the department.

(5) A permit for disinterment shall be required prior to disinterment of a dead human body. The permit shall be issued by the department to a licensed funeral director and embalmer upon proper application. The request for disinterment shall be made by the next of kin of the deceased, as listed in section 38-1425, or a county attorney on a form furnished by the department. The application shall be signed by the funeral director and embalmer who will be directly supervising the disinterment. When the disinterment occurs, the funeral director and embalmer shall sign the permit giving the date of disinterment and file the permit with the department within ten days of the disinterment.

(6) When a request is made under subsection (5) of this section for the disinterment of more than one dead human body, an order from a court of competent jurisdiction shall be submitted to the department prior to the issuance of a permit for disinterment. The order shall include, but not be limited to, the number of bodies to be disinterred if that number can be ascertained, the method and details of transportation of the disinterred bodies, the place of reinterment, and the reason for disinterment. No sexton or other person in charge of a cemetery shall allow the disinterment of a body without first receiving from the department a disinterment permit properly completed.

(7) No dead human body shall be removed from the state for final disposition without a transit permit issued by the funeral director and embalmer having charge of the body in Nebraska, except that when the death is subject to investigation, the transit permit shall not be issued by the funeral director and embalmer without authorization of the county attorney of the county in which the death occurred. No agent of any transportation company shall allow the shipment of any body without the properly completed transit permit prepared in duplicate.

(8) The interment, disinterment, or reinterment of a dead human body shall be performed under the direct supervision of a licensed funeral director and embalmer, except that hospital disposition may be made of the remains of a child born dead pursuant to section 71-20,121.

(9) All transit permits issued in accordance with the law of the place where the death occurred in a state other than Nebraska shall be signed by the funeral

director and embalmer in charge of burial and forwarded to the department within five business days after the interment takes place.

Source: Laws 1921, c. 253, § 2, p. 863; C.S.1922, § 8233; Laws 1927, c. 166, § 3, p. 449; C.S.1929, § 71-2405; R.S.1943, § 71-605; Laws 1949, c. 202, § 1, p. 585; Laws 1953, c. 241, § 1, p. 830; Laws 1961, c. 341, § 3, p. 1091; Laws 1965, c. 418, § 3, p. 1335; Laws 1973, LB 29, § 1; Laws 1978, LB 605, § 1; Laws 1985, LB 42, § 3; Laws 1989, LB 344, § 10; Laws 1993, LB 187, § 8; Laws 1996, LB 1044, § 517; Laws 1997, LB 307, § 137; Laws 1997, LB 752, § 172; Laws 1999, LB 46, § 4; Laws 2003, LB 95, § 33; Laws 2005, LB 54, § 14; Laws 2005, LB 301, § 25; Laws 2007, LB463, § 1184; Laws 2009, LB195, § 68.
Effective date August 30, 2009.

Cross References

For authority of chiropractors to sign death certificates, see section 38-811.
For authority of physician assistants to sign death certificates, see section 38-2047.
Organ and tissue donation, notation required, see section 71-4816.

ARTICLE 7
WOMEN'S HEALTH

Section
71-702. Women's Health Initiative Advisory Council; created; members; terms; duties; expenses.

71-702 Women's Health Initiative Advisory Council; created; members; terms; duties; expenses.

(1) The Women's Health Initiative Advisory Council is created and shall consist of not more than thirty members, at least three-fourths of whom are women. At least one member shall be appointed from the following disciplines: (a) An obstetrician/gynecologist; (b) a nurse practitioner or physician's assistant from a rural community; (c) a geriatrics physician or nurse; (d) a pediatrician; (e) a community public health representative from each congressional district; (f) a health educator; (g) an insurance industry representative; (h) a mental health professional; (i) a representative from a statewide health volunteer agency; (j) a private health care industry representative; (k) an epidemiologist or a health statistician; (l) a foundation representative; and (m) a woman who is a health care consumer from each of the following age categories: Eighteen to thirty; thirty-one to forty; forty-one to sixty-five; and sixty-six and older. The membership shall also include a representative of the University of Nebraska Medical Center, a representative from Creighton University Medical Center, the chief medical officer if one is appointed under section 81-3115, and the Title V Administrator of the Department of Health and Human Services.

(2) The Governor shall appoint advisory council members and shall consider and attempt to balance representation based on political party affiliation, race, and different geographical areas of Nebraska when making appointments. The Governor shall appoint the first chairperson and vice-chairperson of the advisory council. There shall be two ex officio, nonvoting members from the Legislature, one of which shall be the chairperson of the Health and Human Services Committee.

(3) The terms of the initial members shall be as follows: One-third shall serve for one-year terms, one-third shall serve for two-year terms, and one-third shall serve for three-year terms including the members designated chairperson and vice-chairperson. Thereafter members shall serve for three-year terms. Members may not serve more than two consecutive three-year terms.

(4) The Governor shall make the appointments within three months after July 13, 2000.

(5) The advisory council shall meet quarterly the first two years. After this time the advisory council shall meet at least every six months or upon the call of the chairperson or a majority of the voting members. A quorum shall be one-half of the voting members.

(6) The members of the advisory council shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177 and pursuant to policies of the advisory council. Funds for reimbursement for expenses shall be from the Women's Health Initiative Fund.

(7) The advisory council shall advise the Women's Health Initiative of Nebraska in carrying out its duties under section 71-701 and may solicit private funds to support the initiative.

Source: Laws 2000, LB 480, § 2; Laws 2004, LB 818, § 1; Laws 2007, LB296, § 449; Laws 2009, LB84, § 1; Laws 2009, LB154, § 16. Effective date August 30, 2009.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB84, section 1, with LB154, section 16, to reflect all amendments.

ARTICLE 8

BEHAVIORAL HEALTH SERVICES

Section

71-801 Nebraska Behavioral Health Services Act; act, how cited.

Sections 71-801 to 71-830 shall be known and may be cited as the Nebraska Behavioral Health Services Act.

Source: Laws 2004, LB 1083, § 1; Laws 2006, LB 994, § 91; Laws 2009, LB154, § 17; Laws 2009, LB603, § 3.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB154, section 17, with LB603, section 3, to reflect all amendments.

Note: Changes made by LB603 became operative May 23, 2009. Changes made by LB154 became effective August 30, 2009.

71-808 Regional behavioral health authority; established; regional governing board; matching funds; requirements.

(1) A regional behavioral health authority shall be established in each behavioral health region by counties acting under provisions of the Interlocal Cooperation Act. Each regional behavioral health authority shall be governed by a regional governing board consisting of one county board member from each county in the region. Board members shall serve for staggered terms of three years and until their successors are appointed and qualified. Board members shall serve without compensation but shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177.

(2) The regional governing board shall appoint a regional administrator who shall be responsible for the administration and management of the regional behavioral health authority. Each regional behavioral health authority shall encourage and facilitate the involvement of consumers in all aspects of service planning and delivery within the region and shall coordinate such activities with the office of consumer affairs within the division. Each regional behavioral health authority shall establish and utilize a regional advisory committee consisting of consumers, providers, and other interested parties and may establish and utilize such other task forces, subcommittees, or other committees as it deems necessary and appropriate to carry out its duties under this section.

(3) Each county in a behavioral health region shall provide funding for the operation of the behavioral health authority and for the provision of behavioral health services in the region. The total amount of funding provided by counties under this subsection shall be equal to one dollar for every three dollars from the General Fund. The division shall annually certify the total amount of county matching funds to be provided. At least forty percent of such amount shall consist of local and county tax revenue, and the remainder shall consist of other nonfederal sources. The regional governing board of each behavioral health authority, in consultation with all counties in the region, shall determine the amount of funding to be provided by each county under this subsection. Any General Funds transferred from regional centers for the provision of community-based behavioral health services after July 1, 2004, and funds received by a regional behavioral health authority for the provision of behavioral health services to children under section 71-826 shall be excluded from any calculation of county matching funds under this subsection.

Source: Laws 2004, LB 1083, § 8; Laws 2009, LB603, § 4.
Operative date May 23, 2009.

Cross References

Interlocal Cooperation Act, see section 13-801.

71-810 Division; community-based behavioral health services; duties; reduce or discontinue regional center behavioral health services; powers and duties.

(1) The division shall encourage and facilitate the statewide development and provision of an appropriate array of community-based behavioral health services and continuum of care for the purposes of (a) providing greater access to such services and improved outcomes for consumers of such services and (b)

reducing the necessity and demand for regional center behavioral health services.

(2) The division may reduce or discontinue regional center behavioral health services only if (a) appropriate community-based services or other regional center behavioral health services are available for every person receiving the regional center services that would be reduced or discontinued, (b) such services possess sufficient capacity and capability to effectively replace the service needs which otherwise would have been provided at such regional center, and (c) no further commitments, admissions, or readmissions for such services are required due to the availability of community-based services or other regional center services to replace such services.

(3) The division shall notify the Governor and the Legislature of any intended reduction or discontinuation of regional center services under this section. Such notice shall include detailed documentation of the community-based services or other regional center services that are being utilized to replace such services.

(4) As regional center services are reduced or discontinued under this section, the division shall make appropriate corresponding reductions in regional center personnel and other expenditures related to the provision of such services. All funding related to the provision of regional center services that are reduced or discontinued under this section shall be reallocated and expended by the division for purposes related to the statewide development and provision of community-based services.

(5) The division may establish state-operated community-based services to replace regional center services that are reduced or discontinued under this section. The division shall provide regional center employees with appropriate training and support to transition such employees into positions as may be necessary for the provision of such state-operated services.

(6) When the occupancy of the licensed psychiatric hospital beds of any regional center reaches twenty percent or less of its licensed psychiatric hospital bed capacity on March 15, 2004, the division shall notify the Governor and the Legislature of such fact. Upon such notification, the division, with the approval of a majority of members of the Executive Board of the Legislative Council, may provide for the transfer of all remaining patients at such center to appropriate community-based services or other regional center services pursuant to this section and cease the operation of such regional center.

(7) The division, in consultation with each regional behavioral health authority, shall establish and maintain a data and information system for all persons receiving state-funded behavioral health services under the Nebraska Behavioral Health Services Act. Information maintained by the division shall include, but not be limited to, (a) the number of persons receiving regional center services, (b) the number of persons ordered by a mental health board to receive inpatient or outpatient treatment and receiving regional center services, (c) the number of persons ordered by a mental health board to receive inpatient or outpatient treatment and receiving community-based services, (d) the number of persons voluntarily admitted to a regional center and receiving regional center services, (e) the number of persons waiting to receive regional center services, (f) the number of persons waiting to be transferred from a regional center to community-based services or other regional center services, (g) the number of persons discharged from a regional center who are receiving

community-based services or other regional center services, and (h) the number of persons admitted to behavioral health crisis centers. Each regional behavioral health authority shall provide such information as requested by the division and necessary to carry out this subsection. The division shall submit reports of such information to the Governor and the Legislature on a quarterly basis beginning July 1, 2005, in a format which does not identify any person by name, address, county of residence, social security number, or other personally identifying characteristic.

(8) The provisions of this section are self-executing and require no further authorization or other enabling legislation.

Source: Laws 2004, LB 1083, § 10; Laws 2005, LB 551, § 3; Laws 2008, LB928, § 17; Laws 2009, LB154, § 18.
Effective date August 30, 2009.

71-816 Legislative findings; State Committee on Problem Gambling; created; members; duties; division; duties; joint report.

(1) The Legislature finds that the main sources of funding for the Compulsive Gamblers Assistance Fund are the Charitable Gaming Operations Fund as provided in section 9-1,101 and the State Lottery Operation Trust Fund as provided in section 9-812 and Article III, section 24, of the Constitution of Nebraska. It is the intent of the Legislature that the Compulsive Gamblers Assistance Fund be used primarily for counseling and treatment services for problem gamblers and their families who are residents of Nebraska.

(2) The State Committee on Problem Gambling is created. Members of the committee shall have a demonstrated interest and commitment and specialized knowledge, experience, or expertise relating to problem gambling in the State of Nebraska. The committee shall consist of twelve members appointed by the Governor and shall include at least three consumers of problem gambling services. The committee shall appoint one of its members as chairperson of the committee and other officers as it deems appropriate. The committee shall conduct regular meetings and shall meet upon the call of the chairperson or a majority of its members to conduct its official business.

(3) The committee shall develop and recommend to the division guidelines and standards for the distribution and disbursement of money in the Compulsive Gamblers Assistance Fund. Such guidelines and standards shall be based on nationally recognized standards for problem gamblers assistance programs.

(4) In addition, the committee shall develop recommendations regarding (a) the evaluation and approval process for provider applications and contracts for treatment funding from the Compulsive Gamblers Assistance Fund, (b) the review and use of evaluation data, (c) the use and expenditure of funds for education regarding problem gambling and prevention of problem gambling, and (d) the creation and implementation of outreach and educational programs regarding problem gambling for Nebraska residents. The committee may engage in other activities it finds necessary to carry out its duties under this section.

(5) Based on the recommendations of the committee, the division shall adopt guidelines and standards for the distribution and disbursement of money in the fund and for administration of problem gambling services in Nebraska.

(6) The division and the committee shall jointly submit a report within sixty days after the end of each fiscal year to the Legislature and the Governor that provides details of the administration of services and distribution of funds.

Source: Laws 2004, LB 1083, § 16; Laws 2005, LB 551, § 6; Laws 2006, LB 994, § 95; Laws 2008, LB1058, § 1; Laws 2009, LB189, § 1.
Effective date August 30, 2009.

71-817 Compulsive Gamblers Assistance Fund; created; use; investment.

The Compulsive Gamblers Assistance Fund is created. The fund shall include revenue transferred from the State Lottery Operation Trust Fund under section 9-812 and the Charitable Gaming Operations Fund under section 9-1,101 and any other revenue received by the division for credit to the fund from any other public or private source, including, but not limited to, appropriations, grants, donations, gifts, devises, bequests, fees, or reimbursements. The division shall administer the fund for the treatment of problem gamblers as recommended by the State Committee on Problem Gambling established under section 71-816 and shall spend no more than ten percent of the money appropriated to the fund for administrative costs. The Director of Administrative Services shall draw warrants upon the Compulsive Gamblers Assistance Fund upon the presentation of proper vouchers by the division. Money from the Compulsive Gamblers Assistance Fund shall be used exclusively for the purpose of providing assistance to agencies, groups, organizations, and individuals that provide education, assistance, and counseling to individuals and families experiencing difficulty as a result of problem gambling, to promote the awareness of problem gamblers assistance programs, and to pay the costs and expenses of the division and the committee with regard to problem gambling. The division shall not provide any direct services to problem gamblers or their families. Funds appropriated from the Compulsive Gamblers Assistance Fund shall not be granted or loaned to or administered by any regional behavioral health authority unless the authority is a direct provider of a problem gamblers assistance program. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1993, LB 138, § 33; R.S.Supp.,1994, § 9-804.05; Laws 1995, LB 275, § 17; Laws 2000, LB 659, § 3; Laws 2001, LB 541, § 5; R.S.Supp.,2002, § 83-162.04; Laws 2004, LB 1083, § 17; Laws 2005, LB 551, § 7; Laws 2008, LB1058, § 2; Laws 2009, LB189, § 2.
Effective date August 30, 2009.

Cross References

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

71-818 Repealed. Laws 2009, LB 154, § 27.

71-821 Children and Family Behavioral Health Support Act; act, how cited.

Sections 71-821 to 71-827 shall be known and may be cited as the Children and Family Behavioral Health Support Act.

Source: Laws 2009, LB603, § 5.
Operative date May 23, 2009.

71-822 Children and Family Support Hotline; establishment.

No later than January 1, 2010, the department shall establish a Children and Family Support Hotline which shall:

(1) Be a single point of access for children's behavioral health triage through the operation of a twenty-four-hour-per-day, seven-day-per-week telephone line;

(2) Be administered by the division and staffed by trained personnel under the direct supervision of a qualified mental health, behavioral health, or social work professional engaged in activities of mental health treatment;

(3) Provide screening and assessment;

(4) Provide referral to existing community-based resources; and

(5) Be evaluated. The evaluation shall include, but not be limited to, the county of the caller, the reliability and consistency of the information given, an analysis of services needed or requested, and the degree to which the caller reports satisfaction with the referral service.

Source: Laws 2009, LB603, § 6.
Operative date May 23, 2009.

71-823 Family Navigator Program; establishment; evaluation.

(1) No later than January 1, 2010, the department shall establish a Family Navigator Program to respond to children's behavioral health needs. The program shall be administered by the division and consist of individuals trained and compensated by the department who, at a minimum, shall:

(a) Provide peer support; and

(b) Provide connection to existing services, including the identification of community-based services.

(2) The Family Navigator Program shall be evaluated. The evaluation shall include, but not be limited to, an assessment of the quality of the interactions with the program and the effectiveness of the program as perceived by the family, whether the family followed through with the referral recommendations, the availability and accessibility of services, the waiting time for services, and cost and distance factors.

Source: Laws 2009, LB603, § 7.
Operative date May 23, 2009.

71-824 Post-adoption and post-guardianship case management services; notice; administration; evaluation.

No later than January 1, 2010, the department shall provide post-adoption and post-guardianship case management services for adoptive and guardianship families of former state wards on a voluntary basis. The department shall notify adoptive parents and guardians of the availability of such services and the process to access such services and that such services are provided on a voluntary basis. Notification shall be in writing and shall be provided at the time of finalization of the adoption agreement or completion of the guardianship and each six months thereafter until dissolution of the adoption, until termination of the guardianship, or until the former state ward attains nineteen years of age, whichever is earlier. Post-adoption and post-guardianship case management services under this section shall be administered by the Division of Children and Family Services and shall be evaluated. The evaluation shall

include, but not be limited to, the number and percentage of persons receiving such services and the degree of problem resolution reported by families receiving such services.

Source: Laws 2009, LB603, § 8.
Operative date May 23, 2009.

71-825 Annual report; contents.

The department shall provide an annual report, no later than December 1, to the Governor and the Legislature on the operation of the Children and Family Support Hotline established under section 71-822, the Family Navigator Program established under section 71-823, and the provision of voluntary post-adoption and post-guardianship case management services under section 71-824.

Source: Laws 2009, LB603, § 9.
Operative date May 23, 2009.

71-826 Legislative intent regarding appropriations; allocation.

It is the intent of the Legislature to appropriate from the General Fund five hundred thousand dollars for fiscal year 2009-10 and one million dollars for fiscal year 2010-11 to the Department of Health and Human Services — Behavioral Health, Program 38, Behavioral Health Aid, for behavioral health services for children under the Nebraska Behavioral Health Services Act, including, but not limited to, the expansion of the Professional Partner Program and services provided using a sliding-fee schedule. General Funds appropriated pursuant to this section shall be excluded from the calculation of county matching funds under subsection (3) of section 71-808, shall be allocated to the regional behavioral health authorities, and shall be distributed based on the 2008 allocation formula. For purposes of this section, children means Nebraska residents under nineteen years of age.

Source: Laws 2009, LB603, § 10.
Operative date May 23, 2009.

71-827 Children's Behavioral Health Oversight Committee of the Legislature; created; members; duties; meetings; report.

(1) The Children's Behavioral Health Oversight Committee of the Legislature is created as a special legislative committee. The committee shall consist of nine members of the Legislature appointed by the Executive Board of the Legislative Council as follows: (a) Two members of the Appropriations Committee of the Legislature, (b) two members of the Health and Human Services Committee of the Legislature, (c) two members of the Judiciary Committee of the Legislature, and (d) three members of the Legislature who are not members of such committees. The Children's Behavioral Health Oversight Committee shall elect a chairperson and vice-chairperson from among its members. The executive board shall appoint members of the committee no later than thirty days after May 23, 2009, and within the first six legislative days of the regular legislative session in 2011. The committee and this section terminate on December 31, 2012.

(2) The committee shall monitor the effect of implementation of the Children and Family Behavioral Health Support Act and other child welfare and juvenile

justice initiatives by the department related to the provision of behavioral health services to children and their families.

(3) The committee shall meet at least quarterly with representatives of the Division of Behavioral Health and the Division of Children and Family Services of the Department of Health and Human Services and with other interested parties and may meet at other times at the call of the chairperson.

(4) Staff support for the committee shall be provided by existing legislative staff as directed by the executive board. The committee may request the executive board to hire consultants that the committee deems necessary to carry out the purposes of the committee under this section.

(5) The committee shall provide a report to the Governor and the Legislature no later than December 1 of each year. The report shall include, but not be limited to, findings and recommendations relating to the provision of behavioral health services to children and their families.

Source: Laws 2009, LB603, § 11.
Operative date May 23, 2009.

71-828 Behavioral Health Workforce Act; act, how cited.

Sections 71-828 to 71-830 shall be known and may be cited as the Behavioral Health Workforce Act.

Source: Laws 2009, LB603, § 12.
Operative date May 23, 2009.

71-829 Legislative findings.

The Legislature finds that there are insufficient behavioral health professionals in the Nebraska behavioral health workforce and further that there are insufficient behavioral health professionals trained in evidence-based practice. This workforce shortage leads to inadequate accessibility and response to the behavioral health needs of Nebraskans of all ages: Children; adolescents; and adults. These shortages have led to well-documented problems of consumers waiting for long periods of time in inappropriate settings because appropriate placement and care is not available. As a result, mentally ill patients end up in hospital emergency rooms which are the most expensive level of care or are incarcerated and do not receive adequate care, if any.

As the state moves from institutional to community-based behavioral health services, the behavioral health services workforce shortage is increasingly felt by the inability to hire and retain behavioral health professionals in Nebraska. In Laws 2004, LB 1083, the Legislature pledged to ''promote activities in research and education to improve the quality of behavioral health services, the recruitment and retention of behavioral health professionals, and the availability of behavioral health services''. The purpose of the Behavioral Health Workforce Act is to realize the commitment made in LB 1083 to improve community-based behavioral health services for Nebraskans and thus focus on addressing behavioral health issues before they become a crisis through increasing the number of behavioral health professionals and train these professionals in evidence-based practice and alternative delivery methods which will improve the quality of care, including utilizing the existing infrastructure and

telehealth services which will expand outreach to more rural areas in Nebraska.

Source: Laws 2009, LB603, § 13.
Operative date May 23, 2009.

71-830 Behavioral Health Education Center; created; administration; duties; report.

(1) The Behavioral Health Education Center is created beginning July 1, 2009, and shall be administered by the University of Nebraska Medical Center.

(2) The center shall:

(a) Provide funds for two additional medical residents in a Nebraska-based psychiatry program each year starting in 2010 until a total of eight additional psychiatry residents are added in 2013. Beginning in 2011 and every year thereafter, the center shall provide psychiatric residency training experiences that serve rural Nebraska and other underserved areas. As part of his or her residency training experiences, each center-funded resident shall participate in the rural training for a minimum of one year. Beginning in 2012, a minimum of two of the eight center-funded residents shall be active in the rural training each year;

(b) Focus on the training of behavioral health professionals in telehealth techniques, including taking advantage of a telehealth network that exists, and other innovative means of care delivery in order to increase access to behavioral health services for all Nebraskans;

(c) Analyze the geographic and demographic availability of Nebraska behavioral health professionals, including psychiatrists, social workers, community rehabilitation workers, psychologists, substance abuse counselors, licensed mental health practitioners, behavioral analysts, peer support providers, primary care physicians, nurses, nurse practitioners, and pharmacists;

(d) Prioritize the need for additional professionals by type and location;

(e) Establish learning collaborative partnerships with other higher education institutions in the state, hospitals, law enforcement, community-based agencies, and consumers and their families in order to develop evidence-based, recovery-focused, interdisciplinary curriculum and training for behavioral health professionals delivering behavioral health services in community-based agencies, hospitals, and law enforcement. Development and dissemination of such curriculum and training shall address the identified priority needs for behavioral health professionals; and

(f) Beginning in 2011, develop two interdisciplinary behavioral health training sites each year until a total of six sites have been developed. Four of the six sites shall be in counties with a population of fewer than fifty thousand inhabitants. Each site shall provide annual interdisciplinary training opportunities for a minimum of three behavioral health professionals.

(3) No later than December 1, 2011, and no later than December 1 of every odd-numbered year thereafter, the center shall prepare a report of its activities under the Behavioral Health Workforce Act. The report shall be filed with the Clerk of the Legislature and shall be provided to any member of the Legislature upon request.

Source: Laws 2009, LB603, § 14.
Operative date May 23, 2009.

ARTICLE 12
SEX OFFENDER COMMITMENT AND TREATMENT

(b) TREATMENT AND MANAGEMENT SERVICES

(b) TREATMENT AND MANAGEMENT SERVICES

71-1227 Repealed. Laws 2009, LB 154, § 27.

71-1228 Repealed. Laws 2009, LB 154, § 27.

ARTICLE 20
HOSPITALS

(d) MEDICAL AND HOSPITAL CARE

(d) MEDICAL AND HOSPITAL CARE

71-2049 Repealed. Laws 2009, LB 288, § 54.

ARTICLE 24
DRUGS

(c) EMERGENCY BOX DRUG ACT

(j) AUTOMATED MEDICATION SYSTEMS ACT

(k) CORRECTIONAL FACILITIES AND JAILS RELABELING AND REDISPENSING

(c) EMERGENCY BOX DRUG ACT

71-2411 Terms, defined.

For purposes of the Emergency Box Drug Act:

(1) Authorized personnel means any medical doctor, doctor of osteopathy, registered nurse, licensed practical nurse, nurse practitioner, pharmacist, or physician assistant;

(2) Department means the Department of Health and Human Services;

(3) Drug means any prescription drug or device or legend drug or device defined under section 38-2841, any nonprescription drug as defined under section 38-2829, any controlled substance as defined under section 28-405, or any device as defined under section 38-2814;

(4) Emergency box drugs means drugs required to meet the immediate therapeutic needs of patients when the drugs are not available from any other authorized source in time to sufficiently prevent risk of harm to such patients by the delay resulting from obtaining such drugs from such other authorized source;

(5) Long-term care facility means an intermediate care facility, an intermediate care facility for the mentally retarded, a long-term care hospital, a mental health center, a nursing facility, or a skilled nursing facility, as such terms are defined in the Health Care Facility Licensure Act;

(6) Multiple dose vial means any bottle in which more than one dose of a liquid drug is stored or contained;

(7) Pharmacist means a pharmacist as defined in section 38-2832 who is employed by a supplying pharmacy or who has contracted with a long-term care facility to provide consulting services; and

(8) Supplying pharmacy means a pharmacy that supplies drugs for an emergency box located in a long-term care facility. Drugs in the emergency box are owned by the supplying pharmacy.

Source: Laws 1994, LB 1210, § 183; Laws 1996, LB 1044, § 625; Laws 1997, LB 608, § 16; Laws 2000, LB 819, § 106; Laws 2001, LB 398, § 70; Laws 2007, LB296, § 540; Laws 2007, LB463, § 1194; Laws 2009, LB195, § 69.
Effective date August 30, 2009.

Cross References

Health Care Facility Licensure Act, see section 71-401.

71-2412 Long-term care facility; emergency boxes; use; conditions.

Drugs may be administered to residents of a long-term care facility by authorized personnel of the long-term care facility from the contents of emergency boxes located within such long-term care facility if such drugs and boxes meet all of the following requirements:

(1) All emergency box drugs shall be provided by and all emergency boxes containing such drugs shall be sealed by a supplying pharmacy with the seal on such emergency box to be of such a nature that it can be easily identified if it has been broken;

(2) Emergency boxes shall be stored in a medication room or other secured area within the long-term care facility. Only authorized personnel of the long-term care facility or the supplying pharmacy shall obtain access to such room or secured area, by key or combination, in order to prevent unauthorized access and to ensure a proper environment for preservation of the emergency box drugs;

(3) The exterior of each emergency box shall be labeled so as to clearly indicate that it is an emergency box for use in emergencies only. The label shall contain a listing of the drugs contained in the box, including the name, strength, route of administration, quantity, and expiration date of each drug, and the name, address, and telephone number of the supplying pharmacy;

(4) All emergency boxes shall be inspected by a pharmacist designated by the supplying pharmacy at least once every thirty days or after a reported usage of any drug to determine the expiration date and quantity of the drugs in the box. Every inspection shall be documented and the record retained by the long-term care facility for a period of five years;

(5) An emergency box shall not contain multiple dose vials, shall not contain more than ten drugs which are controlled substances, and shall contain no more than a total of fifty drugs; and

(6) All drugs in emergency boxes shall be in the original manufacturer's or distributor's containers or shall be repackaged by the supplying pharmacy and shall include the manufacturer's or distributor's name, lot number, drug name, strength, dosage form, NDC number, route of administration, and expiration date on a typewritten label. Any drug which is repackaged shall contain on the label the calculated expiration date. For purposes of the Emergency Box Drug Act, calculated expiration date has the same meaning as in subdivision (7)(b) of section 38-2884.

Source: Laws 1994, LB 1210, § 184; Laws 2002, LB 1062, § 52; Laws 2007, LB463, § 1195; Laws 2009, LB195, § 70.
Effective date August 30, 2009.

71-2413 Drugs to be included in emergency boxes; requirements; removal; conditions; notification of supplying pharmacy; expired drugs; treatment; examination of emergency boxes; written procedures; establishment.

(1) The supplying pharmacy and the medical director and quality assurance committee of the long-term care facility shall jointly determine the drugs, by identity and quantity, to be included in the emergency boxes. The supplying pharmacy shall maintain a list of emergency box drugs which is identical to the list on the exterior of the emergency box and shall make such list available to the department upon request. The supplying pharmacy shall obtain a receipt upon delivery of the emergency box to the long-term care facility signed by the director of nursing of the long-term care facility which acknowledges that the drugs initially placed in the emergency box are identical to the initial list on the exterior of the emergency box. The receipt shall be retained by the supplying pharmacy for a period of five years.

(2) Except for the removal of expired drugs as provided in subsection (4) of this section, drugs shall be removed from emergency boxes only pursuant to a prescription. Whenever access to the emergency box occurs, the prescription and proof of use shall be provided to the supplying pharmacy and shall be recorded on the resident's medical record by authorized personnel of the long-term care facility. Removal of any drug from an emergency box by authorized personnel of the long-term care facility shall be recorded on a form showing the name of the resident who received the drug, his or her room number, the name of the drug, the strength of the drug, the quantity used, the dose administered, the route of administration, the date the drug was used, the time of usage, the disposal of waste, if any, and the signature or signatures of authorized person-

nel. The form shall be maintained at the long-term care facility for a period of five years from the date of removal with a copy of the form to be provided to the supplying pharmacy.

(3) Whenever an emergency box is opened, the supplying pharmacy shall be notified by the charge nurse or the director of nursing of the long-term care facility within twenty-four hours and a pharmacist designated by the supplying pharmacy shall restock and refill the box, reseal the box, and update the drug listing on the exterior of the box.

(4) Upon the expiration of any drug in the emergency box, the supplying pharmacy shall replace the expired drug, reseal the box, and update the drug listing on the exterior of the box. Emergency box drugs shall be considered inventory of the supplying pharmacy until such time as they are removed for administration.

(5) Authorized personnel of the long-term care facility shall examine the emergency boxes once every twenty-four hours and shall immediately notify the supplying pharmacy upon discovering evidence of tampering with any emergency box. Proof of examination by authorized personnel of the long-term care facility shall be recorded and maintained at the long-term care facility for a period of five years from the date of examination.

(6) The supplying pharmacy and the medical director and quality assurance committee of the long-term care facility shall jointly establish written procedures for the safe and efficient distribution of emergency box drugs.

Source: Laws 1994, LB 1210, § 185; Laws 1999, LB 828, § 166; Laws 2001, LB 398, § 71; Laws 2009, LB195, § 71.
Effective date August 30, 2009.

71-2414 Department; powers; grounds for disciplinary action.

The department shall have (1) the authority to inspect any emergency box and (2) access to the records of the supplying pharmacy and the long-term care facility for inspection. Refusal to allow the department to inspect an emergency box or to have access to records shall be grounds for a disciplinary action against the supplying pharmacy or the license of the long-term care facility.

Source: Laws 1994, LB 1210, § 186; Laws 2009, LB195, § 72.
Effective date August 30, 2009.

71-2415 Repealed. Laws 2009, LB 195, § 111.

71-2416 Violations; department; powers; prohibited acts; violation; penalty.

(1) The department may limit, suspend, or revoke the authority of a supplying pharmacy to maintain emergency boxes in a long-term care facility for any violation of the Emergency Box Drug Act. The department may limit, suspend, or revoke the authority of a long-term care facility to maintain an emergency box for any violation of the act. The taking of such action against the supplying pharmacy or the long-term care facility or both shall not prohibit the department from taking other disciplinary actions against the supplying pharmacy or the long-term care facility.

(2) If the department determines to limit, suspend, or revoke the authority of a supplying pharmacy to maintain emergency boxes in a long-term care facility or to limit, suspend, or revoke the authority of a long-term care facility to

maintain an emergency box, it shall send to the supplying pharmacy or the long-term care facility a notice of such determination. The notice may be served by any method specified in section 25-505.01, or the department may permit substitute or constructive service as provided in section 25-517.02 when service cannot be made with reasonable diligence by any of the methods specified in section 25-505.01. The limitation, suspension, or revocation shall become final thirty days after receipt of the notice unless the supplying pharmacy or the long-term care facility, within such thirty-day period, requests a hearing in writing. The supplying pharmacy or the long-term care facility shall be given a fair hearing before the department and may present such evidence as may be proper. On the basis of such evidence, the determination involved shall be affirmed, set aside, or modified, and a copy of such decision setting forth the findings of facts and the particular reasons on which it is based shall be sent to the supplying pharmacy or the long-term care facility. The parties may appeal the final decision in accordance with the Administrative Procedure Act. Witnesses may be subpoenaed by either party and shall be allowed a fee at the statutory rate.

(3) The procedure governing hearings authorized by the Emergency Box Drug Act shall be in accordance with rules and regulations adopted and promulgated by the department.

(4) The supplying pharmacy or the long-term care facility shall not maintain an emergency box after its authority to maintain such box has been revoked or during the time such authority has been suspended. If the authority is suspended, the suspension shall be for a definite period of time. Such authority shall be automatically reinstated on the expiration of such period. If such authority has been revoked, such revocation shall be permanent, except that at any time after the expiration of two years, application for reinstatement of authority may be made to the department.

(5) Any person who commits any of the acts prohibited by the Emergency Box Drug Act shall be guilty of a Class II misdemeanor. The department may maintain an action in the name of the state against any person for maintaining an emergency box in violation of the act. Each day a violation continues shall constitute a separate violation.

Source: Laws 1994, LB 1210, § 188; Laws 1999, LB 828, § 167; Laws 2009, LB195, § 73.
Effective date August 30, 2009.

Cross References

Administrative Procedure Act, see section 84-920.

71-2417 Controlled substance; exemption.

Any emergency box containing a controlled substance listed in section 28-405 and maintained at a long-term care facility shall be exempt from the provisions of subdivision (3)(g) of section 28-414.

Source: Laws 1994, LB 1210, § 189; Laws 1995, LB 406, § 38; Laws 1999, LB 594, § 59; Laws 2001, LB 398, § 72; Laws 2009, LB195, § 74.
Effective date August 30, 2009.

(j) AUTOMATED MEDICATION SYSTEMS ACT

71-2445 Terms, defined.

For purposes of the Automated Medication Systems Act:

(1) Automated medication distribution machine means a type of automated medication system that stores medication to be administered to a patient by a person credentialed under the Uniform Credentialing Act;

(2) Automated medication system means a mechanical system that performs operations or activities, other than compounding, administration, or other technologies, relative to storage and packaging for dispensing or distribution of medications and that collects, controls, and maintains all transaction information and includes, but is not limited to, a prescription medication distribution machine or an automated medication distribution machine. An automated medication system may only be used in conjunction with the provision of pharmacist care;

(3) Chart order means an order for a drug or device issued by a practitioner for a patient who is in the hospital where the chart is stored or for a patient receiving detoxification treatment or maintenance treatment pursuant to section 28-412. Chart order does not include a prescription;

(4) Hospital has the definition found in section 71-419;

(5) Long-term care facility means an intermediate care facility, an intermediate care facility for the mentally retarded, a long-term care hospital, a mental health center, a nursing facility, or a skilled nursing facility, as such terms are defined in the Health Care Facility Licensure Act;

(6) Medical order means a prescription, a chart order, or an order for pharmaceutical care issued by a practitioner;

(7) Pharmacist means any person who is licensed by the State of Nebraska to practice pharmacy;

(8) Pharmacist care means the provision by a pharmacist of medication therapy management, with or without the dispensing of drugs or devices, intended to achieve outcomes related to the cure or prevention of a disease, elimination or reduction of a patient's symptoms, or arresting or slowing of a disease process;

(9) Pharmacist remote order entry means entering an order into a computer system or drug utilization review by a pharmacist licensed to practice pharmacy in the State of Nebraska and located within the United States, pursuant to medical orders in a hospital, long-term care facility, or pharmacy licensed under the Health Care Facility Licensure Act;

(10) Practice of pharmacy means (a) the interpretation, evaluation, and implementation of a medical order, (b) the dispensing of drugs and devices, (c) drug product selection, (d) the administration of drugs or devices, (e) drug utilization review, (f) patient counseling, (g) the provision of pharmaceutical care, and (h) the responsibility for compounding and labeling of dispensed or repackaged drugs and devices, proper and safe storage of drugs and devices, and maintenance of proper records. The active practice of pharmacy means the performance of the functions set out in this subdivision by a pharmacist as his or her principal or ordinary occupation;

(11) Practitioner means a certified registered nurse anesthetist, a certified nurse midwife, a dentist, an optometrist, a nurse practitioner, a physician assistant, a physician, a podiatrist, or a veterinarian;

(12) Prescription means an order for a drug or device issued by a practitioner for a specific patient, for emergency use, or for use in immunizations. Prescription does not include a chart order;

(13) Prescription medication distribution machine means a type of automated medication system that packages, labels, or counts medication in preparation for dispensing of medications by a pharmacist pursuant to a prescription; and

(14) Telepharmacy means the provision of pharmacist care, by a pharmacist located within the United States, using telecommunications, remote order entry, or other automations and technologies to deliver care to patients or their agents who are located at sites other than where the pharmacist is located.

Source: Laws 2008, LB308, § 2; Laws 2009, LB195, § 75.
Effective date August 30, 2009.

Cross References

Health Care Facility Licensure Act, see section 71-401.
Uniform Credentialing Act, see section 38-101.

71-2447 Hospital, long-term care facility, or pharmacy; use of automated medication system; policies and procedures required.

Any hospital, long-term care facility, or pharmacy that uses an automated medication system shall develop, maintain, and comply with policies and procedures developed in consultation with the pharmacist responsible for pharmacist care for that hospital, long-term care facility, or pharmacy. At a minimum, the policies and procedures shall address the following:

(1) The description and location within the hospital, long-term care facility, or pharmacy of the automated medication system or equipment being used;

(2) The name of the individual or individuals responsible for implementation of and compliance with the policies and procedures;

(3) Medication access and information access procedures;

(4) Security of inventory and confidentiality of records in compliance with state and federal laws, rules, and regulations;

(5) A description of how and by whom the automated medication system is being utilized, including processes for filling, verifying, dispensing, and distributing medications;

(6) Staff education and training;

(7) Quality assurance and quality improvement programs and processes;

(8) Inoperability or emergency downtime procedures;

(9) Periodic system maintenance; and

(10) Medication security and controls.

Source: Laws 2008, LB308, § 4; Laws 2009, LB195, § 76.
Effective date August 30, 2009.

71-2449 Automated medication distribution machine; requirements; drugs; limitations; inventory; how treated.

(1) An automated medication distribution machine:

(a) Is subject to the requirements of section 71-2447; and

(b) May be operated in a hospital or long-term care facility for medication administration pursuant to a chart order or prescription by a licensed health care professional.

(2) Drugs placed in an automated medication distribution machine shall be in the manufacturer's original packaging or in containers repackaged in compliance with state and federal laws, rules, and regulations relating to repackaging, labeling, and record keeping.

(3) The inventory which is transferred to an automated medication distribution machine in a hospital or long-term care facility shall be excluded from the percent of total prescription drug sales revenue described in section 71-7454.

Source: Laws 2008, LB308, § 6; Laws 2009, LB195, § 77.
Effective date August 30, 2009.

71-2450 Pharmacist providing pharmacist remote order entry; requirements.

A pharmacist providing pharmacist remote order entry shall:

(1) Be located within the United States;

(2) Maintain adequate security and privacy in accordance with state and federal laws, rules, and regulations;

(3) Be linked to one or more hospitals, long-term care facilities, or pharmacies for which services are provided via computer link, video link, audio link, or facsimile transmission;

(4) Have access to each patient's medical information necessary to perform via computer link, video link, or facsimile transmission a prospective drug utilization review as specified in section 38-2869; and

(5) Be employed by or have a contractual agreement to provide such services with the hospital, long-term care facility, or pharmacy where the patient is located.

Source: Laws 2008, LB308, § 7; Laws 2009, LB195, § 78.
Effective date August 30, 2009.

(k) CORRECTIONAL FACILITIES AND JAILS RELABELING AND REDISPENSING

71-2453 Department of Correctional Services facilities, detention facilities, or jails; prescription drug or device; return for credit or relabeling and redispensing; requirements; liability; professional disciplinary action.

(1) Prescription drugs or devices which have been dispensed pursuant to a valid prescription and delivered to a Department of Correctional Services facility, a criminal detention facility, a juvenile detention facility, or a jail for administration to a prisoner or detainee held at such facility or jail, but which are not administered to such prisoner or detainee, may be returned to the dispensing pharmacy under contract with the facility or jail for credit or for relabeling and redispensing and administration to another prisoner or detainee held at such facility or jail pursuant to a valid prescription as provided in this section.

(2)(a) The decision to accept return of a dispensed prescription drug or device for credit or for relabeling and redispensing rests solely with the pharmacist at the contracting pharmacy.

(b) A dispensed prescription drug or device shall be properly stored and in the control of the facility or jail at all times prior to the return of the drug or device for credit or for relabeling and redispensing. The drug or device shall be returned in the original and unopened labeled container dispensed by the pharmacist with the tamper-evident seal intact, and the container shall bear the expiration date or calculated expiration date and lot number of the drug or device.

(c) A prescription drug or device shall not be returned or relabeled and redispensed under this section if the drug or device is a controlled substance or if the relabeling and redispensing is otherwise prohibited by law.

(3) For purposes of this section:

(a) Administration has the definition found in section 38-2807;

(b) Calculated expiration date has the definition found in subdivision (3)(a) of section 71-2421;

(c) Criminal detention facility has the definition found in section 83-4,125;

(d) Department of Correctional Services facility has the definition of facility found in section 83-170;

(e) Dispense or dispensing has the definition found in section 38-2817;

(f) Jail has the definition found in section 47-117;

(g) Juvenile detention facility has the definition found in section 83-4,125;

(h) Prescription has the definition found in section 38-2840; and

(i) Prescription drug or device has the definition found in section 38-2841.

(4) The Jail Standards Board, in consultation with the Board of Pharmacy, shall adopt and promulgate rules and regulations relating to the return of dispensed prescription drugs or devices for credit, relabeling, or redispensing under this section, including, but not limited to, rules and regulations relating to (a) education and training of persons authorized to administer the prescription drug or device to a prisoner or detainee, (b) the proper storage and protection of the drug or device consistent with the directions contained on the label or written drug information provided by the pharmacist for the drug or device, (c) limits on quantity to be dispensed, (d) transferability of drugs or devices for prisoners or detainees between facilities, (e) container requirements, (f) establishment of a drug formulary, and (g) fees for the dispensing pharmacy to accept the returned drug or device.

(5) Any person or entity which exercises reasonable care in accepting, distributing, or dispensing prescription drugs or devices under this section or rules and regulations adopted and promulgated under this section shall be immune from civil or criminal liability or professional disciplinary action of any kind for any injury, death, or loss to person or property relating to such activities.

Source: Laws 2009, LB288, § 46.
Operative date August 30, 2009.

ARTICLE 35
RADIATION CONTROL AND RADIOACTIVE WASTE

(d) RADIOLOGICAL INSTRUMENTS

(d) RADIOLOGICAL INSTRUMENTS

71-3531 Fees; use.

(1) Until January 1, 2008, a fee shall be assessed on each radiological instrument calibrated by the department as follows: Direct reading dosimeters, twenty-two dollars; electronic dosimeters, thirty-one dollars; CD V-700 meters, thirty-six dollars; CD V-715 meters, twenty-five dollars; CD V-718 meters, thirty-nine dollars; thermo-electron FH-40 GL and ASP-2 meters, sixty-six dollars; all electron detectors, forty-six dollars; and all other meters, sixty-six dollars. If any of such instruments form a kit, the fees shall be: CD V-777 kits, one hundred forty-nine dollars; thermo-electron FH-40 GL kits, two hundred thirty dollars; and thermo-electron ASP-2 kits, two hundred twenty-four dollars. Fees for minor repairs shall be at a base rate of sixteen dollars per hour plus the cost of parts. Beginning January 1, 2008, the department shall periodically adopt and promulgate rules and regulations that establish or adjust replacement, repair, or calibration fees and the department shall assess such fees on all radiological instruments replaced, repaired, or calibrated by the department. The fees shall be equitable and the Adjutant General and the assistant director of the Nebraska Emergency Management Agency or their designees shall meet at least annually to recommend changes in the fees charged and allocation of fees collected for expenses incurred under this section.

(2) Such fees shall be used for purposes related to (a) inspection, repair, and calibration of radiological instruments, (b) repair, replacement, upgrade, and calibration of radiological calibrators, (c) security of calibration sources, (d) training of calibration technician personnel, (e) purchase of necessary tools and equipment related to radiological calibration, (f) payment of radiological licensing fees, and (g) if funds are available, administrative costs of the department and subsidizing the salary of calibration technician personnel and part-time employees.

(3) Fees for calibration shall be paid in advance. Other fees shall be paid when receipted from the department by the responsible agency. Fees shall be remitted to the State Treasurer for credit to the Nebraska Emergency Management Agency Cash Fund.

Source: Laws 2006, LB 787, § 3; Laws 2009, LB24, § 1.
Effective date August 30, 2009.

71-3534 Forfeiture of instrument; when; procedure.

If a replaced, repaired, or calibrated radiological instrument has not been receipted from the department by the responsible agency sixty days after the completed replacement, repair, or calibration date, the department shall provide written notification to the responsible agency that failure to receipt such instrument within ninety days after the completion date shall result in forfeiture

of such instrument. Written notification to the responsible agency shall be made a total of three times with not less than five working days between notifications. If, after proper notification and ninety days after the completion date, such instrument has not been receipted from the department by the responsible agency, the instrument shall become the property of the State of Nebraska and shall be available for issue by the department to other responsible agencies who agree to be responsible for the replacement, repair, and calibration of the radiological instrument or the instrument shall be turned in as surplus property.

Source: Laws 2006, LB 787, § 6; Laws 2009, LB24, § 2.
Effective date August 30, 2009.

71-3535 Applicability of sections.

Sections 71-3529 to 71-3536 shall not apply to a radiological instrument owned and replaced, repaired, or calibrated by the department, except when a responsible agency has been issued a radiological instrument and, by agreement, has consented to be responsible for the replacement, repair, and calibration of such instrument.

Source: Laws 2006, LB 787, § 7; Laws 2009, LB24, § 3.
Effective date August 30, 2009.

ARTICLE 36

TUBERCULOSIS DETECTION AND PREVENTION ACT

Section
71-3601. Terms, defined.
71-3602. Communicable tuberculosis; orders authorized; refusal; state health officer or local health officer; powers and duties.
71-3604. Hearing; procedure; order.
71-3614. Cost of drugs and patient care; transportation; payment.

71-3601 Terms, defined.

For purposes of the Tuberculosis Detection and Prevention Act:

(1) Communicable tuberculosis means tuberculosis manifested by a laboratory report of sputum or other body fluid or excretion found to contain tubercle bacilli or by chest X-ray findings interpreted as active tuberculosis by competent medical authority;

(2) Department means the Department of Health and Human Services;

(3) Directed health measure means any measure, whether prophylactic or remedial, intended and directed to prevent, treat, or limit the spread of tuberculosis;

(4) Facility means a structure in which suitable isolation for tuberculosis can be given and which is approved by the department for the detention of recalcitrant tuberculous persons;

(5) Local health officer means (a) the health director of a local public health department as defined in section 71-1626 or (b) the medical advisor to the board of health of a county, city, or village;

(6) Recalcitrant tuberculous person means a person affected with tuberculosis in an active stage who by his or her conduct or mode of living endangers the

health and well-being of other persons, by exposing them to tuberculosis, and who refuses to accept adequate treatment; and

(7) State health officer means the chief medical officer as described in section 81-3115.

Source: Laws 1963, c. 399, § 1, p. 1273; Laws 1982, LB 566, § 6; Laws 1996, LB 1044, § 657; Laws 2004, LB 1005, § 88; Laws 2007, LB296, § 576; Laws 2009, LB195, § 79.
Effective date August 30, 2009.

71-3602 Communicable tuberculosis; orders authorized; refusal; state health officer or local health officer; powers and duties.

(1) When there are reasonable grounds to believe that a person has communicable tuberculosis and the person refuses to submit to the examination necessary to determine the existence of communicable tuberculosis, the state health officer or local health officer may order such person to submit to such examination. If such person refuses to comply with such order, the state health officer or a local health officer shall institute proceedings for commitment, returnable to the county court of the county in which the person resides or, if the person is a nonresident or has no permanent residence, in the county in which the person is found. Strictness of pleading is not required, and a general allegation that the public health requires commitment of the person is sufficient.

(2) When a person with communicable tuberculosis conducts himself or herself in such a way as to expose another person to the danger of infection, the state health officer or local health officer may order such person to submit to directed health measures necessary for the treatment of the person and to prevent the transmission of the disease. If such person refuses to comply with such order, the state health officer or a local health officer shall institute proceedings for commitment, returnable to the county court of the county in which the person resides or, if the person is a nonresident or has no permanent residence, in the county in which the person is found. Strictness of pleading is not required, and a general allegation that the public health requires commitment of the person is sufficient.

Source: Laws 1963, c. 399, § 2, p. 1274; Laws 1992, LB 860, § 6; Laws 1996, LB 1044, § 658; Laws 2004, LB 1005, § 89; Laws 2009, LB195, § 80.
Effective date August 30, 2009.

71-3604 Hearing; procedure; order.

(1) Upon the hearing set in the order, the person named in the order shall have a right to be represented by counsel, to confront and cross-examine witnesses against him or her, and to have compulsory process for the securing of witnesses and evidence in his or her own behalf.

(2) Upon a consideration of the petition and evidence:

(a) If the court finds that there are reasonable grounds to believe that the person named in the petition has communicable tuberculosis and has refused to submit to an examination to determine the existence of communicable tuberculosis, the court shall order such person to submit to such examination. If after such examination is completed it is determined that the person has communi-

cable tuberculosis, the court shall order directed health measures necessary for the treatment of the person and to prevent the transmission of the disease; or

(b) If the court finds that the person named in the petition has communicable tuberculosis and conducts himself or herself in such a way as to be a danger to the public health, an order shall be issued committing the person named to a facility and directing the sheriff to take him or her into custody and deliver him or her to the facility or to submit to directed health measures necessary for the treatment of the person and to prevent the transmission of the disease.

(3) If the court does not so find, the petition shall be dismissed. The cost of transporting such person to the facility shall be paid from county general funds.

Source: Laws 1963, c. 399, § 4, p. 1275; Laws 2009, LB195, § 81.
Effective date August 30, 2009.

71-3614 Cost of drugs and patient care; transportation; payment.

(1) When any person who has communicable tuberculosis and who has relatives, friends, or a private or public agency or organization willing to undertake the obligation to support him or her or to aid in supporting him or her in any other state or country, the department may furnish him or her with the cost of transportation to such other state or country if it finds that the interest of the State of Nebraska and the welfare of such person will be promoted thereby. The expense of such transportation shall be paid by the department out of funds appropriated to it for the purpose of carrying out the Tuberculosis Detection and Prevention Act.

(2) No funds appropriated to the department for the purpose of carrying out the act shall be used for meeting the cost of the care, maintenance, or treatment of any person who has communicable tuberculosis in a health care facility on either an inpatient or an outpatient basis, or otherwise, for directed health measures, or for transportation to another state or country, to the extent that such cost is covered by an insurer or other third-party payor or any other entity under obligation to such person by contract, policy, certificate, or any other means whatsoever. The department in no case shall expend any such funds to the extent that any such person is able to bear the cost of such care, maintenance, treatment, or transportation. To protect the health and safety of the public, the department may pay, in part or in whole, the cost of drugs and medical care used to treat any person for or to prevent the spread of communicable tuberculosis and for evaluation and diagnosis of persons who have been identified as contacts of a person with communicable tuberculosis. The department shall determine the ability of a person to pay by consideration of the following factors: (a) The person's age, (b) the number of his or her dependents and their ages and physical condition, (c) the person's length of care, maintenance, or treatment, (d) his or her liabilities, (e) the extent that such cost is covered by an insurer or other third-party payor, and (f) his or her assets. Pursuant to the Administrative Procedure Act, the department shall adopt and promulgate rules and regulations for making the determinations required by this subsection.

Rules, regulations, and orders in effect under this section prior to July 16, 2004, shall continue to be effective until revised, amended, repealed, or nullified pursuant to law.

Source: Laws 1972, LB 1492, § 6; Laws 1996, LB 1044, § 665; Laws 2004, LB 1005, § 97; Laws 2009, LB195, § 82.
Effective date August 30, 2009.

Cross References

Administrative Procedure Act, see section 84-920.

ARTICLE 48
ANATOMICAL GIFTS

(d) DONOR REGISTRY OF NEBRASKA

(d) DONOR REGISTRY OF NEBRASKA

71-4823 Repealed. Laws 2009, LB 154, § 27.

ARTICLE 53
DRINKING WATER

(a) NEBRASKA SAFE DRINKING WATER ACT

(a) NEBRASKA SAFE DRINKING WATER ACT

71-5309 Qualifications of operators of public water system; license; rules and regulations; expired license; relicensure; department; powers and duties.

(1) The director shall adopt and promulgate minimum necessary rules and regulations governing the qualifications of operators of public water systems. In adopting such rules and regulations, the director shall give consideration to the levels of training and experience which are required, in the opinion of the director, to insure to the greatest extent possible that the public water systems shall be operated in such a manner that (a) maximum efficiency can be attained, (b) interruptions in service will not occur, (c) chemical treatment of the water will be adequate to maintain purity and safety, and (d) harmful materials will not enter the public water system.

(2) The director may require, by rule and regulation, that the applicant for a license successfully pass an examination on the subject of operation of a public water system. The rules and regulations, and any tests so administered, may set out different requirements for public water systems based on one or more of the following: Physical size of the facilities, number of persons served, system classification, source of water, treatment technique and purpose, and distribution complexity, so long as the criteria set forth in this section are followed.

(3) An applicant for a license as a public water system operator under the Nebraska Safe Drinking Water Act who previously held a license or certification as a public water system operator under the act and whose license or certification expired two years or more prior to the date of application shall take the examination required to be taken by an applicant for an initial license under the act. The department's review of the application for licensure by an applicant under this subsection shall include the results of such examination and the applicant's experience and training. The department may by rules and

regulations establish requirements for relicensure under the act which are more stringent for applicants whose license is expired or has been revoked or suspended than those for applicants for initial licensure.

Source: Laws 1976, LB 821, § 9; Laws 1988, LB 383, § 7; Laws 2001, LB 667, § 40; Laws 2003, LB 31, § 6; Laws 2007, LB463, § 1228; Laws 2009, LB288, § 35.
Operative date August 30, 2009.

(b) DRINKING WATER STATE REVOLVING FUND ACT

71-5326 Delinquent payment; how treated.

If a municipality, county, or natural resources district fails to make any payment pursuant to a loan within sixty days of the date due, such payment shall be deducted from the amount of aid to municipalities, counties, or natural resources districts to which the municipality, county, or natural resources district is entitled under sections 77-27,136 to 77-27,137.03. Such amount shall be paid directly to the fund from which the loan was made.

Source: Laws 1997, LB 517, § 15; Laws 2009, LB218, § 3.
Operative date July 1, 2011.

ARTICLE 54
DRUG PRODUCT SELECTION

Section
71-5403. Drug product selection; when.

71-5403 Drug product selection; when.

(1) A pharmacist may drug product select except when:

(a) A practitioner designates that drug product selection is not permitted by specifying on the prescription or by telephonic, facsimile, or electronic transmission that there shall be no drug product selection. For written prescriptions, the practitioner shall specify in his or her own handwriting on the prescription the phrase ''no drug product selection'', ''dispense as written'', ''brand medically necessary'', or ''no generic substitution'' or the notation ''N.D.P.S.'', ''D.A.W.'', or ''B.M.N.'' or words or notations of similar import to indicate that drug product selection is not permitted. The pharmacist shall note ''N.D.P.S.'', ''D.A.W.'', ''B.M.N.'', ''no drug product selection'', ''dispense as written'', ''brand medically necessary'', ''no generic substitution'', or words or notations of similar import on the prescription to indicate that drug product selection is not permitted if such is communicated orally by the prescribing practitioner; or

(b) A patient or designated representative or caregiver of such patient instructs otherwise.

(2) A pharmacist shall not drug product select a drug product unless:

(a) The drug product, if it is in solid dosage form, has been marked with an identification code or monogram directly on the dosage unit;

(b) The drug product has been labeled with an expiration date;

(c) The manufacturer, distributor, or packager of the drug product provides reasonable services, as determined by the board, to accept the return of drug products that have reached their expiration date; and

(d) The manufacturer, distributor, or packager maintains procedures for the recall of unsafe or defective drug products.

Source: Laws 1977, LB 103, § 3; Laws 1978, LB 689, § 2; Laws 1983, LB 476, § 22; Laws 1989, LB 353, § 1; Laws 1991, LB 363, § 1; Laws 1998, LB 1073, § 149; Laws 1999, LB 828, § 174; Laws 2003, LB 667, § 16; Laws 2005, LB 382, § 12; Laws 2007, LB247, § 54; Laws 2009, LB195, § 83.
Effective date August 30, 2009.

ARTICLE 56
RURAL HEALTH

(d) RURAL HEALTH SYSTEMS AND PROFESSIONAL INCENTIVE ACT

Section
71-5666. Student loan recipient agreement; contents.
71-5667. Agreements under prior law; renegotiation.
71-5668. Loan repayment recipient agreement; contents.

(d) RURAL HEALTH SYSTEMS AND PROFESSIONAL INCENTIVE ACT

71-5666 Student loan recipient agreement; contents.

Each student loan recipient shall execute an agreement with the state. Such agreement shall be exempt from the requirements of sections 73-501 to 73-509 and shall include the following terms, as appropriate:

(1) The borrower agrees to practice the equivalent of one year of full-time practice of an approved specialty in a designated health profession shortage area in Nebraska for each year of education for which a loan is received and agrees to accept medicaid patients in his or her practice;

(2) If the borrower practices an approved specialty in a designated health profession shortage area in Nebraska, the loan shall be forgiven as provided in this section. Practice in a designated area shall commence within three months of the completion of formal education, which may include a period not to exceed five years to complete specialty training in an approved specialty. The commission may approve exceptions to the three-month restriction upon showing good cause. Loan forgiveness shall occur on a quarterly basis, with completion of the equivalent of three months of full-time practice resulting in the cancellation of one-fourth of the annual loan amount;

(3) If the borrower practices an approved specialty in Nebraska but not in a designated health profession shortage area, practices a specialty other than an approved specialty in Nebraska, or practices outside Nebraska, the borrower shall repay one hundred fifty percent of the outstanding loan principal with interest at a rate of eight percent simple interest per year from the date of default. Such repayment shall commence within six months of the completion of formal education, which may include a period not to exceed five years to complete specialty training in an approved specialty, and shall be completed within a period not to exceed twice the number of years for which loans were awarded;

(4) If a borrower who is a medical, dental, or doctorate-level mental health student determines during the first or second year of medical, dental, or doctorate-level mental health education that his or her commitment to the loan program cannot be honored, the borrower may repay the outstanding loan

principal, plus six percent simple interest per year from the date the loan was granted, prior to graduation from medical or dental school or a mental health practice program without further penalty or obligation. Master's level mental health and physician assistant student loan recipients shall not be eligible for this provision;

(5) If the borrower discontinues the course of study for which the loan was granted, the borrower shall repay one hundred percent of the outstanding loan principal. Such repayment shall commence within six months of the date of discontinuation of the course of study and shall be completed within a period of time not to exceed the number of years for which loans were awarded; and

(6) In the event of a borrower's total and permanent disability or death, the unpaid debt accrued under the Rural Health Systems and Professional Incentive Act shall be canceled.

Source: Laws 1991, LB 400, § 17; Laws 1994, LB 1223, § 63; Laws 1996, LB 1155, § 54; Laws 2001, LB 214, § 4; Laws 2004, LB 1005, § 107; Laws 2007, LB374, § 1; Laws 2009, LB196, § 1.
Effective date August 30, 2009.

71-5667 Agreements under prior law; renegotiation.

Loan agreements executed prior to July 1, 2007, under the Nebraska Medical Student Assistance Act or the Rural Health Systems and Professional Incentive Act may be renegotiated and new agreements executed to reflect the terms required by section 71-5666. No funds repaid by borrowers under the terms of agreements executed prior to July 1, 2007, shall be refunded. Any repayments being made under the terms of prior agreements may be discontinued upon execution of a new agreement if conditions permit. Any agreement renegotiated pursuant to this section shall be exempt from the requirements of sections 73-501 to 73-509.

Source: Laws 1991, LB 400, § 18; Laws 1996, LB 1155, § 55; Laws 2007, LB374, § 2; Laws 2009, LB196, § 2.
Effective date August 30, 2009.

Note: The Nebraska Medical Student Assistance Act, sections 71-5613 to 71-5645, was repealed by Laws 1991, LB 400, § 26.

71-5668 Loan repayment recipient agreement; contents.

Each loan repayment recipient shall execute an agreement with the department and a local entity. Such agreement shall be exempt from the requirements of sections 73-501 to 73-509 and shall include, at a minimum, the following terms:

(1) The loan repayment recipient agrees to practice his or her profession, and a physician, dentist, nurse practitioner, or physician assistant also agrees to practice an approved specialty, in a designated health profession shortage area for at least three years and to accept medicaid patients in his or her practice;

(2) In consideration of the agreement by the recipient, the State of Nebraska and a local entity within the designated health profession shortage area will provide equal funding for the repayment of the recipient's qualified educational debts, in amounts up to twenty thousand dollars per year per recipient for physicians, dentists, and psychologists and up to ten thousand dollars per year per recipient for physician assistants, nurse practitioners, pharmacists, physical therapists, occupational therapists, and mental health practitioners toward

qualified educational debts for up to three years. The department shall make payments directly to the recipient; and

(3) If the loan repayment recipient discontinues practice in the shortage area prior to completion of the three-year requirement, the recipient shall repay to the state one hundred twenty-five percent of the total amount of funds provided to the recipient for loan repayment. Upon repayment by the recipient to the department, the department shall reimburse the local entity its share of the funds.

Source: Laws 1991, LB 400, § 19; Laws 1993, LB 536, § 101; Laws 1994, LB 1223, § 64; Laws 1996, LB 1155, § 56; Laws 1997, LB 577, § 5; Laws 2000, LB 1115, § 84; Laws 2001, LB 214, § 5; Laws 2004, LB 1005, § 108; Laws 2006, LB 962, § 3; Laws 2008, LB797, § 22; Laws 2009, LB196, § 3.
Effective date August 30, 2009.

ARTICLE 57

SMOKING AND TOBACCO

(c) TEEN TOBACCO EDUCATION AND PREVENTION PROJECT

(d) NEBRASKA CLEAN INDOOR AIR ACT

(c) TEEN TOBACCO EDUCATION AND PREVENTION PROJECT

71-5715 Repealed. Laws 2009, LB 154, § 27.

(d) NEBRASKA CLEAN INDOOR AIR ACT

71-5730 Exemptions.

The following indoor areas are exempt from section 71-5729:

(1) Guestrooms and suites that are rented to guests and are designated as smoking rooms, except that not more than twenty percent of rooms rented to guests in an establishment may be designated as smoking rooms. All smoking rooms on the same floor shall be contiguous, and smoke from such rooms shall not infiltrate into areas where smoking is prohibited under the Nebraska Clean Indoor Air Act;

(2) Indoor areas used in connection with a research study on the health effects of smoking conducted in a scientific or analytical laboratory under state or federal law or at a college or university approved by the Coordinating Commission for Postsecondary Education;

(3) Tobacco retail outlets; and

(4) Cigar bars as defined in section 53-103.

Source: Laws 2008, LB395, § 15; Laws 2009, LB355, § 6.

Note: Laws 2009, LB355, section 7, had an operative date of June 1, 2009. LB355 became effective August 30, 2009.

ARTICLE 58
HEALTH CARE; CERTIFICATE OF NEED

Section

71-5803.09 Intermediate care facility, intermediate care facility for the mentally retarded, defined.

Intermediate care facility has the same meaning as in section 71-420 and includes an intermediate care facility for the mentally retarded that has sixteen or more beds. Intermediate care facility for the mentally retarded has the same meaning as in section 71-421.

Source: Laws 1979, LB 172, § 19; Laws 1988, LB 1100, § 174; R.S.1943, (1996), § 71-5819; Laws 1997, LB 798, § 13; Laws 2000, LB 819, § 116; Laws 2009, LB511, § 1.
Effective date April 23, 2009.

71-5829.01 Repealed. Laws 2009, LB 195, § 111.

71-5829.02 Repealed. Laws 2009, LB 195, § 111.

71-5829.03 Certificate of need; activities requiring.

Except as provided in section 71-5830.01, no person, including persons acting for or on behalf of a health care facility, shall engage in any of the following activities without having first applied for and received the necessary certificate of need:

(1) The initial establishment of long-term care beds or rehabilitation beds except as permitted under subdivisions (4) and (5) of this section;

(2) An increase in the long-term care beds of a health care facility by more than ten long-term care beds or more than ten percent of the total long-term care bed capacity of such facility, whichever is less, over a two-year period;

(3) An increase in the rehabilitation beds of a health care facility by more than ten rehabilitation beds or more than ten percent of the total rehabilitation bed capacity of such facility, whichever is less, over a two-year period;

(4) Any initial establishment of long-term care beds through conversion by a hospital of any type of hospital beds to long-term care beds if the total beds converted by the hospital are more than ten beds or more than ten percent of the total bed capacity of such hospital, whichever is less, over a two-year period;

(5) Any initial establishment of rehabilitation beds through conversion by a hospital of any type of hospital beds to rehabilitation beds if the total beds converted by the hospital are more than ten beds or more than ten percent of the total bed capacity of such hospital, whichever is less, over a two-year period; or

(6) Any relocation of rehabilitation beds in Nebraska from one health care facility to another health care facility.

Source: Laws 1997, LB 798, § 22; Laws 2008, LB765, § 1; Laws 2009, LB195, § 84.
Effective date August 30, 2009.

71-5829.04 Long-term care beds; moratorium; exceptions; department; duties.

(1) All long-term care beds which require a certificate of need under section 71-5829.03 are subject to a moratorium unless one of the following exceptions applies:

(a) An exception to the moratorium may be granted if the department establishes that the needs of individuals whose medical and nursing needs are complex or intensive and are above the level of capabilities of staff and above the services ordinarily provided in a long-term care bed are not currently being met by the long-term care beds licensed in the health planning region; or

(b) If the average occupancy for all licensed long-term care beds located in a twenty-five mile radius of the proposed site have exceeded ninety percent occupancy during the most recent three consecutive calendar quarters as reported at the time of the application filing and there is a long-term care bed need as determined under this section, the department may grant an exception to the moratorium and issue a certificate of need. If the department determines average occupancy for all licensed long-term care beds located in a twenty-five mile radius of the proposed site has not exceeded ninety percent occupancy during the most recent three consecutive calendar quarters as reported at the time of the application filing, the department shall deny the application.

(2) The department shall review applications which require a certificate of need under section 71-5829.03 and determine if there is a need for additional long-term care beds as provided in this section. No such application shall be approved if the current supply of licensed long-term care beds in the health planning region of the proposed site exceeds the long-term care bed need for that health planning region. For purposes of this section:

(a) Long-term care bed need is equal to the population of the health planning region, multiplied by the utilization rate of long-term care beds within the health planning region, and the result divided by the minimum occupancy rate of long-term care beds within the health planning region;

(b) Population is the most recent projection of population for the health planning region for the year which is closest to the fifth year immediately following the date of the application. The applicant shall provide such projection as part of the application using data from the University of Nebraska-Lincoln Bureau of Business Research or other source approved by the department;

(c) The utilization rate is the number of people using long-term care beds living in the health planning region in which the proposed project is located divided by the population of the health planning region; and

(d) The minimum occupancy rate is ninety-five percent for health planning regions which are part of or contain a Metropolitan Statistical Area as defined by the United States Bureau of the Census. For all other health planning regions in the state, the minimum occupancy rate is ninety percent.

(3) To facilitate the review and determination required by this section, each health care facility with long-term care beds shall report on a quarterly basis to the department the number of residents at such facility on the last day of the immediately preceding quarter on a form provided by the department. Such report shall be provided to the department no later than ninety days after the last day of the immediately preceding quarter. The department shall provide the occupancy data collected from such reports upon request. Any facility failing to timely report such information shall be ineligible for any exception to the requirement for a certificate of need under section 71-5830.01 and any exception to the moratorium imposed under this section and may not receive, transfer, or relocate long-term care beds.

Source: Laws 1997, LB 798, § 23; Laws 2009, LB195, § 85.
Effective date August 30, 2009.

71-5830.01 Certificate of need; exempt activities.

Notwithstanding any other provisions of the Nebraska Health Care Certificate of Need Act, a certificate of need is not required for:

(1) A change in classification between an intermediate care facility, a nursing facility, or a skilled nursing facility;

(2) A project of a county in which is located a city of the metropolitan class for which a bond issue has been approved by the electorate of such county on or after January 1, 1994;

(3) A project of a federally recognized Indian tribe to be located on tribal lands within the exterior boundaries of the State of Nebraska where (a) a determination has been made by the tribe's governing body that the cultural needs of the tribe's members cannot be adequately met by existing facilities if such project has been approved by the tribe's governing body and (b) the tribe has a self-determination agreement in place with the Indian Health Service of the United States Department of Health and Human Services so that payment for enrolled members of a federally recognized Indian tribe who are served at such facility will be made with one hundred percent federal reimbursement; and

(4) A transfer or relocation of long-term care beds from one facility to another entity in the same health planning region or any other health planning region. The receiving entity shall obtain a license for the transferred or relocated beds within two years after the transfer or relocation. The department shall grant an extension of such time if the receiving entity is making progress toward the licensure of such beds.

Source: Laws 1982, LB 378, § 56; Laws 1989, LB 429, § 16; Laws 1997, LB 798, § 26; Laws 1999, LB 594, § 60; Laws 2008, LB928, § 31; Laws 2009, LB195, § 86.
Effective date August 30, 2009.

71-5865 Certificate of need; appeal; burden of proof.

In an appeal of a decision to deny a certificate of need, the person requesting the appeal shall bear the burden of proving that the project meets the applicable criteria established in sections 71-5829.03 to 71-5829.06.

Source: Laws 1979, LB 172, § 65; Laws 1982, LB 378, § 51; Laws 1989, LB 429, § 36; Laws 1997, LB 798, § 33; Laws 2009, LB195, § 87.
Effective date August 30, 2009.

ARTICLE 76
HEALTH CARE

(b) NEBRASKA HEALTH CARE FUNDING ACT

Section
71-7608. Nebraska Tobacco Settlement Trust Fund; created; use; investment.
71-7611. Nebraska Health Care Cash Fund; created; use; investment.

(b) NEBRASKA HEALTH CARE FUNDING ACT

71-7608 Nebraska Tobacco Settlement Trust Fund; created; use; investment.

The Nebraska Tobacco Settlement Trust Fund is created. The fund shall include any settlement payments or other revenue received by the State of Nebraska in connection with any tobacco-related litigation to which the State of Nebraska is a party. The Department of Health and Human Services shall remit such revenue to the State Treasurer for credit to the fund. Subject to the terms and conditions of such litigation, money from the Nebraska Tobacco Settlement Trust Fund shall be transferred to the Nebraska Health Care Cash Fund as provided in section 71-7611. Any money in the Nebraska Tobacco Settlement Trust Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1998, LB 1070, § 4; Laws 1999, LB 324, § 3; Laws 2000, LB 1427, § 6; Laws 2000, LB 1436, § 1; Laws 2001, LB 692, § 16; Laws 2003, LB 412, § 6; Laws 2004, LB 1091, § 6; Laws 2007, LB296, § 678; Laws 2008, LB606, § 7; Laws 2008, LB928, § 32; Laws 2008, LB961, § 4; Laws 2009, LB316, § 18.
Effective date May 20, 2009.

Cross References

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

71-7611 Nebraska Health Care Cash Fund; created; use; investment.

(1) The Nebraska Health Care Cash Fund is created. The State Treasurer shall transfer (a) fifty-six million one hundred thousand dollars no later than July 15, 2009, and (b) fifty-nine million one hundred thousand dollars beginning July 15, 2010, and annually thereafter no later than July 15 from the Nebraska Medicaid Intergovernmental Trust Fund and the Nebraska Tobacco Settlement Trust Fund to the Nebraska Health Care Cash Fund, except that such amount shall be reduced by the amount of the unobligated balance in the Nebraska Health Care Cash Fund at the time the transfer is made. The state investment officer upon consultation with the Nebraska Investment Council shall advise the State Treasurer on the amounts to be transferred from the Nebraska Medicaid Intergovernmental Trust Fund and from the Nebraska Tobacco Settlement Trust Fund under this section in order to sustain such transfers in perpetuity. The state investment officer shall report to the Legislature on or before October 1 of every even-numbered year on the sustainability of such transfers. Except as otherwise provided by law, no more than the amount specified in this subsection may be appropriated or transferred from the Nebraska Health Care Cash Fund in any fiscal year.

(2) Any money in the Nebraska Health Care 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.

(3) One million dollars in the Nebraska Health Care Cash Fund shall be transferred each year to the Autism Treatment Program Cash Fund for five fiscal years beginning on a date determined by the Department of Health and Human Services but no later than ninety days after a waiver under section 68-966 has been approved and shall be distributed with matching private funds from the Autism Treatment Program Cash Fund and matching funds from Title XIX of the federal Social Security Act in each fiscal year as follows: (a) First, to the Department of Health and Human Services for costs related to application, implementation, and administration of a waiver pursuant to section 68-966; (b) second, to the department for other medical costs for children who would not otherwise qualify for medicaid except for the waiver; and (c) third, the balance to fund services pursuant to the waiver.

(4) The University of Nebraska and postsecondary educational institutions having colleges of medicine in Nebraska and their affiliated research hospitals in Nebraska, as a condition of receiving any funds appropriated or transferred from the Nebraska Health Care Cash Fund, shall not discriminate against any person on the basis of sexual orientation.

(5) The State Treasurer shall transfer two hundred thousand dollars from the Nebraska Health Care Cash Fund to the University of Nebraska Medical Center Cash Fund for the Nebraska Regional Poison Center within fifteen days after each July 1.

(6) Beginning on July 1, 2010, the State Treasurer shall transfer three million dollars annually no later than July 15 of each year from the Nebraska Health Care Cash Fund to the Tobacco Prevention and Control Cash Fund.

(7) The State Treasurer shall transfer five hundred thousand dollars annually no later than July 15 of each year from the Nebraska Health Care Cash Fund to the Stem Cell Research Cash Fund.

Source: Laws 1998, LB 1070, § 7; Laws 2000, LB 1427, § 9; Laws 2001, LB 692, § 18; Laws 2003, LB 412, § 8; Laws 2004, LB 1091, § 7; Laws 2005, LB 426, § 12; Laws 2007, LB322, § 19; Laws 2007, LB482, § 6; Laws 2008, LB480, § 2; Laws 2008, LB830, § 9; Laws 2008, LB961, § 5; Laws 2009, LB27, § 7; Laws 2009, LB316, § 19.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB27, section 7, with LB316, section 19, to reflect all amendments.

Note: Changes made by LB316 became effective May 20, 2009. Changes made by LB27 became effective May 27, 2009.

Cross References

Autism Treatment Program Act, see section 68-962.
Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

ARTICLE 82

STATEWIDE TRAUMA SYSTEM ACT

Section
71-8205. Advanced level trauma center, defined.
71-8207. Basic level trauma center, defined.
71-8208. Communications system, defined.

Section

71-8205 Advanced level trauma center, defined.

Advanced level trauma center means a trauma center which, in addition to providing all of the services provided by basic level and general level trauma centers, also provides definitive care for complex and severe trauma, an emergency trauma team available within fifteen minutes, twenty-four hours per day, inhouse operating room personnel who initiate surgery, a neurosurgeon available who provides neurological assessment and stabilization, a broad range of specialists available for consultation or care, comprehensive diagnostic capabilities and support equipment, and appropriate equipment for pediatric trauma patients in the emergency department, intensive care unit, and operating room.

Source: Laws 1997, LB 626, § 5; Laws 2009, LB195, § 88.
Effective date August 30, 2009.

71-8207 Basic level trauma center, defined.

Basic level trauma center means a trauma center which has a trauma-trained physician, advanced practice registered nurse, or physician assistant available within thirty minutes to provide stabilization and transfer to a higher level trauma center when appropriate, which has basic equipment for resuscitation and stabilization, which maintains appropriate equipment for pediatric trauma patients for resuscitation and stabilization, and which may provide limited surgical intervention based upon the expertise of available onsite staff.

Source: Laws 1997, LB 626, § 7; Laws 2000, LB 1115, § 86; Laws 2009, LB195, § 89.
Effective date August 30, 2009.

71-8208 Communications system, defined.

Communications system means any network which provides rapid public access, coordinated central dispatching of services, and coordination of personnel, equipment, and facilities in the trauma system.

Source: Laws 1997, LB 626, § 8; Laws 2009, LB195, § 90.
Effective date August 30, 2009.

71-8210 Comprehensive level trauma center, defined.

Comprehensive level trauma center means a trauma center which (1) provides the highest level of definitive, comprehensive care for patients with complex traumatic injury, (2) provides an emergency trauma team available within fifteen minutes, twenty-four hours per day, including inhouse, immediately available personnel who can initiate surgery and appropriate equipment for pediatric trauma patients in the emergency department, intensive care unit, and operating room, and (3) is responsible for research, education, and outreach programs for trauma.

Source: Laws 1997, LB 626, § 10; Laws 2009, LB195, § 91.
Effective date August 30, 2009.

71-8216 Emergency medical services and trauma plan, defined.

Emergency medical services and trauma plan means the statewide plan that identifies statewide emergency medical service and trauma care objectives and priorities and identifies equipment, facilities, personnel, training, and other needs required to create and maintain the statewide trauma system established in section 71-8239. Emergency medical services and trauma plan also includes a plan of implementation that identifies the state and regional activities that will create, operate, maintain, and enhance the system. The plan shall be formulated by incorporating the regional trauma plans required under the Statewide Trauma System Act. The plan shall be updated every five years.

Source: Laws 1997, LB 626, § 16; Laws 2009, LB195, § 92.
Effective date August 30, 2009.

71-8218 General level trauma center, defined.

General level trauma center means a trauma center that (1) provides initial evaluation and stabilization, including surgical stabilization if appropriate, and general medical and surgical inpatient services to patients who can be maintained in a stable or improving condition without specialized care, (2) prepares for transfer and transfers patients meeting predetermined criteria pursuant to the rules and regulations adopted under the Statewide Trauma System Act to higher level trauma centers, (3) is physician directed within a formally organized trauma team, (4) provides trauma-trained physicians and nurses to the emergency department within thirty minutes of notification, (5) has personnel available who can initiate surgery, (6) has appropriate diagnostic capabilities and equipment, and (7) maintains appropriate equipment for pediatric trauma patients in the emergency department, intensive care unit, and operating room.

Source: Laws 1997, LB 626, § 18; Laws 2009, LB195, § 93.
Effective date August 30, 2009.

71-8222 On-line physician or qualified physician surrogate, defined.

On-line physician or qualified physician surrogate means a physician or a qualified physician surrogate, preferably within the region, who is providing medical direction to the emergency medical service providing life support and stabilization and includes interfacility or intrafacility transfer and bypass to a higher level trauma center.

Source: Laws 1997, LB 626, § 22; Laws 2009, LB195, § 94.
Effective date August 30, 2009.

71-8223 Repealed. Laws 2009, LB 195, § 111.

71-8230 Specialty level burn or pediatric trauma center, defined.

Specialty level burn or pediatric trauma center means a trauma center that (1) provides specialized care in the areas of burns or pediatrics, (2) is designated or verified by its professional association governing body, (3) provides continuous accessibility regardless of day, season, or patient's ability to pay, and (4) has entry access from each of the designation levels as its on-line physician or qualified physician surrogate deems appropriate.

Source: Laws 1997, LB 626, § 30; Laws 2009, LB195, § 95.
Effective date August 30, 2009.

71-8232 Trauma, defined.

Trauma means a single-system or multisystem injury requiring immediate medical or surgical intervention or treatment to prevent death or permanent disability.

Source: Laws 1997, LB 626, § 32; Laws 2009, LB195, § 96.
Effective date August 30, 2009.

71-8234 Trauma team, defined.

Trauma team means a team of physicians, nurses, medical technicians, and other personnel compiled to create a seamless response to an acutely injured patient in a hospital emergency department.

Source: Laws 1997, LB 626, § 34; Laws 2009, LB195, § 97.
Effective date August 30, 2009.

71-8235 Trauma system, defined.

Trauma system means an organized approach to providing care to trauma patients that provides personnel, facilities, and equipment for effective and coordinated trauma care. The trauma system shall identify facilities with specific capabilities to provide care and provide that trauma patients be treated at a designated trauma center appropriate to the patient's level of injury. Trauma system includes prevention, prehospital or out-of-hospital care, hospital care, and rehabilitative services regardless of insurance carrier or ability to pay.

Source: Laws 1997, LB 626, § 35; Laws 2009, LB195, § 98.
Effective date August 30, 2009.

71-8237 State Trauma Advisory Board; duties.

The State Trauma Advisory Board shall:

(1) Advise the department regarding trauma care needs throughout the state;

(2) Advise the Board of Emergency Medical Services regarding trauma care to be provided throughout the state by out-of-hospital and emergency medical services;

(3) Review the regional trauma plans and recommend changes to the department before the department adopts the plans;

(4) Review proposed departmental rules and regulations for trauma care;

(5) Recommend modifications in rules regarding trauma care; and

(6) Draft a five-year statewide prevention plan that each trauma care region shall implement.

Source: Laws 1997, LB 626, § 37; Laws 2009, LB195, § 99.
Effective date August 30, 2009.

71-8239 Statewide trauma system; established; rules and regulations; state trauma medical director and regional medical directors; appointment.

(1) The department, in consultation with and having solicited the advice of the State Trauma Advisory Board, shall establish and maintain the statewide trauma system.

(2) The department, with the advice of the board, shall adopt and promulgate rules and regulations to carry out the Statewide Trauma System Act.

(3) The Director of Public Health or his or her designee shall appoint the state trauma medical director and the regional medical directors.

Source: Laws 1997, LB 626, § 39; Laws 2007, LB296, § 692; Laws 2009, LB195, § 100.
Effective date August 30, 2009.

71-8240 Department; statewide duties.

The department shall establish and maintain the following on a statewide basis:

(1) Trauma system objectives and priorities;

(2) Minimum trauma standards for facilities, equipment, and personnel for advanced, basic, comprehensive, and general level trauma centers and specialty level burn or pediatric trauma centers;

(3) Minimum standards for facilities, equipment, and personnel for advanced, basic, and general level rehabilitation centers;

(4) Minimum trauma standards for the development of facility patient care protocols;

(5) Trauma care regions as provided for in section 71-8250;

(6) Recommendations for an effective trauma transportation system;

(7) The minimum number of hospitals and health care facilities in the state and within each trauma care region that may provide designated trauma care services based upon approved regional trauma plans;

(8) The minimum number of prehospital or out-of-hospital care providers in the state and within each trauma care region that may provide trauma care services based upon approved regional trauma plans;

(9) A format for submission of the regional trauma plans to the department;

(10) A program for emergency medical services and trauma care research and development;

(11) Review and approve regional trauma plans;

(12) The initial designation of hospitals and health care facilities to provide designated trauma care services in accordance with needs identified in the approved regional trauma plan; and

(13) The trauma implementation plan incorporating the regional trauma plans.

Source: Laws 1997, LB 626, § 40; Laws 2009, LB195, § 101.
Effective date August 30, 2009.

71-8242 Department; startup activities; duties.

The department shall:

(1) Purchase and maintain the statewide trauma registry pursuant to section 71-8248 to assess the effectiveness of trauma delivery and modify standards and other requirements of the statewide trauma system, to improve the provision of emergency medical services and trauma care;

(2) Develop patient outcome measures to assess the effectiveness of trauma care in the system;

(3) Develop standards for regional trauma care quality assurance programs; and

(4) Coordinate and develop trauma prevention and education programs.

The department shall administer funding allocated to the department for the purpose of creating, maintaining, or enhancing the statewide trauma system.

Source: Laws 1997, LB 626, § 42; Laws 2009, LB195, § 102.
Effective date August 30, 2009.

71-8243 Centers; categorized; requirements.

Designated trauma centers and rehabilitation centers that receive trauma patients shall be categorized according to designation under the Statewide Trauma System Act. All levels of centers shall follow federal regulation guidelines and established referral patterns, as appropriate, to facilitate a seamless patient-flow system.

Source: Laws 1997, LB 626, § 43; Laws 1999, LB 594, § 65; Laws 2009, LB195 § 103.
Effective date August 30, 2009.

71-8244 Designated center; requirements; request; appeal; revocation or suspension; notice; hearing.

Any hospital, facility, rehabilitation center, or specialty level burn or pediatric trauma center that desires to be a designated center shall request designation from the department whereby each agrees to maintain a level of commitment and resources sufficient to meet responsibilities and standards required by the statewide trauma system. The department shall determine by rule and regulation the manner and form of such requests. Upon receiving a request, the department shall review the request to determine whether there is compliance with standards for the trauma care level for which designation is desired or whether the appropriate governing body verification documentation has been submitted. Any hospital, facility, rehabilitation center, or specialty level burn or pediatric trauma center which submits such verification documentation shall be designated by the department and shall be included in the trauma system or plan established under the Statewide Trauma System Act. Any medical facility applying for designation may appeal its designation. The appeal shall be in accordance with the Administrative Procedure Act.

Designation is valid for a period of four years and is renewable upon receipt of a request from the medical facility for renewal prior to expiration. Any medical facility that is currently verified by its governing body shall be designated at the corresponding level of designation for the same time period in Nebraska without the necessity of an onsite review by the department. Regional trauma advisory boards shall be notified promptly of designated medical facilities in their region so they may incorporate them into the regional plan. The department may revoke or suspend a designation if it determines that the medical facility is substantially out of compliance with the standards and has refused or been unable to comply after a reasonable period of time has elapsed. The department shall promptly notify the regional trauma advisory board of designation suspensions and revocations. Any rehabilitation or trauma center the designation of which has been revoked or suspended may request a hearing to review the action of the department.

Source: Laws 1997, LB 626, § 44; Laws 2009, LB195, § 104.
Effective date August 30, 2009.

Cross References

Administrative Procedure Act, see section 84-920.

71-8245 Onsite reviews; applicant; duties; confidentiality; fees.

As part of the process to designate and renew the designation of hospitals and health care facilities as advanced, basic, comprehensive, or general level trauma centers, the department may contract for onsite reviews of such hospitals and health care facilities to determine compliance with required standards. As part of the process to designate a health care facility as a basic or general rehabilitation center or specialty level burn or pediatric trauma center, the applicant shall submit to the department documentation of current verification from its governing body in its specialty area. Members of onsite review teams and staff included in onsite visits shall not divulge and cannot be subpoenaed to divulge information obtained or reports written pursuant to this section in any civil action, except pursuant to a court order which provides for the protection of sensitive information of interested parties, including the department: (1) In actions arising out of the designation of a hospital or health care facility pursuant to section 71-8244; (2) in actions arising out of the revocation or suspension of a designation under such section; or (3) in actions arising out of the restriction or revocation of the clinical or staff privileges of a health care provider, subject to any further restrictions on disclosure that may apply. Information that identifies an individual patient shall not be publicly disclosed without the patient's consent. When a medical facility requests designation for more than one service, the department may coordinate the joint consideration of such requests. Composition and qualification of the designation team shall be set forth in rules and regulations adopted under the Statewide Trauma System Act. Reports prepared pursuant to this section shall not be considered public records.

The department may establish fees to defray the costs of carrying out onsite reviews required by this section, but such fees shall not be assessed to health care facilities designated as basic or general level trauma centers or basic level rehabilitation centers.

This section does not restrict the authority of a hospital or a health care provider to provide services which it has been authorized to provide by state law.

Source: Laws 1997, LB 626, § 45; Laws 2009, LB195, § 105.
Effective date August 30, 2009.

71-8246 Regional trauma system; department; duties.

The department shall develop the regional trauma system. The department shall:

(1) Assess and analyze regional trauma care needs;

(2) Identify personnel, agencies, facilities, equipment, training, and education needed to meet regional needs;

(3) Identify specific activities necessary to meet statewide standards and patient care outcomes and develop a plan of implementation for regional compliance;

(4) Promote agreements with providers outside the region to facilitate patient transfer;

(5) Establish a regional budget;

(6) Establish the minimum number and level of facilities to be designated which are consistent with state standards and based upon availability of resources and the distribution of trauma within the region; and

(7) Include other specific elements defined by the department.

Source: Laws 1997, LB 626, § 46; Laws 2009, LB195, § 106.
Effective date August 30, 2009.

71-8247 Regional trauma system quality assurance program; established.

In each trauma region, a regional trauma system quality assurance program shall be established by the health care facilities designated as advanced, basic, comprehensive, and general level trauma centers. The quality assurance program shall evaluate trauma data quality, trauma care delivery, patient care outcomes, and compliance with the Statewide Trauma System Act. The regional medical director and all health care providers and facilities which provide trauma care services within the region shall be invited to participate in the quality assurance program.

Source: Laws 1997, LB 626, § 47; Laws 2009, LB195, § 107.
Effective date August 30, 2009.

71-8248 Statewide trauma registry.

The department shall establish and maintain a statewide trauma registry to collect and analyze data on the incidence, severity, and causes of trauma, including traumatic brain injury. The registry shall be used to improve the availability and delivery of prehospital or out-of-hospital care and hospital trauma care services. Specific data elements of the registry shall be defined by rule and regulation of the department. Every health care facility designated as an advanced, a basic, a comprehensive, or a general level trauma center, a specialty level burn or pediatric trauma center, an advanced, a basic, or a general level rehabilitation center, or a prehospital or out-of-hospital provider shall furnish data to the registry. All other hospitals may furnish trauma data as

required by the department by rule and regulation. All hospitals involved in the care of a trauma patient shall have unrestricted access to all prehospital reports for the trauma registry for that specific trauma occurrence.

Source: Laws 1997, LB 626, § 48; Laws 2009, LB195, § 108.
Effective date August 30, 2009.

ARTICLE 88

STEM CELL RESEARCH ACT

Section
71-8805. Stem Cell Research Cash Fund; created; use; investment.

71-8805 Stem Cell Research Cash Fund; created; use; investment.

(1) The Stem Cell Research Cash Fund is created. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(2) Money credited to the Stem Cell Research Cash Fund pursuant to section 71-7611 shall be used to provide a dollar-for-dollar match, up to five hundred thousand dollars per fiscal year, of funds received by institutions or researchers from sources other than funds provided by the State of Nebraska for nonembryonic stem cell research. Such matching funds shall be awarded through the grant process established pursuant to section 71-8804. No single institution or researcher shall receive more than seventy percent of the funds available for distribution under this section on an annual basis.

(3) Up to three percent of the funds credited to the Stem Cell Research Cash Fund shall be available to the Division of Public Health of the Department of Health and Human Services for administrative costs, including stipends and reimbursements pursuant to section 71-8803.

Source: Laws 2008, LB606, § 5; Laws 2009, LB316, § 20.
Effective date May 20, 2009.

Cross References

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

ARTICLE 89

VETERINARY DRUG DISTRIBUTION LICENSING ACT

Section
71-8909. Veterinary drug distributor, defined.
71-8910. Veterinary drug order, defined.
71-8922. Distribution of veterinary legend drugs; authorized; applicability of labeling provisions.

71-8909 Veterinary drug distributor, defined.

Veterinary drug distributor means any person or entity that engages in the distribution of veterinary legend drugs in the State of Nebraska other than a pharmacy or a veterinarian licensed under the Uniform Credentialing Act acting within the scope of practice of veterinary medicine and surgery as defined in section 38-3312.

Source: Laws 2008, LB1022, § 9; Laws 2009, LB463, § 12.
Effective date August 30, 2009.

Cross References

Uniform Credentialing Act, see section 38-101.

71-8910 Veterinary drug order, defined.

Veterinary drug order means a lawful order or prescription of a veterinarian licensed to practice in this state issued pursuant to a bona fide veterinarian-client-patient relationship. For purposes of the Veterinary Drug Distribution Licensing Act, a veterinary drug order expires and becomes void one hundred eighty days after the date of issue.

Source: Laws 2008, LB1022, § 10; Laws 2009, LB463, § 13.
Effective date August 30, 2009.

71-8922 Distribution of veterinary legend drugs; authorized; applicability of labeling provisions.

A veterinary drug distributor may distribute veterinary legend drugs to:

(1) A licensed veterinarian or to another veterinary drug distributor subject to the requirements of section 71-8921; and

(2) A layperson responsible for the control of an animal if:

(a) A licensed veterinarian has issued, prior to such distribution, a veterinary drug order for the veterinary legend drug in the course of an existing, valid veterinarian-client-patient relationship and the veterinary drug order is in compliance with all federal laws and regulations;

(b) At the time the veterinary legend drug leaves the licensed location of the veterinary drug distributor, those in the employ of the veterinary drug distributor possess a copy of the veterinary drug order for the veterinary legend drug issued according to subdivision (a) of this subdivision and deliver a copy to the layperson responsible for the control of the animal at the time of the distribution;

(c) The original veterinary drug order issued according to subdivision (a) of this subdivision is retained on the premises of the veterinary drug distributor or an authorized central location for three years after the date of the last transaction affecting the veterinary drug order;

(d) All veterinary legend drugs distributed on the veterinary drug order issued according to subdivision (a) of this subdivision are sold in the original, unbroken manufacturer's containers; and

(e) The veterinary legend drugs, once distributed, are not returned to the veterinary drug distributor for resale or redistribution.

Nothing contained in Nebraska statutes governing the practice of pharmacy shall be construed to prohibit a veterinary drug distributor from selling or otherwise distributing a veterinary legend drug pursuant to a veterinary drug order by a veterinarian licensed in this state and, when a valid veterinarian-client-patient relationship exists, to the layperson responsible for the control of the animal.

(3) If all federal labeling requirements are met, labeling provisions of Nebraska laws governing the practice of pharmacy shall not apply to veterinary legend drugs distributed pursuant to the Veterinary Drug Distribution Licensing Act.

Source: Laws 2008, LB1022, § 22; Laws 2009, LB463, § 14.
Effective date August 30, 2009.

CHAPTER 72
PUBLIC LANDS, BUILDINGS, AND FUNDS

ARTICLE 2
SCHOOL LANDS AND FUNDS

72-258.03 School lands; sale; appraised value.

For purposes of sales of educational lands at public auction, appraised value is the adjusted value as determined by the Property Tax Administrator or his or her representative such that the real property's assessed value for the current year is adjusted to one hundred percent of actual value, unless the Board of Educational Lands and Funds establishes a higher value pursuant to section 72-257 or 72-258, in which case that value shall be the appraised value for purposes of sale.

Source: Laws 2000, LB 1010, § 1; Laws 2007, LB166, § 2; Laws 2009, LB166, § 3.
Effective date February 27, 2009.

ARTICLE 12
INVESTMENT OF STATE FUNDS

(b) NEBRASKA CAPITAL EXPANSION ACT

(b) NEBRASKA CAPITAL EXPANSION ACT

72-1268.03 State investment officer; limitation on deposits.

The state investment officer shall not have on deposit in any bank, capital stock financial institution, or qualifying mutual financial institution giving a guaranty bond more than the amount insured or guaranteed by the Federal Deposit Insurance Corporation plus the maximum amount of the bond given by such bank, capital stock financial institution, or qualifying mutual financial institution or in any bank, capital stock financial institution, or qualifying mutual financial institution giving a personal bond more than the amount insured or guaranteed by the Federal Deposit Insurance Corporation plus one-half of the amount of the bond given by such bank, capital stock financial

institution, or qualifying mutual financial institution. All bonds of such depositories shall be deposited with and held by the state investment officer.

Source: Laws 1985, LB 614, § 8; Laws 1992, LB 757, § 24; Laws 2002, LB 957, § 29; Laws 2003, LB 175, § 11; Laws 2009, LB259, § 13. Effective date March 6, 2009.

ARTICLE 21

GOVERNOR'S RESIDENCE

Section
72-2101. Governor's Residence Advisory Commission; created; duties.
72-2105. Commission; meetings; quorum.

72-2101 Governor's Residence Advisory Commission; created; duties.

The Governor's Residence Advisory Commission is created. The commission shall conduct an annual inspection of the Governor's residence. A report on the inspection shall be submitted to the Governor within thirty days after the day of the inspection. The report shall include recommendations for major maintenance or repair projects, if needed. Implementation and priority of an approved major maintenance or repair project shall be determined by the Governor in cooperation with the Director of Administrative Services. Additionally, no changes, additions, deletions, or other alterations to the residence, including its exterior, interior, decorative objects, contents, or grounds shall be made without the prior approval of the commission, except for the Governor's private living quarters located on the second floor of the residence.

Source: Laws 1998, LB 1129, § 28; Laws 2009, LB207, § 1. Effective date August 30, 2009.

72-2105 Commission; meetings; quorum.

The Governor's Residence Advisory Commission shall meet at the direction of the chairperson of the commission. At least one meeting shall be held after the annual inspection. A simple majority of the commission shall constitute a quorum for the transaction of business.

Source: Laws 1998, LB 1129, § 32; Laws 2009, LB207, § 2. Effective date August 30, 2009.

CHAPTER 74
RAILROADS

Article.
15. Nebraska Transit and Rail Advisory Council Act. Repealed.

ARTICLE 15
NEBRASKA TRANSIT AND RAIL ADVISORY COUNCIL ACT

Section
74-1501. Repealed. Laws 2009, LB 2, § 1; Laws 2009, LB 154, § 27.
74-1502. Repealed. Laws 2009, LB 2, § 1; Laws 2009, LB 154, § 27.
74-1503. Repealed. Laws 2009, LB 2, § 1; Laws 2009, LB 154, § 27.
74-1504. Repealed. Laws 2009, LB 2, § 1; Laws 2009, LB 154, § 27.
74-1505. Repealed. Laws 2009, LB 2, § 1; Laws 2009, LB 154, § 27.
74-1506. Repealed. Laws 2009, LB 2, § 1; Laws 2009, LB 154, § 27.
74-1507. Repealed. Laws 2009, LB 2, § 1; Laws 2009, LB 154, § 27.
74-1508. Repealed. Laws 2009, LB 2, § 1; Laws 2009, LB 154, § 27.
74-1509. Repealed. Laws 2009, LB 2, § 1; Laws 2009, LB 154, § 27.
74-1510. Repealed. Laws 2009, LB 2, § 1; Laws 2009, LB 154, § 27.
74-1511. Repealed. Laws 2009, LB 2, § 1; Laws 2009, LB 154, § 27.
74-1512. Repealed. Laws 2009, LB 2, § 1; Laws 2009, LB 154, § 27.
74-1513. Repealed. Laws 2009, LB 2, § 1; Laws 2009, LB 154, § 27.
74-1514. Repealed. Laws 2009, LB 2, § 1; Laws 2009, LB 154, § 27.

74-1501 Repealed. Laws 2009, LB 2, § 1; Laws 2009, LB 154, § 27.

74-1502 Repealed. Laws 2009, LB 2, § 1; Laws 2009, LB 154, § 27.

74-1503 Repealed. Laws 2009, LB 2, § 1; Laws 2009, LB 154, § 27.

74-1504 Repealed. Laws 2009, LB 2, § 1; Laws 2009, LB 154, § 27.

74-1505 Repealed. Laws 2009, LB 2, § 1; Laws 2009, LB 154, § 27.

74-1506 Repealed. Laws 2009, LB 2, § 1; Laws 2009, LB 154, § 27.

74-1507 Repealed. Laws 2009, LB 2, § 1; Laws 2009, LB 154, § 27.

74-1508 Repealed. Laws 2009, LB 2, § 1; Laws 2009, LB 154, § 27.

74-1509 Repealed. Laws 2009, LB 2, § 1; Laws 2009, LB 154, § 27.

74-1510 Repealed. Laws 2009, LB 2, § 1; Laws 2009, LB 154, § 27.

74-1511 Repealed. Laws 2009, LB 2, § 1; Laws 2009, LB 154, § 27.

74-1512 Repealed. Laws 2009, LB 2, § 1; Laws 2009, LB 154, § 27.

74-1513 Repealed. Laws 2009, LB 2, § 1; Laws 2009, LB 154, § 27.

74-1514 Repealed. Laws 2009, LB 2, § 1; Laws 2009, LB 154, § 27.

CHAPTER 75
PUBLIC SERVICE COMMISSION

Article.
3. Motor Carriers.
   (a) Intrastate Motor Carriers. 75-301.
   (d) Interstate Motor Carriers. 75-348 to 75-358. Repealed.
   (e) Safety Regulations. 75-363 to 75-369.03.
   (j) Division of Motor Carrier Services. 75-386, 75-390.
   (l) Unified Carrier Registration Plan and Agreement. 75-393 to 75-398.

ARTICLE 3
MOTOR CARRIERS

(a) INTRASTATE MOTOR CARRIERS

Section
75-301. Motor carriers; regulation; legislative policy.

(d) INTERSTATE MOTOR CARRIERS

75-348. Repealed. Laws 2009, LB 331, § 28.
75-349. Repealed. Laws 2009, LB 331, § 28.
75-350. Repealed. Laws 2009, LB 331, § 28.
75-351. Repealed. Laws 2009, LB 331, § 28.
75-353. Repealed. Laws 2009, LB 331, § 28.
75-354. Repealed. Laws 2009, LB 331, § 28.
75-355. Repealed. Laws 2009, LB 331, § 28.
75-358. Repealed. Laws 2009, LB 331, § 28.

(e) SAFETY REGULATIONS

75-363. Federal motor carrier safety regulations; provisions adopted; exceptions.
75-364. Additional federal motor carrier regulations; provisions adopted; exceptions.
75-369.03. Violations; civil penalty; referral to federal agency or Public Service Commission; when.

(j) DIVISION OF MOTOR CARRIER SERVICES

75-386. Division of Motor Carrier Services; duties.
75-390. Repealed. Laws 2009, LB 331, § 28.

(l) UNIFIED CARRIER REGISTRATION PLAN AND AGREEMENT

75-393. Unified carrier registration plan and agreement; director; powers.
75-394. Registration under unified carrier registration plan and agreement; fees; authorization to accept registration.
75-395. Repealed. Laws 2009, LB 331, § 28.
75-396. Rules and regulations.
75-397. Forms and electronic systems to allow filings.
75-398. Violations; penalty.

(a) INTRASTATE MOTOR CARRIERS

75-301 Motor carriers; regulation; legislative policy.

(1) It is the policy of the Legislature to comply with the laws of the United States, to promote uniformity of regulation, to prevent motor vehicle accidents, deaths, and injuries, to protect the public safety, to reduce redundant regula-

tion, to promote financial responsibility on the part of all motor carriers operating in and through the state, and to foster the development, coordination, and preservation of a safe, sound, adequate, and productive motor carrier system which is vital to the economy of the state.

(2) It is the policy of the Legislature to (a) regulate transportation by motor carriers of passengers and household goods in intrastate commerce upon the public highways of Nebraska in such manner as to recognize and preserve the inherent advantages of and foster sound economic conditions in such transportation and among such carriers, in the public interest, (b) promote adequate economical and efficient service by motor carriers and reasonable charges therefor without unjust discrimination, undue preferences or advantages, and unfair or destructive competitive practices, (c) improve the relations between and coordinate transportation by and regulation of such motor carriers and other carriers, (d) develop and preserve a highway transportation system properly adapted to the needs of the commerce of Nebraska, (e) cooperate with the several states and the duly authorized officials thereof, and (f) cooperate with the United States Government in the administration and enforcement of the unified carrier registration plan and agreement.

The commission, the Division of Motor Carrier Services, and the carrier enforcement division shall enforce all provisions of section 75-126 and Chapter 75, article 3, so as to promote, encourage, and ensure a safe, dependable, responsive, and adequate transportation system for the public as a whole.

Source: Laws 1963, c. 425, art. III, § 1, p. 1374; Laws 1989, LB 78, § 14; Laws 1995, LB 424, § 21; Laws 1996, LB 1218, § 42; Laws 2009, LB331, § 14.
Operative date August 30, 2009.

(d) INTERSTATE MOTOR CARRIERS

75-348 Repealed. Laws 2009, LB 331, § 28.

75-349 Repealed. Laws 2009, LB 331, § 28.

75-350 Repealed. Laws 2009, LB 331, § 28.

75-351 Repealed. Laws 2009, LB 331, § 28.

75-353 Repealed. Laws 2009, LB 331, § 28.

75-354 Repealed. Laws 2009, LB 331, § 28.

75-355 Repealed. Laws 2009, LB 331, § 28.

75-358 Repealed. Laws 2009, LB 331, § 28.

(e) SAFETY REGULATIONS

75-363 Federal motor carrier safety regulations; provisions adopted; exceptions.

(1) The parts, subparts, and sections of Title 49 of the Code of Federal Regulations listed below, as modified in this section, or any other parts, subparts, and sections referred to by such parts, subparts, and sections, in existence and effective as of January 1, 2009, are adopted as Nebraska law.

(2) Except as otherwise provided in this section, the regulations shall be applicable to:

(a) All motor carriers, drivers, and vehicles to which the federal regulations apply; and

(b) All motor carriers transporting persons or property in intrastate commerce to include:

(i) All vehicles of such motor carriers with a gross vehicle weight rating, gross combination weight rating, gross vehicle weight, or gross combination weight over ten thousand pounds;

(ii) All vehicles of such motor carriers designed or used to transport more than eight passengers, including the driver, for compensation, or designed or used to transport more than fifteen passengers, including the driver, and not used to transport passengers for compensation;

(iii) All vehicles of such motor carriers transporting hazardous materials required to be placarded pursuant to section 75-364; and

(iv) All drivers of such motor carriers if the drivers are operating a commercial motor vehicle as defined in section 60-465 which requires a commercial driver's license.

(3) The Legislature hereby adopts, as modified in this section, the following parts of Title 49 of the Code of Federal Regulations:

(a) Part 382 - Controlled Substances And Alcohol Use And Testing;

(b) Part 385 - Safety Fitness Procedures;

(c) Part 386 - Rules Of Practice For Motor Carrier, Broker, Freight Forwarder, And Hazardous Materials Proceedings;

(d) Part 387 - Minimum Levels of Financial Responsibility for Motor Carriers;

(e) Part 390 - Federal Motor Carrier Safety Regulations; General;

(f) Part 391 - Qualifications Of Drivers And Longer Combination Vehicle (LCV) Driver Instructors;

(g) Part 392 - Driving Of Commercial Motor Vehicles;

(h) Part 393 - Parts And Accessories Necessary For Safe Operation;

(i) Part 395 - Hours Of Service Of Drivers;

(j) Part 396 - Inspection, Repair, And Maintenance;

(k) Part 397 - Transportation Of Hazardous Materials; Driving And Parking Rules; and

(l) Part 398 - Transportation Of Migrant Workers.

(4) The provisions of subpart E - Physical Qualifications And Examinations of 49 C.F.R. part 391 - Qualifications Of Drivers And Longer Combination Vehicle (LCV) Driver Instructors shall not apply to any driver subject to this section who: (a) Operates a commercial motor vehicle exclusively in intrastate commerce; and (b) holds, or has held, a commercial driver's license issued by this state prior to July 30, 1996.

(5) The regulations adopted in subsection (3) of this section shall not apply to farm trucks registered pursuant to section 60-3,146 with a gross weight of sixteen tons or less or to fertilizer and agricultural chemical application and distribution equipment transported in units with a capacity of three thousand five hundred gallons or less if the equipment is not required to be placarded

pursuant to section 75-364. The following parts and sections of 49 C.F.R. chapter III shall not apply to drivers of farm trucks registered pursuant to section 60-3,146 and operated solely in intrastate commerce:

(a) All of part 391;

(b) Section 395.8 of part 395; and

(c) Section 396.11 of part 396.

(6) For purposes of this section, intrastate motor carriers shall not include any motor carrier or driver excepted from 49 C.F.R. chapter III by section 390.3(f) of part 390 or any nonprofit entity, operating solely in intrastate commerce, organized for the purpose of furnishing electric service.

(7) Part 395 - Hours Of Service Of Drivers shall apply to motor carriers and drivers who engage in intrastate commerce as defined in section 75-362, except that no motor carrier who engages in intrastate commerce shall permit or require any driver used by it to drive nor shall any driver drive:

(a) More than twelve hours following eight consecutive hours off duty; or

(b) For any period after having been on duty sixteen hours following eight consecutive hours off duty.

No motor carrier who engages in intrastate commerce shall permit or require a driver of a commercial motor vehicle, regardless of the number of motor carriers using the driver's services, to drive, nor shall any driver of a commercial motor vehicle drive, for any period after:

(i) Having been on duty seventy hours in any seven consecutive days if the employing motor carrier does not operate every day of the week; or

(ii) Having been on duty eighty hours in any period of eight consecutive days if the employing motor carrier operates motor vehicles every day of the week.

(8) Part 395 - Hours Of Service Of Drivers, as adopted in subsections (3) and (7) of this section, shall not apply to drivers transporting agricultural commodities or farm supplies for agricultural purposes when the transportation of such commodities or supplies occurs within a one-hundred-air-mile radius of the source of the commodities or the distribution point for the supplies when such transportation occurs during the period beginning on February 15 up to and including December 15 of each calendar year.

(9) 49 C.F.R. 390.21 - Marking Of Commercial Motor Vehicles shall not apply to farm trucks and farm truck-tractors registered pursuant to section 60-3,146 and operated solely in intrastate commerce.

(10) 49 C.F.R. 392.9a - Operating Authority shall not apply to Nebraska motor carriers operating commercial motor vehicles solely in intrastate commerce.

(11) No motor carrier shall permit or require a driver of a commercial motor vehicle to violate, and no driver of a commercial motor vehicle shall violate, any out-of-service order.

Source: Laws 1986, LB 301, § 1; Laws 1987, LB 224, § 23; Laws 1988, LB 884, § 1; Laws 1989, LB 285, § 140; Laws 1990, LB 980, § 29; Laws 1991, LB 854, § 3; Laws 1993, LB 410, § 1; Laws 1994, LB 1061, § 5; Laws 1995, LB 461, § 1; Laws 1996, LB 938, § 4; Laws 1997, LB 722, § 1; Laws 1998, LB 1056, § 8; Laws 1999, LB 161, § 1; Laws 1999, LB 704, § 49; Laws 2000, LB 1361, § 11; Laws 2001, LB 375, § 1; Laws 2002, LB 499, § 5;

Laws 2003, LB 480, § 2; Laws 2004, LB 878, § 1; Laws 2005, LB 83, § 1; Laws 2005, LB 274, § 271; Laws 2006, LB 1007, § 13; Laws 2007, LB239, § 8; Laws 2008, LB756, § 28; Laws 2008, LB845, § 1; Laws 2009, LB48, § 1; Laws 2009, LB331, § 15.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB48, section 1, with LB331, section 15, to reflect all amendments.

Note: Changes made by LB48 became effective March 6, 2009. Changes made by LB331 became operative August 30, 2009.

Cross References

Violation of section, penalty, see section 75-367.

75-364 Additional federal motor carrier regulations; provisions adopted; exceptions.

(1) The parts, subparts, and sections of Title 49 of the Code of Federal Regulations listed below, or any other parts, subparts, and sections referred to by such parts, subparts, and sections, in existence and effective as of January 1, 2009, are adopted as part of Nebraska law and, except as provided in subsections (2) and (3) of this section, shall be applicable to all motor carriers whether engaged in interstate or intrastate commerce, drivers of such motor carriers, and vehicles of such motor carriers:

(a) Part 107 - Hazardous Materials Program Procedures, subpart F - Registration Of Cargo Tank And Cargo Tank Motor Vehicle Manufacturers, Assemblers, Repairers, Inspectors, Testers, and Design Certifying Engineers;

(b) Part 107- Hazardous Materials Program Procedures, subpart G - Registration Of Persons Who Offer Or Transport Hazardous Materials;

(c) Part 171- General Information, Regulations, And Definitions;

(d) Part 172 - Hazardous Materials Table, Special Provisions, Hazardous Materials Communications, Emergency Response Information, and Training Requirements;

(e) Part 173 - Shippers - General Requirements For Shipments And Packagings;

(f) Part 177 - Carriage By Public Highway;

(g) Part 178 - Specifications For Packagings; and

(h) Part 180 - Continuing Qualification And Maintenance Of Packagings.

(2) Agricultural operations exceptions:

(a) The transportation of an agricultural product other than a Class 2 material (Compressed Gases) as defined in 49 C.F.R. 171.8, over roads, other than the National System of Interstate and Defense Highways, between fields of the same farm, is excepted from subsection (1) of this section when:

(i) The agricultural product is transported by a farmer who is an intrastate private motor carrier; and

(ii) The movement of the agricultural product conforms to all other laws in effect on or before July 1, 1998, and 49 C.F.R. 173.24, 173.24a, and 173.24b;

(b) The transportation of an agricultural product to or from a farm, within one hundred fifty miles of the farm, is excepted from the requirements in 49 C.F.R. part 172, subparts G (emergency response information) and H (training), and from the specific packaging requirements of subsection (1) of this section when:

(i) The agricultural product is transported by a farmer who is an intrastate private motor carrier;

(ii) The total amount of agricultural product being transported on a single vehicle does not exceed:

(A) Sixteen thousand ninety-four pounds of ammonium nitrate fertilizer properly classed as Division 5.1, PGIII, in a bulk packaging; or

(B) Five hundred two gallons for liquids or gases, or five thousand seventy pounds for solids, of any other agricultural product;

(iii) The packaging conforms to the requirements of state law and is specifically authorized for transportation of the agricultural product by state law and such state law has been in effect on or before July 1, 1998; and

(iv) Each person having any responsibility for transporting the agricultural product or preparing the agricultural product for shipment has been instructed in the applicable requirements of the parts, subparts, and sections of Title 49 of the Code of Federal Regulations adopted in this section; and

(c) Formulated liquid agricultural products in specification packagings of fifty-eight-gallon capacity or less, with closures manifolded to a closed mixing system and equipped with positive dry disconnect devices, may be transported by a private motor carrier between a final distribution point and an ultimate point of application or for loading aboard an airplane for aerial application.

(3) Exceptions for nonspecification packagings used in intrastate transportation:

(a) Nonspecification cargo tanks for petroleum products: Notwithstanding requirements for specification packagings in 49 C.F.R. part 173, subpart F, and 49 C.F.R. parts 178 and 180, a nonspecification metal tank permanently secured to a transport vehicle and protected against leakage or damage in the event of a turnover, having a capacity of less than three thousand five hundred gallons, may be used by an intrastate motor carrier for transportation of a flammable liquid petroleum product in accordance with subdivision (c) of this subsection;

(b) Permanently secured nonbulk tanks for petroleum products: Notwithstanding requirements for specification packagings in 49 C.F.R. part 173, subpart F, and 49 C.F.R. parts 178 and 180, a nonspecification metal tank permanently secured to a transport vehicle and protected against leakage or damage in the event of a turnover, having a capacity of less than one hundred nineteen gallons, may be used by an intrastate motor carrier for transportation of a flammable liquid petroleum product in accordance with subdivision (c) of this subsection; and

(c) Additional requirements: A packaging used pursuant to subdivision (a) or (b) of this subsection must:

(i) Be operated by an intrastate motor carrier and in use as a packaging for hazardous material before July 1, 1998;

(ii) Be operated in conformance with the requirements of the State of Nebraska;

(iii) Be specifically authorized by state law in effect before July 1, 1998, for use as a packaging for the hazardous material being transported and by 49 C.F.R. 173.24, 173.24a, and 173.24b;

(iv) Be offered for transportation and transported in conformance with all other applicable requirements of the hazardous material regulations;

(v) Not be used to transport a flammable cryogenic liquid, hazardous substance, hazardous waste, or marine pollutant as defined in 49 C.F.R. 171.8; and

(vi) On and after July 1, 2000, for a tank authorized under subdivision (a) or (b) of this subsection, conform to all requirements in 49 C.F.R. part 180, except for 49 C.F.R. 180.405(g), in the same manner as required for a United States Department of Transportation specification MC306 cargo tank motor vehicle.

(4) For purposes of this section:

(a) Agricultural product means a hazardous material, other than a hazardous waste, whose end use directly supports the production of an agricultural commodity, including, but not limited to, a fertilizer, pesticide, soil amendment, or fuel. An agricultural product is limited to a material in Class 3 (Flammable Liquids), Class 8 (Corrosives), or Class 9 (Miscellaneous), Division 2.1 (Flammable Gas), Division 2.2 (Nonflammable Gas), Division 5.1 (Oxidizers), or Division 6.1 (Poisons), or an ORM-D material (Consumer Commodity), as defined in 49 C.F.R. 171.8;

(b) Bulk package means a packaging, including a transport vehicle or freight container, in which hazardous materials are loaded with no other intermediate form of containment and which has:

(i) A maximum capacity greater than one hundred nineteen gallons as a receptacle for a liquid;

(ii) A maximum net mass greater than eight hundred eighty-two pounds and a maximum capacity greater than one hundred nineteen gallons as a receptacle for a solid; or

(iii) A water capacity greater than one thousand pounds as a receptacle for a gas, pursuant to standards set forth in 49 C.F.R. 173.115;

(c) Farmer means a person engaged in the production or raising of crops, poultry, or livestock; and

(d) Private motor carrier means a person or persons engaged in the transportation of persons or product while in commerce, but not for hire.

Source: Laws 1986, LB 301, § 2; Laws 1987, LB 538, § 1; Laws 1988, LB 884, § 2; Laws 1990, LB 980, § 30; Laws 1991, LB 854, § 4; Laws 1993, LB 410, § 2; Laws 1994, LB 1061, § 6; Laws 1995, LB 461, § 2; Laws 1996, LB 938, § 5; Laws 1997, LB 722, § 2; Laws 1998, LB 1056, § 9; Laws 1999, LB 161, § 2; Laws 2000, LB 1361, § 12; Laws 2001, LB 375, § 2; Laws 2002, LB 499, § 6; Laws 2003, LB 480, § 3; Laws 2004, LB 878, § 2; Laws 2005, LB 83, § 2; Laws 2006, LB 1007, § 15; Laws 2007, LB239, § 9; Laws 2008, LB756, § 29; Laws 2009, LB48, § 2; Laws 2009, LB331, § 16.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB48, section 2, with LB331, section 16, to reflect all amendments.

Note: Changes made by LB48 became effective March 6, 2009. Changes made by LB331 became operative August 30, 2009.

75-369.03 Violations; civil penalty; referral to federal agency or Public Service Commission; when.

(1) The Superintendent of Law Enforcement and Public Safety may issue an order imposing a civil penalty against a motor carrier transporting persons or

property in interstate commerce for a violation of sections 75-392 to 75-399 or against a motor carrier transporting persons or property in intrastate commerce for a violation or violations of section 75-363 or 75-364 based upon an inspection conducted pursuant to section 75-366 in an amount which shall not exceed five hundred dollars for any single violation in any proceeding or series of related proceedings against any person or motor carrier as defined in 49 C.F.R. part 390.5 as adopted in section 75-363.

(2) The superintendent shall issue an order imposing a civil penalty in an amount not to exceed ten thousand dollars against a motor carrier transporting persons or property in interstate commerce for a violation of subsection (3) of section 60-4,162 based upon a conviction of such a violation.

(3) The superintendent shall issue an order imposing a civil penalty against a driver operating a commercial motor vehicle, as defined in section 60-465, that requires a commercial driver's license, in violation of an out-of-service order. The civil penalty shall be in an amount not less than two thousand five hundred dollars but not more than five thousand dollars for a first violation and not less than five thousand one dollars but not more than seven thousand five hundred dollars for a second or subsequent violation.

(4) The superintendent shall issue an order imposing a civil penalty against a motor carrier who knowingly allows, requires, permits, or authorizes the operation of a commercial motor vehicle, as defined in section 60-465, that requires a commercial driver's license, in violation of an out-of-service order. The civil penalty shall be not less than two thousand seven hundred fifty dollars but not more than twenty-five thousand dollars per violation.

(5) Upon the discovery of any violation by a motor carrier transporting persons or property in interstate commerce of section 75-307, 75-363, or 75-364 or sections 75-392 to 75-399 based upon an inspection conducted pursuant to section 75-366, the superintendent shall immediately refer such violation to the appropriate federal agency for disposition, and upon the discovery of any violation by a motor carrier transporting persons or property in intrastate commerce of section 75-307 based upon such inspection, the superintendent shall refer such violation to the Public Service Commission for disposition.

Source: Laws 1994, LB 358, § 3; Laws 1996, LB 1218, § 62; Laws 2002, LB 499, § 7; Laws 2006, LB 1007, § 20; Laws 2007, LB358, § 14; Laws 2008, LB845, § 2; Laws 2009, LB331, § 17.
Operative date August 30, 2009.

(j) DIVISION OF MOTOR CARRIER SERVICES

75-386 Division of Motor Carrier Services; duties.

The Division of Motor Carrier Services shall:

(1) Foster, promote, and preserve the motor carrier industry of the State of Nebraska;

(2) Protect and promote the public health and welfare of the citizens of the state by ensuring that the motor carrier industry is operated in an efficient and safe manner;

(3) Promote and provide for efficient and uniform governmental oversight of the motor carrier industry;

(4) Promote financial responsibility on the part of motor carriers operating in and through the State of Nebraska;

(5) Administer all provisions of the International Fuel Tax Agreement Act, the International Registration Plan Act, and the unified carrier registration plan and agreement pursuant to sections 75-392 to 75-399;

(6) Provide for the issuance of certificates of title to apportioned registered motor vehicles as provided for by subsection (6) of section 60-144; and

(7) Carry out such other duties and responsibilities as directed by the Legislature.

Source: Laws 1996, LB 1218, § 2; Laws 2003, LB 563, § 41; Laws 2005, LB 276, § 110; Laws 2005, LB 284, § 4; Laws 2007, LB358, § 17; Laws 2009, LB331, § 18.
Operative date August 30, 2009.

Cross References

International Fuel Tax Agreement Act, see section 66-1401.
International Registration Plan Act, see section 60-3,192.

75-390 Repealed. Laws 2009, LB 331, § 28.

(l) UNIFIED CARRIER REGISTRATION PLAN AND AGREEMENT

75-393 Unified carrier registration plan and agreement; director; powers.

The director may participate in the unified carrier registration plan and agreement pursuant to the Unified Carrier Registration Act of 2005, 49 U.S.C. 13908, as the act existed on January 1, 2009, and may file on behalf of this state the plan required by such plan and agreement for enforcement of the act in this state.

Source: Laws 2007, LB358, § 2; Laws 2009, LB331, § 19.
Operative date August 30, 2009.

75-394 Registration under unified carrier registration plan and agreement; fees; authorization to accept registration.

(1) No foreign or domestic motor carrier, private carrier, leasing company, broker, or freight forwarder shall operate any motor vehicle on a highway of this state or in interstate commerce without first being registered in this state or another jurisdiction pursuant to the unified carrier registration plan and agreement and having paid all fees required under the unified carrier registration plan and agreement for such registration. A motor carrier, private carrier, leasing company, broker, or freight forwarder with its principal place of business in this state shall register in this state with and pay its required registration fees to the division. The division shall remit the fees to the State Treasurer for credit to the General Fund.

(2) The division may accept the registration of and fees required from a foreign or domestic motor carrier, private carrier, leasing company, broker, or freight forwarder that maintains an office in this state but does not have its principal place of business in the United States or that maintains an office in this state but has its principal place of business in another jurisdiction that does not participate in the unified carrier registration plan and agreement. The

division shall remit the fees to the State Treasurer for credit to the General Fund.

Source: Laws 2007, LB358, § 3; Laws 2009, LB331, § 20.
Operative date August 30, 2009.

75-395 Repealed. Laws 2009, LB 331, § 28.

75-396 Rules and regulations.

The director may adopt and promulgate rules and regulations to carry out the unified carrier registration plan and agreement.

Source: Laws 2007, LB358, § 5; Laws 2009, LB331, § 21.
Operative date August 30, 2009.

75-397 Forms and electronic systems to allow filings.

The director may prescribe the appropriate forms and implement the appropriate electronic systems to allow filings with the division pursuant to the unified carrier registration plan and agreement.

Source: Laws 2007, LB358, § 6; Laws 2009, LB331, § 22.
Operative date August 30, 2009.

75-398 Violations; penalty.

Any foreign or domestic motor carrier, private carrier, leasing company, broker, or freight forwarder operating any motor vehicle in violation of sections 75-392 to 75-399, any rule or regulation adopted and promulgated pursuant to such sections, or any order of the division issued pursuant to such sections is guilty of a Class IV misdemeanor and shall also be subject to section 75-369.03. Each day of the violation constitutes a separate offense.

Source: Laws 2007, LB358, § 7; Laws 2009, LB331, § 23.
Operative date August 30, 2009.

CHAPTER 76
REAL PROPERTY

ARTICLE 2
CONVEYANCES

(d) FORMALITIES OF EXECUTION

(d) FORMALITIES OF EXECUTION

76-214 Deed, memorandum of contract, or land contract; recorded; tax statement required; access.

(1) Every grantee who has a deed to real estate recorded and every purchaser of real estate who has a memorandum of contract or land contract recorded shall, at the time such deed, memorandum of contract, or land contract is presented for recording, file with the register of deeds a completed statement as prescribed by the Tax Commissioner. For all deeds and all memoranda of contract and land contracts recorded on and after January 1, 2001, the statement shall not require the social security number of the grantee or purchaser or the federal employer identification number of the grantee or purchaser. This statement may require the recitation of any information contained in the deed, memorandum of contract, or land contract, the total consideration paid, the amount of the total consideration attributable to factors other than the purchase of the real estate itself, and other factors which may influence the transaction. This statement shall be signed and filed by the grantee, the purchaser, or his or her authorized agent. The register of deeds shall forward the statement to the county assessor. If the grantee or purchaser fails to furnish the prescribed statement, the register of deeds shall not record the deed, memorandum of contract, or land contract. The register of deeds shall indicate on the statement the book and page or computer system reference where the deed, memorandum of contract, or land contract is recorded and shall immediately forward the statement to the county assessor. The county assessor shall process the statement according to the instructions of the Property Tax Administrator and shall, pursuant to the rules and regulations of the Tax Commissioner, forward the statement to the Tax Commissioner.

(2) Any person shall have access to the statements at the office of the Tax Commissioner, county assessor, or register of deeds if the statements are available and have not been disposed of pursuant to the records retention and disposition schedule as approved by the State Records Administrator.

Source: Laws 1917, c. 224, § 1, p. 549; C.S.1922, § 5662; C.S.1929, § 76-268; R.S.1943, § 76-214; Laws 1965, c. 456, § 1, p. 1450;

Laws 1965, c. 457, § 1, p. 1451; Laws 1981, LB 28, § 1; Laws 1981, LB 179, § 1; Laws 1984, LB 679, § 13; Laws 1985, LB 273, § 37; Laws 1986, LB 1027, § 200; Laws 1994, LB 902, § 13; Laws 1994, LB 1275, § 6; Laws 1995, LB 490, § 26; Laws 1995, LB 527, § 1; Laws 2000, LB 968, § 21; Laws 2007, LB334, § 12; Laws 2008, LB965, § 1; Laws 2009, LB348, § 1.
Effective date August 30, 2009.

Cross References

Violation of section, penalty, see section 76-215.

ARTICLE 27
NEBRASKA FORECLOSURE PROTECTION ACT

Section
76-2711. Homeowner, defined.

76-2711 Homeowner, defined.

Homeowner means the owner of a residence in foreclosure, including a vendee under a contract for deed to real property as defined in section 45-1002.

Source: Laws 2008, LB123, § 11; Laws 2009, LB328, § 52.
Effective date April 23, 2009.

ARTICLE 30
WIND AGREEMENTS

Section
76-3001. Terms, defined.
76-3002. Wind agreement; limit on term; termination, when.
76-3003. Wind agreement; compliance with other law.
76-3004. Production of wind-generated energy; restriction on severance from surface estate.

76-3001 Terms, defined.

For purposes of sections 76-3001 to 76-3004:

(1) Decommissioning security means a security instrument that is posted or given prior to construction by the wind developer to ensure sufficient funding is available for removal of a wind energy conversion system and reclamation at the end of the useful life of such a system; and

(2) Wind agreement means a right, whether or not stated in the form of a restriction, easement, covenant, or condition, in any deed, wind easement, wind option, or lease or lease option securing land for the study or production of wind-generated energy or any other instrument executed by or on behalf of any owner of land or air space for the purpose of allowing another party to study the potential for, or to develop, a wind energy conversion system as defined in section 66-909.02 on the land or in the air space.

Source: Laws 2009, LB568, § 1.
Effective date August 30, 2009.

76-3002 Wind agreement; limit on term; termination, when.

A wind agreement shall run with the land benefited and burdened and shall terminate upon the conditions stated in the wind agreement, except that the initial term of a wind agreement shall not exceed forty years. A wind agreement shall terminate if development of a wind energy conversion system as defined in section 66-909.02 has not commenced within ten years after the effective date of the wind agreement, except that this period may be extended by mutual agreement of the parties to the wind agreement.

Source: Laws 2009, LB568, § 2.
Effective date August 30, 2009.

76-3003 Wind agreement; compliance with other law.

A wind agreement shall comply with section 66-911.01.

Source: Laws 2009, LB568, § 3.
Effective date August 30, 2009.

76-3004 Production of wind-generated energy; restriction on severance from surface estate.

No interest in any resource located on a tract of land and associated with the production or potential production of wind-generated energy on the tract of land may be severed from the surface estate.

Source: Laws 2009, LB568, § 4.
Effective date August 30, 2009.

CHAPTER 77
REVENUE AND TAXATION

ARTICLE 2
PROPERTY TAXABLE, EXEMPTIONS, LIENS

77-201 Property taxable; valuation; classification.

(1) Except as provided in subsections (2) through (4) of this section, all real property in this state, not expressly exempt therefrom, shall be subject to taxation and shall be valued at its actual value.

(2) Agricultural land and horticultural land as defined in section 77-1359 shall constitute a separate and distinct class of property for purposes of

property taxation, shall be subject to taxation, unless expressly exempt from taxation, and shall be valued at seventy-five percent of its actual value.

(3) Agricultural land and horticultural land actively devoted to agricultural or horticultural purposes which has value for purposes other than agricultural or horticultural uses and which meets the qualifications for special valuation under section 77-1344 shall constitute a separate and distinct class of property for purposes of property taxation, shall be subject to taxation, and shall be valued for taxation at seventy-five percent of its special value as defined in section 77-1343.

(4) Historically significant real property which meets the qualifications for historic rehabilitation valuation under sections 77-1385 to 77-1394 shall be valued for taxation as provided in such sections.

(5) Tangible personal property, not including motor vehicles registered for operation on the highways of this state, shall constitute a separate and distinct class of property for purposes of property taxation, shall be subject to taxation, unless expressly exempt from taxation, and shall be valued at its net book value. Tangible personal property transferred as a gift or devise or as part of a transaction which is not a purchase shall be subject to taxation based upon the date the property was acquired by the previous owner and at the previous owner's Nebraska adjusted basis. Tangible personal property acquired as replacement property for converted property shall be subject to taxation based upon the date the converted property was acquired and at the Nebraska adjusted basis of the converted property unless insurance proceeds are payable by reason of the conversion. For purposes of this subsection, (a) converted property means tangible personal property which is compulsorily or involuntarily converted as a result of its destruction in whole or in part, theft, seizure, requisition, or condemnation, or the threat or imminence thereof, and no gain or loss is recognized for federal or state income tax purposes by the holder of the property as a result of the conversion and (b) replacement property means tangible personal property acquired within two years after the close of the calendar year in which tangible personal property was converted and which is, except for date of construction or manufacture, substantially the same as the converted property.

Source: Laws 1903, c. 73, § 12, p. 390; R.S.1913, § 6300; Laws 1921, c. 133, art. II, § 1, p. 546; C.S.1922, § 5820; C.S.1929, § 77-201; Laws 1939, c. 102, § 1, p. 461; C.S.Supp.,1941, § 77-201; R.S. 1943, § 77-201; Laws 1953, c. 265, § 1, p. 877; Laws 1955, c. 289, § 2, p. 918; Laws 1957, c. 320, § 2, p. 1138; Laws 1959, c. 353, § 1, p. 1244; Laws 1979, LB 187, § 191; Laws 1985, LB 30, § 2; Laws 1985, LB 271, § 2; Laws 1986, LB 816, § 1; Laws 1989, LB 361, § 5; Laws 1991, LB 404, § 2; Laws 1991, LB 320, § 2; Laws 1992, LB 1063, § 52; Laws 1992, Second Spec. Sess., LB 1, § 50; Laws 1997, LB 269, § 34; Laws 1997, LB 270, § 11; Laws 1997, LB 271, § 38; Laws 2004, LB 973, § 6; Laws 2005, LB 66, § 11; Laws 2006, LB 808, § 24; Laws 2006, LB 968, § 2; Laws 2007, LB166, § 3; Laws 2009, LB166, § 4.
Effective date February 27, 2009.

ARTICLE 3
DEPARTMENT OF REVENUE

Section
77-373.01. Department of Labor and Department of Revenue; statistical compilation; confidentiality; disclosure authorized.

77-373.01 Department of Labor and Department of Revenue; statistical compilation; confidentiality; disclosure authorized.

(1) The Department of Labor and the Department of Revenue shall use the codes under the North American Industry Classification System for the compilation and publication of statistics rather than codes under the Standard Industrial Classification System.

For the sole purpose of determining or updating the proper code under the appropriate industrial classification system, the Department of Labor and the Department of Revenue may disclose to the other department identification information about taxpayers conducting a business in this state. The information disclosed shall be strictly limited to the name, address, and federal employer identification number or numbers of the taxpayer and the code under the industrial classification system.

(2) Notwithstanding sections 77-2711 and 77-27,119 and for the sole purpose of administration of the Contractor Registration Act and the contractor data base provisions of section 48-2117, the Department of Labor and the Department of Revenue may disclose to the other department identification information about taxpayers conducting a business in this state. The information disclosed shall be limited to the name, address, and federal employer identification number or numbers of the taxpayer.

(3) The disclosures allowed under this section may be made notwithstanding any other provision of law of this state regarding disclosure of information by either department. Any information received by either department under this section shall be considered confidential by the receiving department, and any employee who discloses such information other than as specifically allowed by this section or other laws of this state shall be subject to the penalties normally imposed on employees who improperly disclose information.

Source: Laws 1997, LB 875, § 19; Laws 2009, LB162, § 8.
Operative date January 1, 2010.

Cross References

Contractor Registration Act, see section 48-2101.

ARTICLE 4
TRAINING AND CERTIFICATION OF COUNTY ASSESSORS

Section
77-421. Certification as county assessor; applicants; forms; examination; fee.

77-421 Certification as county assessor; applicants; forms; examination; fee.

(1) The Property Tax Administrator shall, in February, May, August, and November of each year, hold an examination of applicants for certification as county assessor. An applicant for the examination shall, not less than ten days

before an examination, present to the Property Tax Administrator a written application on forms provided by the Property Tax Administrator. Such application shall not be considered by the Property Tax Administrator unless accompanied by a payment of a fee to the order of the Tax Commissioner. The fees shall be credited to the Department of Revenue Property Assessment Division Cash Fund. The amount of such fee shall be determined annually by the Tax Commissioner and shall be sufficient to cover the costs of the administration of the examination. Such examination shall be written and shall be of such character as fairly to test and determine the qualifications, fitness, and ability of the person tested actually to perform the duties of county assessor. The Property Tax Administrator shall prepare such examination.

(2) When the office of county assessor is vacant, the county board may for good cause request a certification examination from the Property Tax Administrator at a time different from those set out in subsection (1) of this section. The request shall be in writing and shall state the basis for the certification examination. The Property Tax Administrator shall within ten days after receipt of the request for certification review the request and send notice of approval or disapproval to the county board. If approved, the Property Tax Administrator shall state the date, time, and place of the requested certification examination.

Source: Laws 1969, c. 623, § 1, p. 2520; Laws 1983, LB 245, § 1; Laws 1986, LB 1105, § 1; Laws 1995, LB 490, § 52; Laws 1997, LB 270, § 22; Laws 1999, LB 36, § 12; Laws 2000, LB 968, § 34; Laws 2007, LB334, § 29; Laws 2009, LB166, § 5.
Effective date February 27, 2009.

ARTICLE 6

ASSESSMENT AND EQUALIZATION OF RAILROAD PROPERTY

(b) CAR LINE COMPANIES

Section
77-680. Car line companies; annual statement.

(b) CAR LINE COMPANIES

77-680 Car line companies; annual statement.

The president or other chief officer or owner of every car line company shall, on or before June 1 of each year, furnish to the Property Tax Administrator, on forms prescribed by the Tax Commissioner, a statement showing (1) the aggregate number of miles made by each class of its cars on the several lines of railroad in this state during the preceding year ending December 31, (2) the aggregate number of miles made by each class of its cars on all railroad lines during the preceding year ending December 31, (3) the total number of each type of its cars, (4) the taxable value of its cars, and (5) the number of its cars required to make the total mileage in this state. For good cause shown, the Property Tax Administrator may allow an extension of time in which to file such statement.

Source: Laws 1992, LB 1063, § 65; Laws 1992, LB 719A, § 206; Laws 1993, LB 734, § 47; Laws 1995, LB 490, § 75; Laws 2009, LB166, § 6.
Effective date February 27, 2009.

ARTICLE 8
PUBLIC SERVICE ENTITIES

Section
77-801. Public service entity; furnish information; confidentiality.

77-801 Public service entity; furnish information; confidentiality.

All public service entities shall, on or before April 15 of each year, furnish a statement specifying such information as may be required by the Property Tax Administrator on forms prescribed by the Tax Commissioner to determine and distribute the entity's total taxable value including the franchise value. All information reported by the public service entities, not available from any other public source, and any memorandum thereof shall be confidential and available to taxing officials only. For good cause shown, the Property Tax Administrator may allow an extension of time in which to file such statement. Such extension shall not exceed fifteen days after April 15.

The returns of public service entities shall not be held to be conclusive as to the taxable value of the property, but the Property Tax Administrator shall, from all the information which he or she is able to obtain, find the taxable value of all such property, including tangible property and franchises, and shall assess such property on the same basis as other property is required to be assessed.

The county assessor shall assess all nonoperating property of any public service entity. A public service entity operating within the State of Nebraska shall, on or before January 1 of each year, report to the county assessor of each county in which it has situs all nonoperating property belonging to such entity which is not subject to assessment and assessed by the Property Tax Administrator under section 77-802.

Source: Laws 1903, c. 73, § 68, p. 408; Laws 1903, c. 73, § 76, p. 411; Laws 1903, c. 73, § 80, p. 412; Laws 1911, c. 104, § 6, p. 373; R.S.1913, §§ 6358, 6366, 6370; Laws 1921, c. 133, art. IX, § 1, p. 586; C.S.1922, § 5890; C.S.1929, § 77-801; R.S.1943, § 77-801; Laws 1981, LB 179, § 8; Laws 1983, LB 353, § 1; Laws 1985, LB 269, § 2; Laws 1995, LB 490, § 87; Laws 1997, LB 270, § 37; Laws 2000, LB 968, § 38; Laws 2004, LB 973, § 13; Laws 2009, LB166, § 7.
Effective date February 27, 2009.

ARTICLE 13
ASSESSMENT OF PROPERTY

Section
77-1327. Legislative intent; Property Tax Administrator; sales file; studies; powers and duties.
77-1339. Joint or cooperative performance of assessment function; two or more counties; agreement; contents; approval by Tax Commissioner.
77-1340. County assessment function by Property Tax Administrator; procedure; cost; effect; billing of county; county board reassume assessment function; appointment of county assessor; transfer of property; employees.
77-1340.01. Repealed. Laws 2009, LB 121, § 15.
77-1340.02. Repealed. Laws 2009, LB 121, § 15.
77-1340.03. Repealed. Laws 2009, LB 121, § 15.

77-1327 Legislative intent; Property Tax Administrator; sales file; studies; powers and duties.

(1) It is the intent of the Legislature that accurate and comprehensive information be developed by the Property Tax Administrator and made accessible to the taxing officials and property owners in order to ensure the uniformity and proportionality of the assessments of real property valuations in the state in accordance with law and to provide the statistical and narrative reports pursuant to section 77-5027.

(2) All transactions of real property for which the statement required in section 76-214 is filed shall be available for development of a sales file by the Property Tax Administrator. All transactions with stated consideration of more than one hundred dollars or upon which more than two dollars and twenty-five cents in documentary stamp taxes are paid shall be considered sales. All sales shall be deemed to be arm's length transactions unless determined to be otherwise under professionally accepted mass appraisal techniques. The Department of Revenue shall not overturn a determination made by a county assessor regarding the qualification of a sale unless the department reviews the sale and determines through the review that the determination made by the county assessor is incorrect.

(3) The Property Tax Administrator annually shall make and issue comprehensive assessment ratio studies of the average level of assessment, the degree of assessment uniformity, and the overall compliance with assessment requirements for each major class of real property subject to the property tax in each county. The comprehensive assessment ratio studies shall be developed in compliance with professionally accepted mass appraisal techniques and shall employ such statistical analysis as deemed appropriate by the Property Tax Administrator, including measures of central tendency and dispersion. The comprehensive assessment ratio studies shall be based upon the sales file as developed in subsection (2) of this section and shall be used by the Property Tax Administrator for the analysis of the level of value and quality of assessment for purposes of section 77-5027 and by the Property Tax Administrator in establishing the adjusted valuations required by section 79-1016. Such studies may also be used by assessing officials in establishing assessed valuations.

(4) For purposes of determining the level of value of agricultural and horticultural land subject to special valuation under sections 77-1343 to 77-1347.01, the Property Tax Administrator shall annually make and issue a comprehensive study developed in compliance with professionally accepted mass appraisal techniques to establish the level of value if in his or her opinion the level of value cannot be developed through the use of the comprehensive assessment ratio studies developed in subsection (3) of this section.

(5) The Property Tax Administrator may require assessors and other taxing officials to report data on the assessed valuation and other features of the property assessment for such periods and in such form and content as the Property Tax Administrator shall deem appropriate. The Property Tax Administrator shall so construct and maintain the system used to collect and analyze the data to enable him or her to make intracounty comparisons of assessed valuation, including school districts, as well as intercounty comparisons of assessed valuation, including school districts. The Property Tax Administrator shall include analysis of real property sales pursuant to land contracts and similar transfers at the time of execution of the contract or similar transfer.

Source: Laws 1969, c. 622, § 3, p. 2513; Laws 1979, LB 187, § 207; Laws 1980, LB 834, § 61; Laws 1992, LB 719A, § 166; Laws 1994, LB 1275, § 11; Laws 1995, LB 452, § 19; Laws 1995, LB 490, § 124; Laws 1999, LB 36, § 29; Laws 1999, LB 194, § 21; Laws 2001, LB 170, § 7; Laws 2002, LB 994, § 14; Laws 2005, LB 40, § 8; Laws 2007, LB334, § 65; Laws 2009, LB166, § 8.
Effective date February 27, 2009.

77-1339 Joint or cooperative performance of assessment function; two or more counties; agreement; contents; approval by Tax Commissioner.

(1) Any two or more counties may enter into an agreement for joint or cooperative performance of the assessment function.

(2) Such agreement shall provide for:

(a) The division, merger, or consolidation of administrative functions between or among the parties, or the performance thereof by one county on behalf of all the parties;

(b) The financing of the joint or cooperative undertaking;

(c) The rights and responsibilities of the parties with respect to the direction and supervision of work to be performed under the agreement;

(d) The duration of the agreement and procedures for amendment or termination thereof; and

(e) Any other necessary or appropriate matters.

(3) The agreement may provide for the suspension of the powers and duties of the office of county assessor in any one or more of the parties.

(4) Unless the agreement provides for the performance of the assessment function by the assessor of one county for and on behalf of all other counties party thereto, the agreement shall prescribe the manner of electing the assessor, and the employees of the office, who shall serve pursuant to the agreement. Each county party to the agreement shall be represented in the procedure for choosing such assessor. No person shall be appointed assessor pursuant to an agreement who could not be so appointed for a single county. Except to the extent made necessary by the multicounty character of the assessment agency,

qualifications for employment as assessor or in the assessment agency and terms and conditions of work shall be similar to those for the personnel of a single county assessment agency. Any county may include in any one or more of its employee benefit programs an assessor serving pursuant to an agreement made under this section and the employees of the assessment agency. As nearly as practicable, such inclusion shall be on the same basis as for similar employees of a single county only. An agreement providing for the joint or cooperative performance of the assessment function may provide for such assessor and employee coverage in county employee benefit programs.

(5) No agreement made pursuant to the provisions of this section shall take effect until it has been approved in writing by the Tax Commissioner.

(6) Copies of any agreement made pursuant to the provisions of this section, and of any amendment thereto, shall be filed in the office of the Tax Commissioner and county board of the counties involved.

Source: Laws 1969, c. 622, § 15, p. 2517; Laws 1995, LB 490, § 132; Laws 2007, LB334, § 70; Laws 2009, LB121, § 5.
Operative date July 1, 2013.

77-1340 County assessment function by Property Tax Administrator; procedure; cost; effect; billing of county; county board reassume assessment function; appointment of county assessor; transfer of property; employees.

(1) The county board of a county may, by resolution, request the Property Tax Administrator to assume the duties, responsibilities, and authority of the county assessor and to perform the same in and for the county. Such a resolution must be adopted on or before October 31, 2006, and every other year thereafter.

(2) If the Property Tax Administrator finds that direct state performance of the duties, responsibilities, and authority of the county assessor will be either (a) necessary or desirable for the economic and efficient performance thereof or (b) necessary or desirable for improving the quality of assessment in the state, he or she may recommend assumption of such duties, responsibilities, and authority. The Tax Commissioner shall decide whether to recommend assumption and deliver such recommendation to the Governor and the Legislature by December 15, 2006, and every other year thereafter.

(3) The Tax Commissioner may recommend assuming the duties, responsibilities, and authority of the county assessor or reject assuming such duties, responsibilities, and authority. If the Tax Commissioner rejects the request, the assessment function shall not be transferred and the county may make another request.

(4) Upon a recommendation by the Tax Commissioner that the assumption of the assessment function should be undertaken according to the criteria in subsection (2) of this section, the Tax Commissioner shall request from the Legislature a sufficient appropriation in the next regular session of the Legislature following the recommendation to assume the assessment function. If the appropriation is not made, the Tax Commissioner shall notify the county on or before July 1 that the assessment function will not be undertaken. If a sufficient appropriation is made, the Tax Commissioner shall notify the county on or before July 1 that the assessment function will be undertaken beginning the next following July 1.

(5) If the Tax Commissioner recommends assumption of the assessment function and the Legislature makes an appropriation which the Tax Commissioner determines is sufficient to undertake the assumption, then commencing on the second July 1 after the adoption of the resolution by the county board, (a) the Property Tax Administrator shall undertake and perform the assessment function and all other duties and functions of the county assessor's office, including appraisal and reappraisal, (b) the office and functions of the county assessor shall be suspended, and (c) the performance of the assessment function by the Property Tax Administrator shall be deemed performance by the county assessor. Upon the assumption of the assessment function by the Property Tax Administrator, the term of office of the incumbent county assessor shall terminate and the county need no longer elect a county assessor pursuant to section 32-519. At that time, the county assessor and the employees of the county assessor's office shall become state employees with the status of newly hired employees except as provided in section 77-1340.02. No transferred county assessor or employee shall incur a loss of income or the right to participate in state-sponsored benefits as a result of becoming a state employee with the status of a newly hired employee pursuant to this section.

(6) Beginning July 1, 2010, the Property Tax Administrator shall bill each county for which the Property Tax Administrator has assumed the assessment function under this section for the services rendered on a quarterly basis. Beginning July 1, 2010, through June 30, 2011, the Property Tax Administrator shall bill twenty-five percent of the cost of the services rendered; beginning July 1, 2011, through June 30, 2012, the Property Tax Administrator shall bill fifty percent of the cost of the services rendered; and beginning July 1, 2012, through June 30, 2013, the Property Tax Administrator shall bill seventy-five percent of the cost of the services rendered. Reimbursements to the Department of Revenue shall be credited to the Department of Revenue Property Assessment Division Cash Fund.

(7) The county board of a county may, by resolution, reassume the assessment function prior to November 1, 2009, for fiscal year 2010-11, prior to September 1, 2010, for fiscal year 2011-12, and prior to September 1, 2011, for fiscal year 2012-13. The county board shall appoint an individual with a valid assessor's certificate to the position of county assessor. The appointment shall be effective July 1 of the year following the adoption of the resolution. On July 1 of such year, the appointed county assessor shall assume the title and perform the assessment functions and any other duties mandated of the office of county assessor. The appointed assessor shall continue to perform the county assessor's duties until an assessor is elected at the next election. At the close of business on June 30 of the year following the adoption of the resolution, the Property Tax Administrator shall cease his or her performance of the county assessment function. The Property Tax Administrator shall at that time transfer all books, files, and similar records with regard to the county assessment function of the county and all furniture, computers, and other equipment and property used by the state to perform the county assessment function, other than motor vehicles, to the county assessor. All contracts of the Department of Revenue pertaining to the operation of the county assessment function shall be assumed by the county until the expiration of the contract. On July 1 of the year following the adoption of the resolution, the employees of the Department of

Revenue involved in the performance of the county assessment function in that county shall become county employees by operation of law.

Source: Laws 1969, c. 622, § 16, p. 2519; Laws 1995, LB 490, § 133; Laws 1996, LB 1085, § 53; Laws 1997, LB 269, § 37; Laws 2002, LB 994, § 15; Laws 2005, LB 291, § 1; Laws 2007, LB334, § 71; Laws 2009, LB121, § 6.

Note: This section was repealed by Laws 2009, LB121, section 15, operative on July 1, 2013.

77-1340.01 Repealed. Laws 2009, LB 121, § 15.

Note: This section was repealed by Laws 2009, LB121, section 15, operative on July 1, 2013.

77-1340.02 Repealed. Laws 2009, LB 121, § 15.

Note: This section was repealed by Laws 2009, LB121, section 15, operative on July 1, 2013.

77-1340.03 Repealed. Laws 2009, LB 121, § 15.

Note: This section was repealed by Laws 2009, LB121, section 15, operative on July 1, 2013.

77-1340.04 Property Tax Administrator; relinquish property tax function; employees; transfer of property; appointment of county assessor; allocation of costs; contracts.

(1) On July 1, 2013, the Property Tax Administrator shall relinquish the property assessment function in all counties that transferred the assessment function to the Property Tax Administrator and have not reassumed the assessment function prior to such date.

(2) On July 1, 2013, the employees of the Department of Revenue involved in the performance of the county assessment function shall become county employees by operation of law.

(3) At the close of business on June 30, 2013, the Property Tax Administrator shall cease his or her performance of the county assessment function and the county assessor appointed pursuant to subsection (4) of this section shall assume the county assessment function. The Property Tax Administrator shall at that time transfer all books, files, and similar records with regard to the county assessment function of the county and all furniture, computers, and other equipment and property used by the state to perform the county assessment function, other than motor vehicles, to the county assessor.

(4) In such counties, the county board shall appoint an individual with a valid assessor's certificate to the position of county assessor. The appointment shall be effective July 1, 2013. On July 1, 2013, the appointed county assessor shall assume the title and perform the assessment functions and any other duties mandated of the office of county assessor. The appointed assessor shall continue to perform the county assessor's duties until an assessor is elected at the next election.

(5) The Property Tax Administrator shall provide to each county board of a county that transferred the assessment function to the Property Tax Administrator on or before October 1, 2009, a line-item allocation of its total cost of the assessment function for the fiscal year ending June 30, 2009. This allocation of costs shall also identify the costs attributable to those employees that perform duties in more than one county.

(6) All contracts of the Department of Revenue pertaining to the operation of the county assessment function shall be assumed by the county until the expiration of the contract.

(7) Counties in which there are employees of the department who provide services to more than one county shall enter into an agreement pursuant to section 77-1339 for the continued performance of the services provided by the employee. No agreement pursuant to section 77-1339 is necessary if one of the counties in which the employee is providing services agrees to retain the employee as a permanent full-time employee.

Source: Laws 2009, LB121, § 8.
Operative date August 30, 2009.

77-1340.05 Transfer of assessment function to county; transferred employee; retirement rights.

(1)(a) On the date of employment transfer, all employees of the Department of Revenue transferred to a county pursuant to section 77-1340 or 77-1340.04 shall immediately have the right to participate in the particular county employees retirement plan and shall have all retirement funds transferred from the State Employees Retirement System of the State of Nebraska.

(b) For transferred employees who are transferring retirement funds, the amount transferred shall equal the employee and employer accounts of the transferring employee plus earnings on those amounts during the period of employment with the state.

(2) Upon the completion of the transfer of funds pursuant to subsection (1) of this section, the transferred employee shall receive vesting credit for such employee's years of participation in the retirement system of the county from which the employee was transferred, if any, plus all years of participation in the State Employees Retirement System. Each employee that was employed by the department after the assessment function was transferred from the county shall receive vesting credit for such employee's years of participation in the State Employees Retirement System.

Source: Laws 2009, LB121, § 9.
Operative date August 30, 2009.

77-1340.06 Transfer of assessment function to county; transferred employee; leave and insurance rights.

(1) Each employee of the Department of Revenue transferred to a county pursuant to section 77-1340 or 77-1340.04 shall be paid for his or her accrued vacation leave hours based on his or her straight-time rate of pay and, notwithstanding section 81-1324, for twenty-five percent of the value of his or her accrued sick leave hours based on his or her straight-time rate of pay. For purposes of this subsection, straight-time rate of pay means the rate of pay in effect on June 30 of the year of transfer. The state shall reimburse employees on the date of employment transfer.

(2) A transferred employee may credit years of service with both the county and state toward the accrual rate for sick leave and vacation leave plans. The transferred employee shall not receive any additional accrual rate value for county benefits until the employee meets the qualifications for the increased accrual rates pursuant to the county's requirements.

(3) The transferred employee may participate in and be covered by the county's insurance program. The waiting period for medical insurance coverage of a transferred employee shall be waived, and any preexisting condition

clause in the county's insurance program shall be waived if the transferred employee has health insurance under the Nebraska State Insurance Program or comparable health insurance coverage immediately prior to the date of employment transfer.

Source: Laws 2009, LB121, § 10.
Operative date August 30, 2009.

77-1342 Department of Revenue Property Assessment Division Cash Fund; created; use; investment.

There is hereby created a fund to be known as the Department of Revenue Property Assessment Division Cash Fund to which shall be credited all money received by the Department of Revenue for services performed for county and multicounty assessment districts, for charges for publications, manuals, and lists, as an assessor's examination fee authorized by section 77-421, and under the provisions of sections 60-3,202, 77-684, 77-1250, and 77-1340. The fund shall be used to carry out any duties and responsibilities of the department. The county or multicounty assessment district shall be billed by the department for services rendered. Reimbursements to the department shall be credited to the fund, and expenditures therefrom shall be made only when such funds are available. The department shall only bill for the actual amount expended in performing the service.

The fund shall not, at the close of each year, be lapsed to the General Fund. Any money in the Department of Revenue Property Assessment Division 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 1969, c. 622, § 18, p. 2519; Laws 1971, LB 158, § 1; Laws 1971, LB 53, § 8; Laws 1973, LB 132, § 4; Laws 1985, LB 273, § 38; Laws 1989, Spec. Sess., LB 7, § 8; Laws 1992, LB 1063, § 123; Laws 1992, Second Spec. Sess., LB 1, § 96; Laws 1994, LB 1066, § 82; Laws 1995, LB 490, § 134; Laws 1997, LB 270, § 75; Laws 1997, LB 271, § 50; Laws 1999, LB 36, § 32; Laws 2001, LB 170, § 8; Laws 2002, LB 1310, § 9; Laws 2003, LB 563, § 42; Laws 2005, LB 274, § 272; Laws 2007, LB334, § 72; Laws 2009, LB121, § 7.
Operative date August 30, 2009.

Cross References

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

77-1343 Agricultural or horticultural land; terms, defined.

The purpose of sections 77-1343 to 77-1347.01 is to provide a special valuation for qualified agricultural or horticultural land so that the current assessed valuation of the land for property tax purposes is the value that the land would have without regard to the value the land would have for other purposes or uses. For purposes of sections 77-1343 to 77-1347.01:

(1) Agricultural or horticultural land means that land as defined in section 77-1359;

(2) Applicant means an owner or lessee;

(3) Lessee means a person leasing agricultural or horticultural land from a state or governmental subdivision which is an owner that is subject to taxation under section 77-202.11;

(4) Owner means an owner of record of agricultural or horticultural land or the purchaser of agricultural or horticultural land under a contract for sale; and

(5) Special valuation means the value that the land would have for agricultural or horticultural purposes or uses without regard to the actual value the land would have for other purposes or uses.

Source: Laws 1974, LB 359, § 1; Laws 1983, LB 26, § 1; Laws 1985, LB 271, § 15; Laws 1989, LB 361, § 9; Laws 2000, LB 968, § 48; Laws 2001, LB 170, § 9; Laws 2002, LB 994, § 16; Laws 2004, LB 973, § 25; Laws 2006, LB 808, § 27; Laws 2009, LB166, § 9. Effective date February 27, 2009.

77-1344 Agricultural or horticultural land; special valuation; when applicable.

(1) Agricultural or horticultural land which has an actual value as defined in section 77-112 reflecting purposes or uses other than agricultural or horticultural purposes or uses shall be assessed as provided in subsection (3) of section 77-201 if the land meets the qualifications of this subsection and an application for such special valuation is filed and approved pursuant to section 77-1345. In order for the land to qualify for special valuation all of the following criteria shall be met: (a) The land is located outside the corporate boundaries of any sanitary and improvement district, city, or village except as provided in subsection (2) of this section; and (b) the land is agricultural or horticultural land.

(2) Special valuation may be applicable to agricultural or horticultural land included within the corporate boundaries of a city or village if the land is subject to a conservation or preservation easement as provided in the Conservation and Preservation Easements Act and the governing body of the city or village approves the agreement creating the easement.

(3) The eligibility of land for the special valuation provisions of this section shall be determined each year as of January 1. If the land so qualified becomes disqualified on or before December 31 of that year, it shall continue to receive the special valuation until January 1 of the year following.

(4) The special valuation placed on such land by the county assessor under this section shall be subject to equalization by the county board of equalization and the Tax Equalization and Review Commission.

Source: Laws 1974, LB 359, § 2; Laws 1983, LB 26, § 2; Laws 1985, LB 271, § 16; Laws 1989, LB 361, § 10; Laws 1991, LB 320, § 5; Laws 1996, LB 934, § 2; Laws 1996, LB 1039, § 1; Laws 1997, LB 270, § 76; Laws 1998, LB 611, § 3; Laws 2000, LB 968, § 49; Laws 2001, LB 170, § 10; Laws 2004, LB 973, § 26; Laws 2005, LB 261, § 5; Laws 2006, LB 808, § 28; Laws 2007, LB166, § 6; Laws 2009, LB166, § 10.
Effective date February 27, 2009.

Cross References

Conservation and Preservation Easements Act, see section 76-2,118.

77-1345.01 Agricultural or horticultural lands; special valuation; approval or denial; protest; appeal; failure to give notice; effect.

(1) On or before July 15 in the year of application, the county assessor shall approve or deny the application for special valuation filed pursuant to section 77-1345. On or before July 22, the county assessor shall issue notice of approval or denial.

(2) If the application is approved by the county assessor, the land shall be valued as provided in section 77-1344 and, on or before July 22, the county board of equalization shall send a property valuation notice for special value to the owner and, if not the same, the applicant. Within thirty days after the mailing of the notice, a written protest of the special value may be filed.

(3)(a) If the application is denied by the assessor, a written protest of the denial of the application may be filed within thirty days after the mailing of the denial.

(b) If the denial of an application for special valuation is reversed on appeal and the application is approved, the land shall be valued as provided in section 77-1344 and the county board of equalization shall send the property valuation notice for special value to the owner and, if not the same, the applicant or his or her successor in interest, within fourteen days after the date of the final order. Within thirty days after the mailing of the notice, a written protest of the special value may be filed.

(4) If the county board of equalization takes action pursuant to section 77-1504 or 77-1507 and the applicant filed an application for special valuation pursuant to subsection (3) of section 77-1345, the county assessor shall approve or deny the application within fifteen days after the filing of the application and issue notice of the approval or denial as prescribed in subsection (1) of this section. If the application is denied by the county assessor, a written protest of the denial may be filed within thirty days of the mailing of the denial.

(5) The assessor shall mail notice of any action taken by him or her on an application to the owner and the applicant if different than the owner.

(6) All provisions of section 77-1502 except dates for filing of a protest, the period for hearing protests, and the date for mailing notice of the county board of equalization's decision are applicable to any protest filed pursuant to this section.

(7) The county board of equalization shall decide any protest filed pursuant to this section within thirty days after the filing of the protest.

(8) The clerk shall mail a copy of any decision made by the county board of equalization on a protest filed pursuant to this section to the owner and the applicant if different than the owner within seven days after the board's decision.

(9) Any decision of the county board of equalization may be appealed to the Tax Equalization and Review Commission, in accordance with section 77-5013, within thirty days after the date of the decision.

(10) If a failure to give notice as prescribed by this section prevented timely filing of a protest or appeal provided for in this section, any applicant may petition the Tax Equalization and Review Commission in accordance with section 77-5013, on or before December 31 of each year, to determine whether

the land will receive special valuation for that year or to determine special value for that year.

Source: Laws 2000, LB 968, § 51; Laws 2004, LB 973, § 28; Laws 2005, LB 15, § 4; Laws 2005, LB 263, § 11; Laws 2006, LB 808, § 30; Laws 2008, LB965, § 14; Laws 2009, LB166, § 11.
Effective date February 27, 2009.

Cross References

Tax Equalization and Review Commission Act, see section 77-5001.

77-1348 Repealed. Laws 2009, LB 166, § 23.

77-1355 Greenbelt Advisory Committee; established; members; terms; duties; expenses.

(1) The Greenbelt Advisory Committee is established to assist and advise the Property Tax Administrator in developing uniform and proportionate special valuation of agricultural land and horticultural land which is subject to land-use controls provided for in sections 77-1343 to 77-1347.01. The advisory committee shall provide advice to the Tax Commissioner and the Legislature on rules and regulations under section 77-1346 and methods and practices of state and local assessing officials for such special valuation. The Tax Commissioner shall respond to the recommendations of the advisory committee and explain the basis for approval or rejection of recommendations.

(2) The advisory committee shall consist of the following members appointed by the Governor:

(a) Two active farmers;

(b) An active rancher;

(c) A real property appraiser with expertise in the appraisal of agricultural land and horticultural land;

(d) A professor of agricultural economics at the University of Nebraska Institute of Agriculture and Natural Resources;

(e) An elected county assessor or a designee of the county assessor; and

(f) An elected county commissioner or supervisor.

The members shall serve for terms of four years, except that the Governor shall designate three of the initial members to serve for two-year terms. The members shall select a chairperson from the advisory committee's membership. The advisory committee shall meet at least once annually.

(3) The advisory committee shall develop recommendations on:

(a) When using comparable sales analysis for purposes of establishing the special valuation under sections 77-1343 to 77-1347.01, how such information may be gathered from other counties and locations within a county;

(b) When using an income capitalization approach for such special valuation, the income and expense information to be used and the appropriate method of gathering such information;

(c) When using the income capitalization approach, the approved methods of determining the capitalization rate, including methods of gathering valid comparable sales for purposes of determining the capitalization rate on comparable agricultural land and horticultural land; and

(d) Any further revisions to sections 77-1343 to 77-1347.01 as the committee deems important for uniform enforcement of such sections and uniform special valuation of agricultural land and horticultural land.

(4) Methods and recommendations developed by the advisory committee shall provide for an annually updated analysis based on a three-year average of the information used. The advisory committee may develop recommendations for valuation methods which provide for special valuation of land used for specialized agricultural and horticultural crop production which is unique or localized to a specific area. The recommendations shall be provided by October 1 each year.

(5) The Property Tax Administrator shall provide administrative staff support and information as requested by the advisory committee so long as provision of staff support and information does not impair the ability of the Property Tax Administrator to carry out other statutory obligations.

(6) Members shall be reimbursed for actual and necessary expenses pursuant to sections 81-1174 to 81-1177.

Source: Laws 2000, LB 1124, § 1; Laws 2001, LB 170, § 12; Laws 2005, LB 261, § 6; Laws 2006, LB 778, § 71; Laws 2006, LB 808, § 34; Laws 2007, LB166, § 9; Laws 2007, LB334, § 75; Laws 2009, LB166, § 12.
Effective date February 27, 2009.

77-1371 Comparable sales; use; guidelines.

Comparable sales are recent sales of properties that are similar to the property being assessed in significant physical, functional, and location characteristics and in their contribution to value. When using comparable sales in determining actual value of an individual property under the sales comparison approach provided in section 77-112, the following guidelines shall be considered in determining what constitutes a comparable sale:

(1) Whether the sale was financed by the seller and included any special financing considerations or the value of improvements;

(2) Whether zoning affected the sale price of the property;

(3) For sales of agricultural land or horticultural land as defined in section 77-1359, whether a premium was paid to acquire nearby property. Land within one mile of currently owned property shall be considered nearby property;

(4) Whether sales or transfers made in connection with foreclosure, bankruptcy, or condemnations, in lieu of foreclosure, or in consideration of other legal actions should be excluded from comparable sales analysis as not reflecting current market value;

(5) Whether sales between family members within the third degree of consanguinity include considerations that fail to reflect current market value;

(6) Whether sales to or from federal or state agencies or local political subdivisions reflect current market value;

(7) Whether sales of undivided interests in real property or parcels less than forty acres or sales conveying only a portion of the unit assessed reflect current market value;

(8) Whether sales or transfers of property in exchange for other real estate, stocks, bonds, or other personal property reflect current market value;

(9) Whether deeds recorded for transfers of convenience, transfers of title to cemetery lots, mineral rights, and rights of easement reflect current market value;

(10) Whether sales or transfers of property involving railroads or other public utility corporations reflect current market value;

(11) Whether sales of property substantially improved subsequent to assessment and prior to sale should be adjusted to reflect current market value or eliminated from such analysis; and

(12) For agricultural land or horticultural land as defined in section 77-1359 which is or has been receiving the special valuation pursuant to sections 77-1343 to 77-1347.01, whether the sale price reflects a value which the land has for purposes or uses other than as agricultural land or horticultural land and therefor does not reflect current market value of other agricultural land or horticultural land.

The Property Tax Administrator may issue guidelines for assessing officials for use in determining what constitutes a comparable sale. Guidelines shall take into account the factors listed in this section and other relevant factors as prescribed by the Property Tax Administrator.

Source: Laws 1989, LB 361, § 4; Laws 1995, LB 490, § 142; Laws 2000, LB 968, § 56; Laws 2001, LB 170, § 16; Laws 2003, LB 295, § 3; Laws 2009, LB166, § 13.
Effective date February 27, 2009.

ARTICLE 15

EQUALIZATION BY COUNTY BOARD

Section
77-1501. County board of equalization; who constitutes; meetings; county officials; duties.
77-1502. Board; protests; report; notification.
77-1507.01. Failure to give notice; effect.

77-1501 County board of equalization; who constitutes; meetings; county officials; duties.

The county board shall constitute the county board of equalization. The county board of equalization shall fairly and impartially equalize the values of all items of real property in the county so that all real property is assessed uniformly and proportionately.

The county assessor or his or her designee shall attend all meetings of the county board of equalization when such meetings pertain to the assessment or exemption of real and personal property. The county treasurer or designated county official pursuant to section 23-186 shall attend all meetings of the county board of equalization involving the exemption of motor vehicles from the motor vehicle tax. All records of the county assessor's office shall be available for the inspection and consideration of the county board of equalization. The county clerk, deputy, or designee pursuant to section 23-1302 shall attend all meetings of the county board of equalization and shall make a record of the proceedings of the county board of equalization.

Source: Laws 1903, c. 73, § 120, p. 428; R.S.1913, § 6436; C.S.1922, § 5971; C.S.1929, § 77-1701; R.S.1943, § 77-1501; Laws 1953, c.

273, § 1, p. 898; Laws 1997, LB 270, § 85; Laws 1999, LB 194, § 23; Laws 2005, LB 762, § 2; Laws 2009, LB166, § 14.
Effective date February 27, 2009.

77-1502 Board; protests; report; notification.

(1) The county board of equalization shall meet for the purpose of reviewing and deciding written protests filed pursuant to this section beginning on or after June 1 and ending on or before July 25 of each year. Protests regarding real property shall be signed and filed after the county assessor's completion of the real property assessment roll required by section 77-1315 and on or before June 30. For protests of real property, a protest shall be filed for each parcel. Protests regarding taxable tangible personal property returns filed pursuant to section 77-1229 from January 1 through May 1 shall be signed and filed on or before June 30. The county board in a county with a population of more than one hundred thousand inhabitants based upon the most recent federal decennial census may adopt a resolution to extend the deadline for hearing protests from July 25 to August 10. The resolution must be adopted before July 25 and it will affect the time for hearing protests for that year only. By adopting such resolution, such county waives any right to petition the Tax Equalization and Review Commission for adjustment of a class or subclass of real property under section 77-1504.01 for that year.

(2) Each protest shall be signed and filed with the county clerk of the county where the property is assessed. The protest shall contain or have attached a statement of the reason or reasons why the requested change should be made and a description of the property to which the protest applies. If the property is real property, a description of each parcel shall be provided. If the property is tangible personal property, a physical description of the property under protest shall be provided. If the protest does not contain or have attached the statement of the reason or reasons for the protest or the description of the property, the protest shall be dismissed by the county board of equalization.

(3) No hearing of the county board of equalization on a protest filed under this section shall be held before a single commissioner or supervisor.

(4) The county clerk or county assessor shall prepare a separate report on each protest. The report shall include (a) a description of the property to which the protest applies, (b) any recommendation of the county assessor for action on the protest, (c) if a referee is used, the recommendation of the referee, (d) the date the county board of equalization heard the protest, (e) the decision made by the county board of equalization, (f) the date of the decision, and (g) the date notice of the decision was mailed to the protester. The report shall contain, or have attached to it, a statement, signed by the chairperson of the county board of equalization, describing the basis upon which the board's decision was made. The report shall have attached to it a copy of that portion of the property record file which substantiates calculation of the protested value unless the county assessor certifies to the county board of equalization that a copy is maintained in either electronic or paper form in his or her office. One copy of the report, if prepared by the county clerk, shall be given to the county assessor on or before August 2. The county assessor shall have no authority to make a change in the assessment rolls until there is in his or her possession a report which has been completed in the manner specified in this section. If the county assessor deems a report submitted by the county clerk incomplete, the

county assessor shall return the same to the county clerk for proper preparation.

(5) On or before August 2, or on or before August 18 in a county that has adopted a resolution to extend the deadline for hearing protests, the county clerk shall mail to the protester written notice of the board's decision. The notice shall contain a statement advising the protester that a report of the board's decision is available at the county clerk's or county assessor's office, whichever is appropriate, and that a copy of the report may be used to complete an appeal to the Tax Equalization and Review Commission.

Source: Laws 1903, c. 73, § 121, p. 428; Laws 1905, c. 112, § 1, p. 515; Laws 1909, c. 112, § 1, p. 444; Laws 1911, c. 104, § 14, p. 379; R.S.1913, § 6437; C.S.1922, § 5972; C.S.1929, § 77-1702; R.S. 1943, § 77-1502; Laws 1947, c. 251, § 36, p. 826; Laws 1949, c. 233, § 1, p. 644; Laws 1953, c. 274, § 1, p. 899; Laws 1959, c. 355, § 25, p. 1267; Laws 1959, c. 371, § 1, p. 1307; Laws 1961, c. 377, § 6, p. 1158; Laws 1961, c. 384, § 1, p. 1177; Laws 1972, LB 1342, § 1; Laws 1975, LB 312, § 1; Laws 1984, LB 660, § 2; Laws 1986, LB 174, § 1; Laws 1986, LB 817, § 13; Laws 1987, LB 508, § 44; Laws 1992, LB 1063, § 124; Laws 1992, Second Spec. Sess., LB 1, § 97; Laws 1994, LB 902, § 21; Laws 1995, LB 452, § 23; Laws 1995, LB 490, § 147; Laws 1997, LB 270, § 86; Laws 2003, LB 292, § 12; Laws 2004, LB 973, § 33; Laws 2005, LB 283, § 2; Laws 2005, LB 299, § 1; Laws 2006, LB 808, § 37; Laws 2008, LB965, § 15; Laws 2009, LB166, § 15.
Effective date February 27, 2009.

77-1507.01 Failure to give notice; effect.

Any person otherwise having a right to appeal may petition the Tax Equalization and Review Commission in accordance with section 77-5013, on or before December 31 of each year, to determine the actual value or special value of real property for that year if a failure to give notice prevented timely filing of a protest or appeal provided for in sections 77-1501 to 77-1510.

Source: Laws 2005, LB 15, § 5; Laws 2007, LB167, § 3; Laws 2009, LB166, § 16.
Effective date February 27, 2009.

ARTICLE 17

COLLECTION OF TAXES

Section
77-1775. Tax paid as result of clerical error, misunderstanding, or mistake; refund or credit; procedure.
77-1783.01. Corporate taxes; corporate officer or employee; personal liability; collection procedure; limitation.
77-1784. Electronic filings; electronic fund transfers; required; when; penalty; disclosure to taxpayer.

77-1775 Tax paid as result of clerical error, misunderstanding, or mistake; refund or credit; procedure.

(1) In case of payment of any taxes upon property valued by the state made as a result of a clerical error or honest mistake or misunderstanding, except as to

valuation or equalization, on the part of the taxing officials of the state or the taxpayer, the taxpayer shall make a written claim for a credit or refund of the tax paid within two years from the date the tax was due. The claim shall set forth the amount of the overpayment and the reasons therefor.

(2) The Tax Commissioner may approve or disapprove the claim in whole or part without a hearing. The Tax Commissioner shall grant a hearing prior to taking any action on a claim for refund or credit if requested in writing by the taxpayer when the claim is filed or prior to any action being taken on the claim by the Tax Commissioner. The written order of the Tax Commissioner shall be mailed to the claimant within seven days after the date of the order. If the claim is denied in whole or part, the taxpayer may appeal within thirty days after the date of the written order of the Tax Commissioner to the Tax Equalization and Review Commission in accordance with section 77-5013.

(3) Upon approval of the claim by the Tax Commissioner, the Property Tax Administrator shall certify the amount of the refund or credit to the county treasurer to whom the tax was paid or distributed. If only valuation was previously certified to a county or counties, then the Property Tax Administrator shall certify the value resulting from the written order to the official who received the original valuation which was changed by the written order. The refund shall be made in the manner prescribed in section 77-1736.06. The ordering of a refund or credit pursuant to this section shall not have a dispositional effect on any similar claim for refund or credit made by another taxpayer.

Source: Laws 1983, LB 193, § 12; Laws 1988, LB 352, § 157; Laws 1989, LB 762, § 5; Laws 1991, LB 829, § 17; Laws 1995, LB 490, § 174; Laws 2004, LB 973, § 42; Laws 2007, LB334, § 87; Laws 2009, LB166, § 17.
Effective date February 27, 2009.

Cross References

Tax Equalization and Review Commission Act, see section 77-5001.

77-1783.01 Corporate taxes; corporate officer or employee; personal liability; collection procedure; limitation.

(1) Any officer or employee with the duty to collect, account for, or pay over any taxes imposed upon a corporation or with the authority to decide whether the corporation will pay taxes imposed upon a corporation shall be personally liable for the payment of such taxes in the event of willful failure on his or her part to have a corporation perform such act. Such taxes shall be collected in the same manner as provided under the Uniform State Tax Lien Registration and Enforcement Act.

(2) Within sixty days after the day on which the notice and demand are made for the payment of such taxes, any officer or employee seeking to challenge the Tax Commissioner's determination as to his or her personal liability for the corporation's unpaid taxes may petition for a redetermination. The petition may include a request for the redetermination of the personal liability of the corporate officer or employee, the redetermination of the amount of the corporation's unpaid taxes, or both. If a petition for redetermination is not filed within the sixty-day period, the determination becomes final at the expiration of the period.

(3) If the requirements prescribed in subsection (2) of this section are satisfied, the Tax Commissioner shall abate collection proceedings and shall grant the officer or employee an oral hearing and give him or her ten days' notice of the time and place of such hearing. The Tax Commissioner may continue the hearing from time to time as necessary.

(4) Any notice required under this section shall be served personally or by mail in the manner provided in section 77-27,135.

(5) If the Tax Commissioner determines that further delay in the collection of such taxes from the officer or employee will jeopardize future collection proceedings, nothing in this section shall prevent the immediate collection of such taxes.

(6) No notice or demand for payment may be issued against any officer or employee with the duty to collect, account for, or pay over any taxes imposed upon a corporation or with the authority to decide whether the corporation will pay taxes imposed upon a corporation more than three years after the final determination of the corporation's liability.

(7) For purposes of this section:

(a) Corporation shall mean any corporation and any other entity that is taxed as a corporation under the Internal Revenue Code;

(b) Taxes shall mean all taxes and additions to taxes including interest and penalties imposed under the revenue laws of this state which are administered by the Tax Commissioner; and

(c) Willful failure shall mean that failure which was the result of an intentional, conscious, and voluntary action.

Source: Laws 1996, LB 1041, § 5; Laws 2008, LB914, § 6; Laws 2009, LB165, § 2.
Operative date October 1, 2009.

Cross References

Uniform State Tax Lien Registration and Enforcement Act, see section 77-3901.

77-1784 Electronic filings; electronic fund transfers; required; when; penalty; disclosure to taxpayer.

(1) The Tax Commissioner may accept electronic filing of applications, returns, and any other document required to be filed with the Tax Commissioner.

(2) The Tax Commissioner may use electronic fund transfers to collect any taxes, fees, or other amounts required to be paid to or collected by the Tax Commissioner or to pay any refunds of such amounts.

(3) The Tax Commissioner may adopt rules and regulations to establish the criteria for acceptability of filing documents and making payments electronically. The criteria may include requirements for electronic signatures, the type of tax for which electronic filings or payments will be accepted, the method of transfer, or minimum amounts which may be transferred. The Tax Commissioner may refuse to accept any electronic filings or payments that do not meet the criteria established.

(4) For payments due after January 1, 2006, the Tax Commissioner may require the use of electronic fund transfers for any taxes, fees, or amounts required to be paid to or collected by the Tax Commissioner for any taxpayer

who made payments exceeding twenty thousand dollars for a tax program in the prior year for that tax program. The requirement to make electronic fund transfers may be phased in as deemed necessary by the Tax Commissioner. Notice of the requirement to make electronic fund transfers shall be provided at least three months prior to the date the first electronic payment is required to be made.

(5) Any person who fails to make a required payment by electronic fund transfer shall be subject to a penalty of one hundred dollars for each required payment that was not made by electronic fund transfer. The penalty provided by this section shall be in addition to all other penalties and applies even if payment by some other method is timely made. The Tax Commissioner may waive the penalty provided in this section upon a showing of good cause.

(6) The use of electronic filing of documents and electronic fund transfers shall not change the rights of any party from the rights such party would have if a different method of filing or payment were used. Until criteria for electronic signatures are adopted under subsection (3) of this section, the document produced during the electronic filing of a taxpayer's information with the state shall be prima facie evidence for all purposes that the taxpayer's signature accompanied the taxpayer's information in the electronic transmission.

(7) For tax returns due on or after January 1, 2010, the Tax Commissioner may require any person that aids, procures, advises, or assists in the preparation of and files any tax return on behalf of any taxpayer for profit to file an electronic return if the person filed twenty-five or more tax returns in the prior calendar year. The requirement to require electronic filing may be phased in as deemed necessary by the Tax Commissioner.

Any person that files a tax return on behalf of a taxpayer must disclose in writing to the taxpayer that the return will be filed in an electronic format and in accordance with rules and regulations prescribed by the Tax Commissioner.

(8) Any person who fails to file an electronic return as required under subsection (7) of this section shall be subject to a penalty of one hundred dollars for each return that was not properly filed in addition to other penalties provided by law. The Tax Commissioner may waive the penalty provided in this section upon a showing of good cause.

Source: Laws 1987, LB 523, § 42; Laws 1995, LB 134, § 1; Laws 2000, LB 1251, § 1; Laws 2005, LB 216, § 2; Laws 2009, LB165, § 3. Operative date January 1, 2010.

ARTICLE 20

INHERITANCE TAX

Section
77-2010. Inheritance tax; when due; interest; bond; failure to file; penalty.
77-2018.04. Inheritance tax; proceedings for determination of; deductions allowed; enumerated.
77-2018.07. Inheritance tax; tentative payment of tax; when; application; consent of county attorney required; procedure for payment of tentative tax.

77-2010 Inheritance tax; when due; interest; bond; failure to file; penalty.

All taxes imposed by sections 77-2001 to 77-2037, unless otherwise herein provided for, shall be due and payable twelve months after the date of the death of the decedent, and interest at the rate specified in section 45-104.01, as such

rate may from time to time be adjusted by the Legislature, shall be charged and collected on any unpaid taxes due from the date the same became payable, and in all cases in which the personal representatives or trustees do not pay such tax within twelve months from the death of the decedent, they shall be required to give bond in the form and to the effect prescribed in section 77-2009 for the payment of the tax together with interest. In addition, for failure to file an appropriate proceeding for the determination of the tax within twelve months after the date of the death of the decedent there shall be added to the amount due a penalty of five percent per month or fraction thereof, up to a maximum penalty of twenty-five percent of the unpaid taxes due. The filing of a petition or an application for probate proceedings or the filing of an application under section 77-2018.07 and payment of the tentative tax payment within twelve months of the decedent's death shall be considered an appropriate proceeding for the determination to avoid a penalty and to stop the accrual of a penalty. In addition, the county court may abate this penalty if good cause is shown for failure to file.

Source: Laws 1901, c. 54, § 3, p. 416; Laws 1911, c. 107, § 1, p. 386; R.S.1913, § 6624; C.S.1922, § 6155; C.S.1929, § 77-2203; R.S. 1943, § 77-2010; Laws 1951, c. 267, § 5, p. 901; Laws 1976, LB 585, § 10; Laws 1978, LB 650, § 29; Laws 1981, LB 167, § 48; Laws 2007, LB502, § 4; Laws 2009, LB120, § 1.
Effective date August 30, 2009.

77-2018.04 Inheritance tax; proceedings for determination of; deductions allowed; enumerated.

In all proceedings for the determination of inheritance tax, the following deductions from the value of the property subject to Nebraska inheritance taxation shall be allowed to the extent paid from, chargeable to, paid, payable, or expected to become payable with respect to property subject to Nebraska inheritance taxation:

(1) The cost of the funeral of the decedent, including costs for interment and gravesite marker;

(2) All expenses of administration which accrue as a result of the death of the decedent, including, but not limited to, attorney's fees, court costs, and expenses concerning property not subject to probate, and expenses related to taking possession or control of estate assets and the management, protection, and preservation of estate assets, including, but not limited to, expenses related to the sale of estate assets, but not expenses related to the day-to-day operation and continuation of business interests which have not accrued as a result of the death of the decedent;

(3) All expenses of the last illness of the decedent which were incurred within six months of the death of the decedent;

(4) All other debts upon which the decedent was liable for payment at the date of his or her death and which have been paid; and

(5) Any federal estate tax paid, payable, or expected to become payable, after deduction of all applicable credits, which is attributable to property subject to Nebraska inheritance taxation.

Source: Laws 1976, LB 585, § 8; Laws 1977, LB 456, § 4; Laws 1987, LB 125, § 1; Laws 2009, LB120, § 2.
Effective date August 30, 2009.

77-2018.07 Inheritance tax; tentative payment of tax; when; application; consent of county attorney required; procedure for payment of tentative tax.

(1) Any person subject to the tax imposed by sections 77-2001 to 77-2037 may, prior to the final determination of the inheritance tax, make a tentative payment of the tax in order to avoid the accrual of interest or penalty on such tax. Any person who desires to pay such tentative inheritance tax shall make a written application to the county court for an order allowing the payment of a sum specified in such application, prior to the final determination of the inheritance tax due.

(2) If the county attorney shall not consent to the amount requested in the application by entering his or her voluntary appearance and waiver of notice, he or she shall within seven days of the filing of the application show in writing what sum he or she requests for the purpose of the prepayment. The county court shall issue an order allowing a tentative payment of the tax in such amount as the court shall specify.

(3) The county treasurer shall receive all taxes paid pursuant to this section but shall not be required to invest any tentative tax payment made for the benefit of the estate nor shall the county treasurer be required to pay interest on any refund claim for the period he or she holds the tentative tax payment.

(4) The tentative tax payment allowed in this section shall apply to both probate and nonprobate estates. The tentative tax payment shall not be a final order and may be amended, altered, or modified by subsequent order of the court.

Source: Laws 1976, LB 585, § 12; Laws 2009, LB120, § 3.
Effective date August 30, 2009.

ARTICLE 23

DEPOSIT AND INVESTMENT OF PUBLIC FUNDS

(a) GENERAL PROVISIONS

(b) PUBLIC FUNDS DEPOSIT SECURITY ACT

(a) GENERAL PROVISIONS

77-2302 Federal Deposit Insurance Corporation references; how construed.

For purposes of any law requiring a bank, capital stock financial institution as defined under section 77-2366, or qualifying mutual financial institution as defined under section 77-2365.01 to secure the deposit of public money or public funds in excess of the amount insured by the Federal Deposit Insurance Corporation, references to amounts insured by the Federal Deposit Insurance Corporation shall include amounts guaranteed by the Federal Deposit Insurance Corporation.

Source: Laws 2009, LB259, § 26.
Effective date March 6, 2009.

77-2305 State funds; depositories; limitations on amount deposited in any one bank.

The State Treasurer shall not have on deposit in any bank giving a guaranty bond more than the amount insured or guaranteed by the Federal Deposit Insurance Corporation plus the maximum amount of the bond given by the bank, nor any bank giving a personal bond more than the amount insured or guaranteed by the Federal Deposit Insurance Corporation, plus one-half of the amount of the bond of the bank. The amount deposited in any bank shall not exceed the amount insured or guaranteed by the Federal Deposit Insurance Corporation plus twice its capital stock and surplus, but no bonds or giving of security shall be required for funds over which the state investment officer has investment jurisdiction except those funds which are eligible for long-term investment. All bonds of such depositories shall be deposited with and held by the State Treasurer.

Source: Laws 1891, c. 50, § 3, p. 348; Laws 1897, c. 23, § 2, p. 188; Laws 1899, c. 74, § 1, p. 321; Laws 1905, c. 151, § 1, p. 595; Laws 1907, c. 142, § 1, p. 450; Laws 1909, c. 139, § 1, p. 493; R.S.1913, § 6657; C.S.1922, § 6188; Laws 1927, c. 34, § 1, p. 153; C.S.1929, § 77-2503; Laws 1931, c. 135, § 1, p. 376; Laws 1933, c. 147, § 1, p. 564; Laws 1935, c. 152, § 2, p. 560; C.S.Supp.,1941, § 77-2503; R.S.1943, § 77-2305; Laws 1957, c. 340, § 1, p. 1178; Laws 1978, LB 599, § 1; Laws 1996, LB 1274, § 26; Laws 2009, LB259, § 14.
Effective date March 6, 2009.

77-2318 County funds; depositories; limitation on deposits; exception.

The county treasurer shall not have on deposit in any bank, capital stock financial institution, or qualifying mutual financial institution at any time more money than the amount insured or guaranteed by the Federal Deposit Insurance Corporation, plus the maximum amount of the bond given by such bank,

capital stock financial institution, or qualifying mutual financial institution in cases when the bank, capital stock financial institution, or qualifying mutual financial institution gives a guaranty bond except as provided in section 77-2318.01. The amount on deposit at any time with any bank, capital stock financial institution, or qualifying mutual financial institution shall not exceed fifty percent of the capital and surplus of such bank, capital stock financial institution, or qualifying mutual financial institution except as provided in section 77-2318.01. When the amount of money which the county treasurer desires to deposit in the banks, capital stock financial institutions, and qualifying mutual financial institutions within the county exceeds fifty percent of the capital and surplus of all of the banks, capital stock financial institutions, and qualifying mutual financial institutions in such county, then the county treasurer may, with the consent of the county board, deposit an amount in excess thereof, but not exceeding the capital stock and surplus in any one bank, capital stock financial institution, or qualifying mutual financial institution unless the depository gives security as provided in section 77-2318.01. Bond shall be required of all banks, capital stock financial institutions, and qualifying mutual financial institutions for such excess deposit unless security is given in accordance with section 77-2318.01. The bonds shall be deposited with the county clerk and approved by the county board. Section 77-2366 shall apply to deposits in capital stock financial institutions. Section 77-2365.01 shall apply to deposits in qualifying mutual financial institutions.

Source: Laws 1891, c. 50, § 8, p. 352; Laws 1897, c. 23, § 5, p. 191; Laws 1903, c. 110, § 2, p. 585; Laws 1909, c. 35, § 1, p. 216; R.S.1913, § 6662; C.S.1922, § 6193; Laws 1925, c. 96, § 1, p. 279; Laws 1927, c. 34, § 2, p. 156; Laws 1929, c. 36, § 1, p. 151; C.S.1929, § 77-2508; Laws 1935, c. 152, § 4, p. 563; Laws 1939, c. 103, § 3, p. 464; C.S.Supp.,1941, § 77-2508; R.S.1943, § 77-2318; Laws 1953, c. 284, § 1, p. 921; Laws 1989, LB 33, § 36; Laws 1992, LB 757, § 26; Laws 1996, LB 1274, § 30; Laws 2001, LB 362, § 38; Laws 2009, LB259, § 15.
Effective date March 6, 2009.

77-2326.04 Public money in hands of court officials; deposits; security for repayment.

No deposits in excess of the amount insured or guaranteed by the Federal Deposit Insurance Corporation shall be made to accumulate in any bank, capital stock financial institution, or qualifying mutual financial institution designated as a depository unless and until the county judge, clerk of the county court, or clerk of the district court, as the case may be, has received from such depository as security for the prompt repayment by the depository of his or her respective deposits in excess of the amount insured or guaranteed by the Federal Deposit Insurance Corporation either a surety bond in form and with corporate sureties approved by the county judge or judges or by formal resolution of the county board, as the case may be, or in lieu thereof, the giving of security as provided in the Public Funds Deposit Security Act. Section 77-2366 shall apply to deposits in capital stock financial institutions. Section 77-2365.01 shall apply to deposits in qualifying mutual financial institutions.

Source: Laws 1947, c. 269, § 4, p. 869; Laws 1959, c. 263, § 16, p. 946; Laws 1988, LB 703, § 4; Laws 1989, LB 33, § 46; Laws 1989, LB 377, § 14; Laws 1990, LB 1146, § 7; Laws 1993, LB 356, § 1;

Laws 1996, LB 1274, § 33; Laws 2001, LB 362, § 46; Laws 2009, LB259, § 16.
Effective date March 6, 2009.

Cross References

Public Funds Deposit Security Act, see section 77-2386.

77-2340 County funds; investment of funds; time deposits; security required; exception.

The county treasurers of the various counties of the state may, upon resolution of their respective county boards authorizing the same, make time deposits in banks, capital stock financial institutions, or qualifying mutual financial institutions selected as depositories of county funds under the provisions of sections 77-2312 to 77-2315. The time deposits shall bear interest and shall be secured as set forth in section 77-2304 or 77-2320, except that the amount insured or guaranteed by the Federal Deposit Insurance Corporation shall be exempt from the requirement of being secured as provided by section 77-2320 or by bonds similar to the bond required and set forth in section 77-2304. Section 77-2366 shall apply to deposits in capital stock financial institutions. Section 77-2365.01 shall apply to deposits in qualifying mutual financial institutions.

Source: Laws 1931, c. 18, § 2, p. 90; C.S.Supp.,1941, § 77-2524; R.S. 1943, § 77-2340; Laws 1961, c. 392, § 3, p. 1191; Laws 1972, LB 1069, § 7; Laws 1975, LB 164, § 1; Laws 1989, LB 33, § 53; Laws 1992, LB 757, § 27; Laws 2001, LB 362, § 52; Laws 2009, LB259, § 17.
Effective date March 6, 2009.

77-2344 Metropolitan utilities district funds; depositories; bond or securities authorized.

No deposit in excess of the amount insured or guaranteed by the Federal Deposit Insurance Corporation shall be made in any bank, capital stock financial institution, or qualifying mutual financial institution designated as a depository unless and until the metropolitan utilities district has received from such depository as security for the prompt repayment by the depository either a corporate surety bond in form and with sureties approved by formal resolution by the governing body of such district or the giving of security as provided in the Public Funds Deposit Security Act. Section 77-2366 shall apply to deposits in capital stock financial institutions. Section 77-2365.01 shall apply to deposits in qualifying mutual financial institutions.

Source: Laws 1933, c. 95, § 2, p. 378; Laws 1935, c. 6, § 1, p. 69; C.S.Supp.,1941, § 77-2531; R.S.1943, § 77-2344; Laws 1959, c. 263, § 19, p. 948; Laws 1989, LB 33, § 56; Laws 1989, LB 377, § 15; Laws 1992, LB 746, § 76; Laws 1992, LB 757, § 28; Laws 1996, LB 1274, § 39; Laws 2001, LB 177, § 7; Laws 2001, LB 362, § 55; Laws 2009, LB259, § 18.
Effective date March 6, 2009.

Cross References

Public Funds Deposit Security Act, see section 77-2386.

77-2345 Metropolitan utilities district funds; depositories; limitation on amount.

No deposit shall be made in any designated bank, capital stock financial institution, or qualifying mutual financial institution (1) in excess of the amount insured or guaranteed by the Federal Deposit Insurance Corporation or (2) in excess of the obligation of the depository bond at the time any deposit of funds is made or during the period in which the deposit of funds remains in the depository. Section 77-2366 shall apply to deposits in capital stock financial institutions. Section 77-2365.01 shall apply to deposits in qualifying mutual financial institutions.

Source: Laws 1933, c. 95, § 2, p. 378; Laws 1935, c. 6, § 1, p. 69; C.S.Supp.,1941, § 77-2531; R.S.1943, § 77-2345; Laws 1989, LB 33, § 57; Laws 1992, LB 757, § 29; Laws 1996, LB 1274, § 40; Laws 2001, LB 362, § 56; Laws 2009, LB259, § 19.
Effective date March 6, 2009.

77-2352 School district or township funds; security requirements.

No deposit in excess of the amount insured or guaranteed by the Federal Deposit Insurance Corporation shall be made in any bank, capital stock financial institution, or qualifying mutual financial institution designated as a depository unless and until the treasurer or ex officio treasurer has received from the depository as security for the prompt repayment by the depository either a corporate surety bond in form and with sureties approved by formal resolution by the governing body of such district or the giving of security as provided in the Public Funds Deposit Security Act. Section 77-2366 shall apply to deposits in capital stock financial institutions. Section 77-2365.01 shall apply to deposits in qualifying mutual financial institutions.

Source: Laws 1937, c. 22, § 2, p. 135; Laws 1939, c. 103, § 2, p. 463; C.S.Supp.,1941, § 77-2535; R.S.1943, § 77-2352; Laws 1959, c. 263, § 20, p. 948; Laws 1967, c. 508, § 3, p. 1709; Laws 1988, LB 802, § 14; Laws 1989, LB 33, § 65; Laws 1989, LB 377, § 16; Laws 1992, LB 757, § 30; Laws 1996, LB 1274, § 43; Laws 2001, LB 362, § 61; Laws 2009, LB259, § 20.
Effective date March 6, 2009.

Cross References

Public Funds Deposit Security Act, see section 77-2386.

77-2355 Public power and irrigation district funds; depositories; bond or security required.

No deposits in excess of the amount insured or guaranteed by the Federal Deposit Insurance Corporation shall be made or be allowed to accumulate in any bank, capital stock financial institution, or qualifying mutual financial institution designated as a depository unless and until the treasurer or other competent officer of the district has received from such depository as security for the prompt repayment of such deposits by the depository either a surety bond in form and with corporate sureties approved by formal resolution of the board of directors of such district or, in lieu thereof, the giving of security as provided in the Public Funds Deposit Security Act. Section 77-2366 shall apply

to deposits in capital stock financial institutions. Section 77-2365.01 shall apply to deposits in qualifying mutual financial institutions.

Source: Laws 1941, c. 160, § 2, p. 642; C.S.Supp.,1941, § 77-2538; R.S.1943, § 77-2355; Laws 1959, c. 263, § 21, p. 949; Laws 1989, LB 33, § 69; Laws 1989, LB 377, § 17; Laws 1992, LB 757, § 31; Laws 1996, LB 1274, § 44; Laws 2001, LB 362, § 65; Laws 2009, LB259, § 21.
Effective date March 6, 2009.

Cross References

Public Funds Deposit Security Act, see section 77-2386.

77-2362 Public funds; depositories; security.

Whenever, by the laws of this state, any municipal corporation or other governmental subdivision of the state is authorized or required to obtain or accept from banks, capital stock financial institutions, or qualifying mutual financial institutions surety bonds or other bonds as security for deposits of public funds belonging to such municipal corporation or other governmental subdivision, the insurance or guarantee afforded to depositors in banks, capital stock financial institutions, or qualifying mutual financial institutions through the Federal Deposit Insurance Corporation, organized under the laws of the United States, shall be deemed and construed to be, for the purposes of such laws, a surety bond or bonds to the extent that such deposits are insured or guaranteed by such corporation, and for deposits so insured or guaranteed, no other surety bond or bonds or other security shall be required. Section 77-2366 shall apply to deposits in capital stock financial institutions. Section 77-2365.01 shall apply to deposits in qualifying mutual financial institutions.

Source: Laws 1935, c. 140, § 1, p. 515; C.S.Supp.,1941, § 77-2536; R.S.1943, § 77-2362; Laws 1989, LB 33, § 75; Laws 1992, LB 757, § 32; Laws 2001, LB 362, § 69; Laws 2009, LB259, § 22.
Effective date March 6, 2009.

77-2365.02 Funds of state or political subdivisions; investment in certificates of deposit and timed deposits; conditions.

Notwithstanding any other provision of law, to the extent that the funds of this state or any political subdivision of this state may be invested, by the appropriate custodian of such funds, in certificates of deposit or time deposits with banks, capital stock financial institutions, or qualifying mutual financial institutions, such authorization shall include the investment of funds in certificates of deposit and time deposits in accordance with the following conditions:

(1) The bank, capital stock financial institution, or qualifying mutual financial institution in this state through which the investment of funds is initially made arranges for the deposit of a portion or all of such funds in one or more certificates of deposit or time deposits with other banks, capital stock financial institutions, or qualifying mutual financial institutions located in the United States;

(2) Each such certificate of deposit or time deposit is fully insured or guaranteed by the Federal Deposit Insurance Corporation;

(3) The bank, capital stock financial institution, or qualifying mutual financial institution through which the investment of funds was initially made acts as a

custodian for the state or political subdivision with respect to any such certificate of deposit or time deposit issued for the account of the state or political subdivision; and

(4) At the same time that the funds are deposited into and such certificates of deposit or time deposits are issued by other banks, capital stock financial institutions, or qualifying mutual financial institutions, the bank, capital stock financial institution, or qualifying mutual financial institution through which the investment of funds in certificates of deposit or time deposits was initially made receives an amount of deposits from customers of other banks, capital stock financial institutions, or qualifying mutual financial institutions located in the United States which is equal to or greater than the amount of the investment of funds in certificates of deposit or time deposits initially made by the state or political subdivision.

Source: Laws 2004, LB 999, § 51; Laws 2009, LB259, § 23.
Effective date March 6, 2009.

77-2375 Local hospital district; deposit; limitation on amount; excess deposit; security required.

The secretary-treasurer shall not have on deposit in any bank, capital stock financial institution, or qualifying mutual financial institution at any time more money than the amount insured or guaranteed by the Federal Deposit Insurance Corporation, plus the maximum amount of the bond given by such bank, capital stock financial institution, or qualifying mutual financial institution in cases when the bank, capital stock financial institution, or qualifying mutual financial institution gives a guaranty bond, except as provided in section 77-2376. The amount on deposit at any time with any bank, capital stock financial institution, or qualifying mutual financial institution shall not exceed fifty percent of the capital and surplus of such bank, capital stock financial institution, or qualifying mutual financial institution, except as provided in section 77-2376. When the amount of money which the secretary-treasurer desires to deposit in the banks, capital stock financial institutions, or qualifying mutual financial institutions within the district exceeds fifty percent of the capital and surplus of all of the banks, capital stock financial institutions, or qualifying mutual financial institutions in such local hospital district, the secretary-treasurer may, with the consent of the board of directors, deposit an amount in excess thereof, but not exceeding the capital and surplus in any one bank, capital stock financial institution, or qualifying mutual financial institution, unless the depository gives security as provided in section 77-2376. Bond shall be required of all banks, capital stock financial institutions, or qualifying mutual financial institutions for such excess deposit, unless security is given in accordance with section 77-2376. The bonds shall be deposited with the secretary-treasurer and approved by the board of directors. Section 77-2366 shall apply to deposits in capital stock financial institutions. Section 77-2365.01 shall apply to deposits in qualifying mutual financial institutions.

Source: Laws 1994, LB 1118, § 7; Laws 1996, LB 1274, § 53; Laws 2001, LB 362, § 75; Laws 2009, LB259, § 24.
Effective date March 6, 2009.

77-2385 Local hospital district; time deposits authorized; requirements.

The secretary-treasurers of the various local hospital districts of the state may, upon resolution of their respective boards of directors authorizing such action, make time deposits in banks, capital stock financial institutions, or qualifying mutual financial institutions selected as depositories of the local hospital district funds under sections 77-2369 to 77-2372. The time deposits shall bear interest and shall be secured as set forth in section 77-2304 or 77-2378, except that the amount insured or guaranteed by the Federal Deposit Insurance Corporation shall be exempt from the requirement of being secured as provided by section 77-2378 or by bonds similar to the bond required and set forth in section 77-2304. Section 77-2366 shall apply to deposits in capital stock financial institutions. Section 77-2365.01 shall apply to deposits in qualifying mutual financial institutions.

Source: Laws 1994, LB 1118, § 17; Laws 2001, LB 362, § 81; Laws 2009, LB259, § 25.
Effective date March 6, 2009.

(b) PUBLIC FUNDS DEPOSIT SECURITY ACT

77-2387 Terms, defined.

For purposes of the Public Funds Deposit Security Act, unless the context otherwise requires:

(1) Affiliate means any entity that controls, is controlled by, or is under common control with another entity;

(2) Bank means any state-chartered or federally chartered bank which has a main chartered office in this state, any branch thereof in this state, or any branch in this state of a state-chartered or federally chartered bank which maintained a main chartered office in this state prior to becoming a branch of such state-chartered or federally chartered bank;

(3) Capital stock financial institution means a capital stock state building and loan association, a capital stock federal savings and loan association, a capital stock federal savings bank, and a capital stock state savings bank, which has a main chartered office in this state, any branch thereof in this state, or any branch in this state of a capital stock financial institution which maintained a main chartered office in this state prior to becoming a branch of such capital stock financial institution;

(4) Control means to own directly or indirectly or to control in any manner twenty-five percent of the voting shares of any bank, capital stock financial institution, or holding company or to control in any manner the election of the majority of directors of any bank, capital stock financial institution, or holding company;

(5) Custodial official means an officer or an employee of the State of Nebraska or any political subdivision who, by law, is made custodian of or has control over public money or public funds subject to the act or the security for the deposit of public money or public funds subject to the act;

(6) Deposit guaranty bond means a bond underwritten by an insurance company authorized to do business in this state which provides coverage for deposits of a governing authority which are in excess of the amounts insured or guaranteed by the Federal Deposit Insurance Corporation;

(7) Event of default means the issuance of an order by a supervisory authority or a receiver which restrains a bank, capital stock financial institution, or qualifying mutual financial institution from paying its deposit liabilities;

(8) Governing authority means the official, or the governing board, council, or other body or group of officials, authorized to designate a bank, capital stock financial institution, or qualifying mutual financial institution as a depository of public money or public funds subject to the act;

(9) Governmental unit means the State of Nebraska or any political subdivision thereof;

(10) Qualifying mutual financial institution shall have the same meaning as in section 77-2365.01;

(11) Repurchase agreement means an agreement to purchase securities by the governing authority by which the counterparty bank, capital stock financial institution, or qualifying mutual financial institution will repurchase the securities on or before a specified date and for a specified amount and the counterparty bank, capital stock financial institution, or qualifying mutual financial institution will deliver the underlying securities to the governing authority by book entry, physical delivery, or third-party custodial agreement. The transfer of underlying securities to the counterparty bank's, capital stock financial institution's, or qualifying mutual financial institution's customer book entry account may be used for book entry delivery if the governing authority so chooses; and

(12) Securities means:

(a) Bonds or obligations fully and unconditionally guaranteed both as to principal and interest by the United States Government;

(b) United States Government notes, certificates of indebtedness, or treasury bills of any issue;

(c) United States Government bonds;

(d) United States Government guaranteed bonds or notes;

(e) Bonds or notes of United States Government agencies;

(f) Bonds of any state or political subdivision which are fully defeased as to principal and interest by any combination of bonds or notes authorized in subdivision (c), (d), or (e) of this subdivision;

(g) Bonds or obligations, including mortgage-backed obligations, issued by the Federal Home Loan Mortgage Corporation, the Federal Farm Credit System, a Federal Home Loan Bank, or the Federal National Mortgage Association;

(h) Repurchase agreements the subject securities of which are any of the securities described in subdivisions (a) through (g) of this subdivision;

(i) Securities issued under the authority of the Federal Farm Loan Act;

(j) Loan participations which carry the guarantee of the Commodity Credit Corporation, an instrumentality of the United States Department of Agriculture;

(k) Guaranty agreements of the Small Business Administration of the United States Government;

(l) Bonds or obligations of any county, city, village, metropolitan utilities district, public power and irrigation district, sewer district, fire protection

district, rural water district, or school district in this state which have been issued as required by law;

(m) Bonds of the State of Nebraska or of any other state which are purchased by the Board of Educational Lands and Funds of this state for investment in the permanent school fund or which are purchased by the state investment officer of this state for investment in the permanent school fund;

(n) Bonds or obligations of another state, or a political subdivision of another state, which are rated within the two highest classifications of prime by at least one of the standard rating services;

(o) Warrants of the State of Nebraska;

(p) Warrants of any county, city, village, local hospital district, or school district in this state;

(q) Irrevocable, nontransferable, unconditional standby letters of credit issued by the Federal Home Loan Bank of Topeka; and

(r) Certificates of deposit fully insured or guaranteed by the Federal Deposit Insurance Corporation that are issued to a bank, capital stock financial institution, or qualifying mutual financial institution furnishing securities pursuant to the Public Funds Deposit Security Act.

Source: Laws 1996, LB 1274, § 2; Laws 1997, LB 275, § 2; Laws 2000, LB 932, § 39; Laws 2001, LB 362, § 82; Laws 2001, LB 420, § 35; Laws 2003, LB 131, § 37; Laws 2003, LB 175, § 14; Laws 2004, LB 999, § 50; Laws 2009, LB259, § 27.
Effective date March 6, 2009.

77-2388 Authorized depositories; security; requirements.

Any bank, capital stock financial institution, or qualifying mutual financial institution subject to a requirement by law to secure the deposit of public money or public funds in excess of the amount insured or guaranteed by the Federal Deposit Insurance Corporation may give security by furnishing securities or providing a deposit guaranty bond pursuant to the Public Funds Deposit Security Act in satisfaction of the requirement.

Source: Laws 1996, LB 1274, § 3; Laws 2001, LB 362, § 83; Laws 2009, LB259, § 28.
Effective date March 6, 2009.

77-2389 Security; how furnished.

A bank, capital stock financial institution, or qualifying mutual financial institution furnishes securities pursuant to the Public Funds Deposit Security Act if it (1) deposits securities held by the bank, capital stock financial institution, or qualifying mutual financial institution, (2) pledges or grants a security interest in securities held by the bank, capital stock financial institution, or qualifying mutual financial institution as provided in the act, or (3) effects the assignment to the custodial official of a certificate of deposit fully insured or guaranteed by the Federal Deposit Insurance Corporation that is issued to the bank, capital stock financial institution, or qualifying mutual financial institution.

Source: Laws 1996, LB 1274, § 4; Laws 2001, LB 362, § 84; Laws 2003, LB 175, § 15; Laws 2009, LB259, § 29.
Effective date March 6, 2009.

77-2395 Custodial official; duties.

(1) If a bank, capital stock financial institution, or qualifying mutual financial institution designated as a depository furnishes securities pursuant to section 77-2389, the custodial official shall not have on deposit in such depository any public money or public funds in excess of the amount insured or guaranteed by the Federal Deposit Insurance Corporation, unless and until the depository has furnished to the custodial official securities, the market value of which are in an amount not less than one hundred two percent of the amount on deposit which is in excess of the amount so insured or guaranteed.

(2) If a bank, capital stock financial institution, or qualifying mutual financial institution designated as a depository furnishes securities pursuant to subsection (1) of section 77-2398, the custodial official shall not have on deposit in such depository any public money or public funds in excess of the amount insured or guaranteed by the Federal Deposit Insurance Corporation, unless and until the depository has furnished to the custodial official securities, the market value of which are in an amount not less than one hundred five percent of the amount on deposit which is in excess of the amount so insured or guaranteed.

(3) If a bank, capital stock financial institution, or qualifying mutual financial institution designated as a depository provides a deposit guaranty bond pursuant to the Public Funds Deposit Security Act, the custodial official shall not have on deposit in such depository any public money or public funds in excess of the amount insured or guaranteed by the Federal Deposit Insurance Corporation, unless and until the depository has provided to the custodial official a deposit guaranty bond in an amount not less than the amount on deposit which is in excess of the amount so insured or guaranteed.

Source: Laws 1996, LB 1274, § 10; Laws 2000, LB 932, § 42; Laws 2001, LB 362, § 90; Laws 2009, LB259, § 30.
Effective date March 6, 2009.

77-2398 Deposits in excess of insured or guaranteed amount; requirements.

(1) As an alternative to the requirements to secure the deposit of public money or public funds in excess of the amount insured or guaranteed by the Federal Deposit Insurance Corporation pursuant to sections 77-2389 and 77-2394, a bank, capital stock financial institution, or qualifying mutual financial institution designated as a public depositary may secure the deposits of one or more governmental units by providing a deposit guaranty bond or by depositing, pledging, or granting a security interest in a single pool of securities to secure the repayment of all public money or public funds deposited in the bank, capital stock financial institution, or qualifying mutual financial institution by such governmental units and not otherwise secured pursuant to law, if at all times the total value of the deposit guaranty bond is at least equal to the amount on deposit which is in excess of the amount so insured or guaranteed or the aggregate market value of the pool of securities so deposited, pledged, or in which a security interest is granted is at least equal to one hundred five percent of the amount on deposit which is in excess of the amount so insured or guaranteed. Each such bank, capital stock financial institution, or qualifying mutual financial institution shall carry on its accounting records at all times a general ledger or other appropriate account of the total amount of all public money or public funds to be secured by a deposit guaranty bond or by the pool

of securities, as determined at the opening of business each day, and the total value of the deposit guaranty bond or the aggregate market value of the pool of securities deposited, pledged, or in which a security interest is granted to secure such public money or public funds.

(2) Only the securities listed in subdivision (12) of section 77-2387 may be provided and accepted as security for the deposit of public money or public funds and shall be eligible as collateral. The qualified trustee shall accept no security which is not listed in subdivision (12) of section 77-2387.

Source: Laws 2000, LB 932, § 43; Laws 2001, LB 362, § 92; Laws 2009, LB259, § 31.
Effective date March 6, 2009.

77-23,100 Deposits in excess of insured or guaranteed amount; qualified trustee; duties.

(1) Any bank, capital stock financial institution, or qualifying mutual financial institution in which public money or public funds have been deposited which satisfies its requirement to secure the deposit of public money or public funds in excess of the amount insured or guaranteed by the Federal Deposit Insurance Corporation by the deposit, pledge, or granting of a security interest in a single pool of securities shall designate a qualified trustee and place with the trustee for holding the securities so deposited, pledged, or in which a security interest has been granted pursuant to subsection (1) of section 77-2398. The bank, capital stock financial institution, or qualifying mutual financial institution shall give written notice of the designation of the qualified trustee to any custodial official depositing public money or public funds for which such securities are deposited, pledged, or in which a security interest has been granted, and if an affiliate of the bank, capital stock financial institution, or qualifying mutual financial institution is to serve as the qualified trustee, the notice shall disclose the affiliate relationship and shall be given prior to designation of the qualified trustee. The custodial official shall accept the written receipt of the trustee describing the pool of securities so deposited, pledged, or in which a security interest has been granted by the bank, capital stock financial institution, or qualifying mutual financial institution, a copy of which shall also be delivered to the bank, capital stock financial institution, or qualifying mutual financial institution.

(2) Any bank, capital stock financial institution, or qualifying mutual financial institution which satisfies its requirement to secure the deposit of public money or public funds in excess of the amount insured or guaranteed by the Federal Deposit Insurance Corporation under the Public Funds Deposit Security Act by providing a deposit guaranty bond pursuant to the provisions of subsection (1) of section 77-2398 shall designate a qualified trustee and cause to be issued a deposit guaranty bond which runs to the qualified trustee and which is conditioned that the bank, capital stock financial institution, or qualifying mutual financial institution shall render to the qualified trustee the statement required under subsection (3) of this section.

(3) Each bank, capital stock financial institution, or qualifying mutual financial institution which satisfies its requirement to secure the deposit of public money or public funds in excess of the amount insured or guaranteed by the Federal Deposit Insurance Corporation by providing a deposit guaranty bond or by depositing, pledging, or granting a security interest in a single pool of

securities shall, on or before the tenth day of each month, render to the qualified trustee a statement showing as of the last business day of the previous month (a) the amount of public money or public funds deposited in such bank, capital stock financial institution, or qualifying mutual financial institution that is not insured or guaranteed by the Federal Deposit Insurance Corporation (i) by each custodial official separately and (ii) by all custodial officials in the aggregate and (b) the total value of the deposit guaranty bond or the aggregate market value of the pool of securities deposited, pledged, or in which a security interest has been granted pursuant to subsection (1) of section 77-2398. Any qualified trustee shall be authorized, acting for the benefit of custodial officials, to take any and all actions necessary to take title to or to effect a first perfected security interest in the securities deposited, pledged, or in which a security interest is granted.

(4) Within ten days after receiving the statement required under subsection (3) of this section from a bank, capital stock financial institution, or qualifying mutual financial institution, the qualified trustee shall provide a report to each custodial official listed in such statement reflecting (a) the amount of public money or public funds deposited in such bank, capital stock financial institution, or qualifying mutual financial institution by each custodial official as of the last business day of the previous month that is not insured or guaranteed by the Federal Deposit Insurance Corporation and that is secured pursuant to subsection (1) of section 77-2398 and (b) the total value of the deposit guaranty bond or the aggregate market value of the pool of securities deposited, pledged, or in which a security interest is granted pursuant to subsection (1) of section 77-2398 as of the last business day of the previous month. The report shall clearly notify the custodial official if the value of the securities deposited does not meet the statutory requirement.

Source: Laws 2000, LB 932, § 45; Laws 2001, LB 362, § 94; Laws 2009, LB259, § 32.
Effective date March 6, 2009.

77-23,101 Qualified trustee; requirements.

Any Federal Reserve Bank, branch of a Federal Reserve Bank, a federal home loan bank, or another responsible bank which is authorized to exercise trust powers, capital stock financial institution which is authorized to exercise trust powers, qualifying mutual financial institution which is authorized to exercise trust powers, or trust company, other than the pledgor or the bank, capital stock financial institution, or qualifying mutual financial institution providing the deposit guaranty bond or granting the security interest, is qualified to act as a qualified trustee for the receipt of a deposit guaranty bond or the holding of securities under section 77-23,100. The bank, capital stock financial institution, or qualifying mutual financial institution in which public money or public funds are deposited may at any time substitute, exchange, or release securities deposited with a qualified trustee if such substitution, exchange, or release does not reduce the aggregate market value of the pool of securities to an amount that is less than one hundred five percent of the total amount of public money or public funds less the portion of such public money or public funds insured or guaranteed by the Federal Deposit Insurance Corporation. The bank, capital stock financial institution, or qualifying mutual financial institution in which public money or public funds are deposited may at any time reduce the amount of the deposit guaranty bond if the reduction

does not reduce the value of the deposit guaranty bond to an amount less than the total amount of public money or public funds less the portion of such public money or public funds insured or guaranteed by the Federal Deposit Insurance Corporation.

Source: Laws 2000, LB 932, § 46; Laws 2001, LB 362, § 95; Laws 2009, LB259, § 33.
Effective date March 6, 2009.

77-23,102 Default; procedure.

(1) If a bank, capital stock financial institution, or qualifying mutual financial institution experiences an event of default the qualified trustee shall proceed in the following manner: (a) The qualified trustee shall ascertain the aggregate amounts of public money or public funds secured pursuant to subsection (1) of section 77-2398 and deposited in the bank, capital stock financial institution, or qualifying mutual financial institution which has defaulted, as disclosed by the records of such bank, capital stock financial institution, or qualifying mutual financial institution. The qualified trustee shall determine for each custodial official for whom public money or public funds are deposited in the defaulting bank, capital stock financial institution, or qualifying mutual financial institution the accounts and amount of federal deposit insurance or guarantee that is available for each account. It shall then determine for each such custodial official the amount of public money or public funds not insured or guaranteed by the Federal Deposit Insurance Corporation and the amount of the deposit guaranty bond or pool of securities pledged, deposited, or in which a security interest has been granted to secure such public money or public funds. Upon completion of this analysis, the qualified trustee shall provide each such custodial official with a statement that reports the amount of public money or public funds deposited by the custodial official in the defaulting bank, capital stock financial institution, or qualifying mutual financial institution, the amount of public money or public funds that may be insured or guaranteed by the Federal Deposit Insurance Corporation, and the amount of public money or public funds secured by a deposit guaranty bond or secured by a pool of securities pursuant to subsection (1) of section 77-2398. Each such custodial official shall verify this information from his or her records within ten business days after receiving the report and information from the qualified trustee; and (b) upon receipt of a verified report from such custodial official and if the defaulting bank, capital stock financial institution, or qualifying mutual financial institution is to be liquidated or if for any other reason the qualified trustee determines that public money or public funds are not likely to be promptly paid upon demand, the qualified trustee shall proceed to enforce the deposit guaranty bond or liquidate the pool of securities held to secure the deposit of public money or public funds and shall repay each custodial official for the public money or public funds not insured or guaranteed by the Federal Deposit Insurance Corporation deposited in the bank, capital stock financial institution, or qualifying mutual financial institution by the custodial official. In the event that the amount of the deposit guaranty bond or the proceeds of the securities held by the qualified trustee after liquidation is insufficient to cover all public money or public funds not insured or guaranteed by the Federal Deposit Insurance Corporation for all custodial officials for whom the qualified trustee serves, the qualified trustee shall pay out to each custodial official available amounts pro rata in accordance with the respective public money or public

funds not insured or guaranteed by the Federal Deposit Insurance Corporation for each such custodial official.

(2) In the event that a federal deposit insurance agency is appointed and acts as a liquidator or receiver of any bank, capital stock financial institution, or qualifying mutual financial institution under state or federal law, those duties under this section that are specified to be performed by the qualified trustee in the event of default may be delegated to and performed by such federal deposit insurance agency.

Source: Laws 2000, LB 932, § 47; Laws 2001, LB 362, § 96; Laws 2009, LB259, § 34.
Effective date March 6, 2009.

77-23,105 Reports required.

Upon request of a custodial official, a bank, capital stock financial institution, or qualifying mutual financial institution shall report as of the date of such request the amount of public money or public funds deposited in such bank, capital stock financial institution, or qualifying mutual financial institution that is not insured or guaranteed by the Federal Deposit Insurance Corporation (1) by the custodial official making the request and (2) by all other custodial officials and secured pursuant to subsection (1) of section 77-2398, and the total value of the deposit guaranty bond or the aggregate market value of the pool of securities deposited, pledged, or in which a security interest has been granted to secure public money or public funds held by the bank, capital stock financial institution, or qualifying mutual financial institution, including those deposited by the custodial official. Upon request of a custodial official, a qualified trustee shall report as of the date of such request the total value of the deposit guaranty bond or the aggregate market value of the pool of securities deposited, pledged, or in which a security interest has been granted by the bank, capital stock financial institution, or qualifying mutual financial institution and shall provide an itemized list of the securities in the pool. Such reports shall be made on or before the date the custodial official specifies.

Source: Laws 2000, LB 932, § 50; Laws 2001, LB 362, § 99; Laws 2009, LB259, § 35.
Effective date March 6, 2009.

ARTICLE 26
CIGARETTE TAX

Section
77-2602.04. Bonds; limitation on pledge of revenue.

77-2602.04 Bonds; limitation on pledge of revenue.

Notwithstanding any other provision of law, for bonds issued on or after July 1, 2008, funds received by the issuer pursuant to section 77-2602 shall not be pledged for repayment of bonds, except that such funds may be pledged for repayment of refunding bonds issued to refund bonds issued prior to May 20, 2009.

Source: Laws 2008, LB961, § 9; Laws 2009, LB316, § 21.
Effective date May 20, 2009.

ARTICLE 27
SALES AND INCOME TAX

(a) ACT, RATES, AND DEFINITIONS

(b) SALES AND USE TAX

(c) INCOME TAX

(e) GOVERNMENTAL SUBDIVISION AID

(g) LOCAL OPTION REVENUE ACT

(j) SETOFF FOR CHILD, SPOUSAL, AND MEDICAL SUPPORT DEBTS

(m) NEBRASKA ADVANTAGE RURAL DEVELOPMENT ACT

(a) ACT, RATES, AND DEFINITIONS

77-2701 Act, how cited.

Sections 77-2701 to 77-27,135.01 and 77-27,228 to 77-27,236 shall be known and may be cited as the Nebraska Revenue Act of 1967.

Source: Laws 1967, c. 487, § 1, p. 1533; Laws 1984, LB 1124, § 2; Laws 1985, LB 715, § 1; Laws 1985, LB 273, § 40; Laws 1987, LB 773, § 1; Laws 1987, LB 772, § 1; Laws 1987, LB 775, § 14; Laws 1987, LB 523, § 12; Laws 1989, LB 714, § 1; Laws 1989, LB 762, § 9; Laws 1991, LB 444, § 1; Laws 1991, LB 773, § 6; Laws 1991, LB 829, § 19; Laws 1992, LB 871, § 3; Laws 1992, LB 1063, § 180; Laws 1992, Second Spec. Sess., LB 1, § 153; Laws 1992, Fourth Spec. Sess., LB 1, § 22; Laws 1993, LB 138, § 69; Laws 1993, LB 240, § 1; Laws 1993, LB 345, § 14; Laws 1993, LB 587, § 20; Laws 1993, LB 815, § 22; Laws 1994, LB 901, § 1; Laws 1994, LB 938, § 1; Laws 1995, LB 430, § 2; Laws 1996, LB 106, § 2; Laws 1997, LB 182A, § 1; Laws 1998, LB 924, § 27; Laws 2001, LB 172, § 10; Laws 2001, LB 433, § 2; Laws 2002, LB 57, § 2; Laws 2002, LB 947, § 3; Laws 2003, LB 72, § 1; Laws 2003, LB 168, § 1; Laws 2003, LB 282, § 6; Laws 2003, LB 759, § 4; Laws 2004, LB 1017, § 2; Laws 2005, LB 28, § 1; Laws 2005, LB 312, § 6; Laws 2006, LB 872, § 1; Laws 2006, LB 968, § 3; Laws 2006, LB 1189, § 1; Laws 2007, LB223, § 3; Laws 2007, LB343, § 1; Laws 2007, LB367, § 9; Laws 2008, LB916, § 5; Laws 2009, LB9, § 2.
Operative date October 1, 2009.

77-2701.03 Changes; when effective; relief from liability; conditions.

(1) The sales tax rate may only be changed effective at the beginning of a calendar quarter.

(2) Any sales tax exemption or repeal of any sales tax exemption shall only be effective at the beginning of a calendar quarter.

(3) Any change in sales tax rate or base dealing with a service covering a period of time starting before and ending after the effective date of the change shall be effective as follows: (a) For a rate increase or base expansion, the change shall apply to the first billing period commencing on or after the effective date; and (b) for a rate decrease or base contraction, the change shall apply to bills rendered on or after the effective date.

(4) A seller shall be relieved of liability for failing to collect tax at the new effective rate if the state fails to provide a period of at least thirty days between enactment of the statute providing for a rate change and the effective date of such rate change, the seller collected tax at the immediately preceding effective rate, and the seller's failure to collect at the newly effective rate does not extend beyond thirty days after the date of enactment of the new rate.

(5) Subsection (4) of this section shall not apply if the seller fraudulently failed to collect at the new rate or solicits purchasers based on the immediately preceding effective rate.

Source: Laws 2003, LB 282, § 7; Laws 2009, LB165, § 4.
Operative date October 1, 2009.

77-2701.04 Definitions, where found.

For purposes of sections 77-2701.04 to 77-2713, unless the context otherwise requires, the definitions found in sections 77-2701.05 to 77-2701.53 shall be used.

Source: Laws 1992, LB 871, § 4; Laws 1992, Fourth Spec. Sess., LB 1, § 23; Laws 1993, LB 345, § 15; Laws 1998, LB 924, § 28; R.S.Supp.,2002, § 77-2702.03; Laws 2003, LB 282, § 8; Laws 2003, LB 759, § 6; Laws 2004, LB 1017, § 3; Laws 2005, LB 312, § 7; Laws 2006, LB 968, § 4; Laws 2006, LB 1189, § 2; Laws 2007, LB223, § 4; Laws 2007, LB367, § 10; Laws 2008, LB916, § 6; Laws 2009, LB9, § 3.
Operative date October 1, 2009.

77-2701.16 Gross receipts, defined.

(1) Gross receipts means the total amount of the sale or lease or rental price, as the case may be, of the retail sales of retailers.

(2) Gross receipts of every person engaged as a public utility specified in this subsection, as a community antenna television service operator, or as a satellite service operator or any person involved in connecting and installing services defined in subdivision (2)(a), (b), or (d) of this section means:

(a)(i) In the furnishing of telephone communication service, other than mobile telecommunications service as described in section 77-2703.04, the gross income received from furnishing ancillary services, except for conference bridging services, and intrastate telecommunications services, except for value-added, nonvoice data service; and

(ii) In the furnishing of mobile telecommunications service as described in section 77-2703.04, the gross income received from furnishing mobile telecommunications service that originates and terminates in the same state to a customer with a place of primary use in Nebraska;

(b) In the furnishing of telegraph service, the gross income received from the furnishing of intrastate telegraph services;

(c) In the furnishing of gas, electricity, sewer, and water service, the gross income received from the furnishing of such services upon billings or statements rendered to consumers for such utility services;

(d) In the furnishing of community antenna television service or satellite service, the gross income received from the furnishing of such community antenna television service as regulated under sections 18-2201 to 18-2205 or 23-383 to 23-388 or satellite service; and

(e) The gross income received from the provision, installation, construction, servicing, or removal of property used in conjunction with the furnishing, installing, or connecting of any public utility services specified in subdivision (2)(a) or (b) of this section or community antenna television service or satellite service specified in subdivision (2)(d) of this section, except when acting as a subcontractor for a public utility, this subdivision does not apply to the gross income received by a contractor electing to be treated as a consumer of building materials under subdivision (2) or (3) of section 77-2701.10 for any such services performed on the customer's side of the utility demarcation point.

(3) Gross receipts of every person engaged in selling, leasing, or otherwise providing intellectual or entertainment property means:

(a) In the furnishing of computer software, the gross income received, including the charges for coding, punching, or otherwise producing any computer software and the charges for the tapes, disks, punched cards, or other properties furnished by the seller; and

(b) In the furnishing of videotapes, movie film, satellite programming, satellite programming service, and satellite television signal descrambling or decoding devices, the gross income received from the license, franchise, or other method establishing the charge.

(4) Gross receipts for providing a service means:

(a) The gross income received for building cleaning and maintenance, pest control, and security;

(b) The gross income received for motor vehicle washing, waxing, towing, and painting;

(c) The gross income received for computer software training;

(d) The gross income received for installing and applying tangible personal property if the sale of the property is subject to tax. If any or all of the charge for installation is free to the customer and is paid by a third-party service provider to the installer, any tax due on that part of the activation commission, finder's fee, installation charge, or similar payment made by the third-party service provider shall be paid and remitted by the third-party service provider;

(e) The gross income received for services of recreational vehicle parks;

(f) The gross income received for labor for repair or maintenance services performed with regard to tangible personal property the sale of which would be subject to sales and use taxes, excluding motor vehicles, except as otherwise provided in section 77-2704.26 or 77-2704.50;

(g) The gross income received for animal specialty services except (i) veterinary services, (ii) specialty services performed on livestock as defined in section 54-183, and (iii) animal grooming performed by a licensed veterinarian or a licensed veterinary technician in conjunction with medical treatment; and

(h) The gross income received for detective services.

(5) Gross receipts includes the sale of admissions which means the right or privilege to have access to or to use a place or location. An admission includes a membership that allows access to or use of a place or location, but which membership does not include the right to hold office, vote, or change the policies of the organization. When an admission to an activity or a membership constituting an admission pursuant to this subsection is combined with the solicitation of a contribution, the portion or the amount charged representing the fair market price of the admission shall be considered a retail sale subject to the tax imposed by section 77-2703. The organization conducting the activity shall determine the amount properly attributable to the purchase of the privilege, benefit, or other consideration in advance, and such amount shall be clearly indicated on any ticket, receipt, or other evidence issued in connection with the payment.

(6) Gross receipts includes the sale of live plants incorporated into real estate except when such incorporation is incidental to the transfer of an improvement upon real estate or the real estate.

(7) Gross receipts includes the sale of any building materials annexed to real estate by a person electing to be taxed as a retailer pursuant to subdivision (1) of section 77-2701.10.

(8) Gross receipts includes the sale of and recharge of prepaid calling service and prepaid wireless calling service.

(9) Gross receipts includes the retail sale of digital audio works, digital audiovisual works, digital codes, and digital books delivered electronically if the products are taxable when delivered on tangible storage media. A sale includes the transfer of a permanent right of use, the transfer of a right of use that terminates on some condition, and the transfer of a right of use conditioned upon the receipt of continued payments.

(10) Gross receipts does not include:

(a) The amount of any rebate granted by a motor vehicle or motorboat manufacturer or dealer at the time of sale of the motor vehicle or motorboat, which rebate functions as a discount from the sales price of the motor vehicle or motorboat; or

(b) The price of property or services returned or rejected by customers when the full sales price is refunded either in cash or credit.

Source: Laws 1992, LB 871, § 8; Laws 1993, LB 345, § 18; Laws 1994, LB 123, § 21; Laws 1994, LB 901, § 2; Laws 1994, LB 977, § 1; Laws 1994, LB 1087, § 1; Laws 1996, LB 106, § 3; Laws 1999, LB 214, § 1; Laws 2002, LB 947, § 4; Laws 2002, LB 1085, § 3; R.S.Supp.,2002, § 77-2702.07; Laws 2003, LB 282, § 20; Laws 2003, LB 759, § 8; Laws 2004, LB 1017, § 7; Laws 2005, LB 216, § 4; Laws 2005, LB 753, § 1; Laws 2007, LB367, § 13; Laws 2008, LB916, § 7; Laws 2009, LB165, § 5; Laws 2009, LB 587, § 1.
Operative date October 1, 2009.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB165, section 5, with LB587, section 1, to reflect all amendments.

77-2701.24 Occasional sale, defined.

Occasional sale means:

(1) A sale, but not a lease or rental, of property which is the subject of any intercompany sale or transfer involving any parent, subsidiary, or brother-sister company relationship under section 77-2704.28 and which was either originally acquired prior to June 1, 1967, or, if acquired thereafter, the seller or transferor directly or indirectly has previously paid a sales or use tax thereon, including:

(a) From one corporation to another corporation pursuant to a reorganization. For purposes of this subdivision, reorganization means a statutory merger or consolidation or the acquisition by a corporation of substantially all of the properties of another corporation when the consideration is solely all or a part of the voting stock of the acquiring corporation or of its parent or subsidiary corporation;

(b) In connection with the winding up, dissolution, or liquidation of a corporation only when there is a distribution of the property of such corporation to the shareholders in kind if the portion of the property so distributed to

the shareholder is substantially in proportion to the share of stock or securities held by the shareholder;

(c) To a corporation for the purpose of organization of such corporation or the contribution of additional capital to such corporation when the former owners of the property transferred are immediately after the transfer in control of the corporation and the stock or securities received by each is substantially in proportion to his or her interest in the property prior to the transfer;

(d) To a partnership in the organization of such partnership if the former owners of the property transferred are immediately after the transfer members of such partnership and the interest in the partnership received by each is substantially in proportion to his or her interest in the property prior to the transfer;

(e) From a partnership to the members thereof when made in kind in the dissolution of such partnership if the portion of the property so distributed to the members of the partnership is substantially in proportion to the interest in the partnership held by the members;

(f) To a limited liability company in the organization of such limited liability company if the former owners of the property transferred are immediately after the transfer members of such limited liability company and the interest in the limited liability company received by each is substantially in proportion to his or her interest in the property prior to the transfer;

(g) From a limited liability company to the members thereof when made in kind in the dissolution of such limited liability company if the portion of the property so distributed to the members of the limited liability company is substantially in proportion to the interest in the limited liability company held by the members;

(h) From one limited liability company to another limited liability company pursuant to a reorganization; or

(i) Any transaction between two persons that qualifies as a tax-free transaction under the Internal Revenue Code;

(2) A sale of household goods, personal effects, and services if each of the following conditions is met and if any one condition is not met then the entire gross receipts shall be subject to the tax imposed by section 77-2703:

(a) Such sales are by an individual at his or her residence or if more than one individual's property is involved such sales are by one of the individuals involved at the residence of one of the individuals or such sales are by an individual on an online auction site;

(b) Such sales do not occur at any residence or on an online auction site for more than three days during a calendar year;

(c) Such individual or individuals or any member of any of their households does not conduct or engage in a trade or business in which similar items are sold or services provided;

(d) Such property sold was originally acquired for and used for personal use or the service provided may be performed at any individual residence without specialized equipment or supplies; and

(e) Such property is not otherwise excepted from the definition of occasional sale;

(3) Commencing with any transaction occurring on or after October 1, 1985, any sale of business or farm machinery and equipment if each of the following conditions is met and if any one condition is not met the entire gross receipts shall be subject to the tax imposed by section 77-2703:

(a) Such machinery or equipment was used by the seller or seller's predecessor in a sale described in subdivision (1) of this section as a depreciable capital asset in connection with the farm or business for a period of at least one year;

(b) Such property was originally acquired prior to June 1, 1967, or if acquired thereafter, the seller or seller's predecessor in a sale described in subdivision (1) of this section directly or indirectly has previously paid a sales or use tax thereon; and

(c) Such property is not otherwise excepted from the definition of occasional sale;

(4) Commencing October 1, 1985, a sale by an organization created exclusively for religious purposes or an agent of the organization for such sale if each of the following conditions is met and if any one condition is not met then the entire gross receipts shall be subject to the tax imposed by section 77-2703:

(a) All sales occur during an activity conducted by such organization or, if more than one organization is involved, by one of the organizations owning property being sold;

(b) The organization only sells property it owns or provides the service during one such activity in a calendar year; and

(c) The activity does not last longer than three consecutive days; and

(5) Any sale that is made in connection with the sale to a single buyer of all or substantially all of a trade or business if the seller or seller's predecessor in a sale described in subdivision (1) of this section directly or indirectly has previously paid a sales or use tax thereon. This subdivision shall apply to any transaction occurring on or after October 1, 1985.

Commencing October 1, 1985, occasional sale does not include any sale directly by or any sale which is supervised or aided by an auctioneer or an agent or employee of an auctioneer.

Except for a sale listed in subdivision (1) of this section, an occasional sale does not mean any sale of motor vehicles, semitrailers, or trailers as defined in the Motor Vehicle Registration Act or any sale of a motorboat as defined in section 37-1204.

Source: Laws 1992, LB 871, § 10; Laws 1993, LB 121, § 500; Laws 1993, LB 345, § 19; Laws 1994, LB 123, § 22; Laws 1995, LB 574, § 73; Laws 2002, LB 1085, § 4; R.S.Supp.,2002, § 77-2702.09; Laws 2003, LB 282, § 28; Laws 2005, LB 274, § 273; Laws 2009, LB165, § 6.
Operative date October 1, 2009.

Cross References

Motor Vehicle Registration Act, see section 60-301.

(b) SALES AND USE TAX

77-2703.04 Telecommunications sourcing rule.

(1) Except for the telecommunications service defined in subsection (3) of this section, the sale of telecommunications service sold on a call-by-call basis shall

be sourced to (a) each level of taxing jurisdiction where the call originates and terminates in that jurisdiction or (b) each level of taxing jurisdiction where the call either originates or terminates and in which the service address is also located.

(2) Except for the telecommunications service defined in subsection (3) of this section, a sale of telecommunications service sold on a basis other than a call-by-call basis and ancillary services are sourced to the customer's place of primary use.

(3)(a) For mobile telecommunications service and ancillary services provided and billed to a customer by a home service provider:

(i) Notwithstanding any other provision of law or any local ordinance or resolution, such mobile telecommunications service is deemed to be provided by the customer's home service provider;

(ii) All taxable charges for such mobile telecommunications service and ancillary services shall be subject to tax by the state or other taxing jurisdiction in this state whose territorial limits encompass the customer's place of primary use regardless of where the mobile telecommunications service originates, terminates, or passes through; and

(iii) No taxes, charges, or fees may be imposed on a customer with a place of primary use outside this state.

(b) In accordance with the federal Mobile Telecommunications Sourcing Act, as such act existed on July 20, 2002, the Tax Commissioner may, but is not required to:

(i) Provide or contract for a tax assignment data base based upon standards identified in 4 U.S.C. 119, as such section existed on July 20, 2002, with the following conditions:

(A) If such data base is provided, a home service provider shall be held harmless for any tax that otherwise would result from any errors or omissions attributable to reliance on such data base; or

(B) If such data base is not provided, a home service provider may rely on an enhanced zip code for identifying the proper taxing jurisdictions and shall be held harmless for any tax that otherwise would result from any errors or omissions attributable to reliance on such enhanced zip code if the home service provider identified the taxing jurisdiction through the exercise of due diligence and complied with any procedures that may be adopted by the Tax Commissioner. Any such procedure shall be in accordance with 4 U.S.C. 120, as such section existed on July 20, 2002; and

(ii) Adopt procedures for correcting errors in the assignment of primary use that are consistent with 4 U.S.C. 121, as such section existed on July 20, 2002.

(c) If charges for mobile telecommunications service that are not subject to tax are aggregated with and not separately stated on the bill from charges that are subject to tax, the total charge to the customer shall be subject to tax unless the home service provider can reasonably separate charges not subject to tax using the records of the home service provider that are kept in the regular course of business.

(d) For purposes of this subsection:

(i) Customer means an individual, business, organization, or other person contracting to receive mobile telecommunications service from a home service

provider. Customer does not include a reseller of mobile telecommunications service or a serving carrier under an arrangement to serve the customer outside the home service provider's service area;

(ii) Home service provider means a telecommunications company as defined in section 86-322 that has contracted with a customer to provide mobile telecommunications service;

(iii) Mobile telecommunications service means a wireless communication service carried on between mobile stations or receivers and land stations, and by mobile stations communicating among themselves, and includes (A) both one-way and two-way wireless communication services, (B) a mobile service which provides a regularly interacting group of base, mobile, portable, and associated control and relay stations, whether on an individual, cooperative, or multiple basis for private one-way or two-way land mobile radio communications by eligible users over designated areas of operation, and (C) any personal communication service;

(iv) Place of primary use means the street address representative of where the customer's use of mobile telecommunications service primarily occurs. The place of primary use shall be the residential street address or the primary business street address of the customer and shall be within the service area of the home service provider; and

(v) Tax means the sales taxes levied under sections 13-319, 77-2703, and 77-27,142, the surcharges levied under the Enhanced Wireless 911 Services Act, the Nebraska Telecommunications Universal Service Fund Act, and the Telecommunications Relay System Act, and any other tax levied against the customer based on the amount charged to the customer. Tax does not mean an income tax, property tax, franchise tax, or any other tax levied on the home service provider that is not based on the amount charged to the customer.

(4) A sale of post-paid calling service is sourced to the origination point of the telecommunications signal as first identified by either (a) the seller's telecommunications system, or (b) information received by the seller from its service provider, where the system used to transport such signals is not that of the seller.

(5) A sale of prepaid calling service or a sale of a prepaid wireless calling service is sourced in accordance with section 77-2703.01, except that in the case of a sale of a prepaid wireless calling service, the rule provided in section 77-2703.01 shall include as an option the location associated with the mobile telephone number.

(6) A sale of a private communication service is sourced as follows:

(a) Service for a separate charge related to a customer channel termination point is sourced to each level of jurisdiction in which such customer channel termination point is located;

(b) Service where all customer termination points are located entirely within one jurisdiction or levels of jurisdiction is sourced in such jurisdiction in which the customer channel termination points are located;

(c) Service for segments of a channel between two customer channel termination points located in different jurisdictions and which segments of channel are separately charged is sourced fifty percent in each level of jurisdiction in which the customer channel termination points are located; and

(d) Service for segments of a channel located in more than one jurisdiction or levels of jurisdiction and which segments are not separately billed is sourced in each jurisdiction based on the percentage determined by dividing the number of customer channel termination points in such jurisdiction by the total number of customer channel termination points.

(7) For purposes of this section:

(a) 800 service means a telecommunications service that allows a caller to dial a toll-free number without incurring a charge for the call. The service is typically marketed under the name 800, 855, 866, 877, and 888 toll-free calling, and any subsequent numbers designated by the Federal Communications Commission;

(b) 900 service means an inbound toll telecommunications service purchased by a subscriber that allows the subscriber's customers to call in to the subscriber's prerecorded announcement or live service. 900 service does not include the charge for collection services provided by the seller of the telecommunications services to the subscriber or service or product sold by the subscriber to the subscriber's customer. The service is typically marketed under the name 900 service, and any subsequent numbers designated by the Federal Communications Commission;

(c) Air-to-ground radiotelephone service means a radio telecommunication service, as that term is defined in 47 C.F.R. 22.99, as such regulation existed on January 1, 2007, in which common carriers are authorized to offer and provide radio telecommunications service for hire to subscribers in aircraft;

(d) Ancillary services means services that are associated with or incidental to the provision of telecommunications services, including, but not limited to, detailed telecommunications billings, directory assistance, vertical service, and voice mail services;

(e) Call-by-call basis means any method of charging for telecommunications service where the price is measured by individual calls;

(f) Coin-operated telephone service means a telecommunications service paid for by inserting money into a telephone accepting direct deposits of money to operate;

(g) Communications channel means a physical or virtual path of communications over which signals are transmitted between or among customer channel termination points;

(h) Conference bridging service means an ancillary service that links two or more participants of an audio or video conference call and may include the provision of a telephone number. Conference bridging service does not include the telecommunications services used to reach the conference bridge;

(i) Customer means the person or entity that contracts with the seller of telecommunications service. If the end user of telecommunications service is not the contracting party, the end user of the telecommunications service is the customer of the telecommunications service, but this sentence only applies for the purpose of sourcing sales of telecommunications service under this section. Customer does not include a reseller of telecommunications service or for mobile telecommunications service of a serving carrier under an agreement to serve the customer outside the home service provider's licensed service area;

(j) Customer channel termination point means the location where the customer either inputs or receives the communications;

(k) Detailed telecommunications billing service means an ancillary service of separately stating information pertaining to individual calls on a customer's billing statement;

(l) Directory assistance means an ancillary service of providing telephone number information and address information;

(m) End user means the person who utilizes the telecommunications service. In the case of an entity, end user means the individual who utilizes the service on behalf of the entity;

(n) Fixed wireless service means a telecommunications service that provides radio communication between fixed points;

(o) International means a telecommunications service that originates or terminates in the United States and terminates or originates outside the United States, respectively. United States includes the District of Columbia or a United States territory or possession;

(p) Interstate means a telecommunications service that originates in one state of the United States, or a territory or possession of the United States, and terminates in a different state, territory, or possession of the United States;

(q) Intrastate means a telecommunications service that originates in one state of the United States, or a territory or possession of the United States, and terminates in the same state, territory, or possession of the United States;

(r) Mobile wireless service means a telecommunications service that is transmitted, conveyed, or routed regardless of the technology used, whereby the origination and termination points of the transmission, conveyance, or routing are not fixed, including, by way of example only, telecommunications services that are provided by a commercial mobile radio service provider;

(s) Paging service means a telecommunications service that provides transmission of coded radio signals for the purpose of activating specific pagers. Such transmission may include messages and sounds;

(t) Pay telephone services means a telecommunications service provided through pay telephones;

(u) Post-paid calling service means the telecommunications service obtained by making a payment on a call-by-call basis either through the use of a credit card or payment mechanism, such as a bank card, travel card, credit card, or debit card, or by a charge made to a telephone number which is not associated with the origination or termination of the telecommunications service. A post-paid calling service includes a telecommunications service, except a prepaid wireless calling service, that would be a prepaid calling service except it is not exclusively a telecommunications service;

(v) Prepaid calling service means the right to access exclusively telecommunications service, which is paid for in advance and which enables the origination of calls using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount;

(w) Prepaid wireless calling service means a telecommunications service that provides the right to utilize mobile wireless service as well as other nontelecommunications services, including the download of digital products delivered electronically, content, and ancillary services, which must be paid for in advance, that is sold in predetermined units of dollars or which the number declines with use in a known amount;

(x) Private communication service means a telecommunications service that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which such channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of such channel or channels;

(y) Residential telecommunications service means a telecommunications service or ancillary services provided to an individual for personal use at a residential address, including an individual dwelling unit such as an apartment. In the case of institutions where individuals reside, such as schools or nursing homes, telecommunications service is considered residential if it is provided to and paid for by an individual resident rather than the institution;

(z) Service address means the location of the telecommunications equipment to which a customer's call is charged and from which the call originates or terminates, regardless of where the call is billed or paid. If this location is not known, service address means the origination point of the signal of the telecommunications service first identified either by the seller's telecommunications system, or in information received by the seller from its service provider, where the system used to transport such signals is not that of the seller. If both locations are not known, the service address means the location of the customer's place of primary use;

(aa) Telecommunications service means the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points. Telecommunications service includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether such service is referred to as voice over Internet protocol services or is classified by the Federal Communications Commission as enhanced or value-added. Telecommunications service does not include:

(i) Data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a purchaser when such purchaser's primary purpose for the underlying transaction is the processed data or information;

(ii) Installation or maintenance of wiring or equipment on a customer's premises;

(iii) Tangible personal property;

(iv) Advertising, including, but not limited to, directory advertising;

(v) Billing and collection services provided to third parties;

(vi) Internet access service;

(vii) Radio and television audio and video programming services, regardless of the medium, including the furnishing of transmission, conveyance, and routing of such services by the programming service provider. Radio and television audio and video programming services shall include, but not be limited to, cable service as defined in 47 U.S.C. 522, as such section existed on January 1, 2007, and audio and video programming services delivered by providers of commercial mobile radio service as defined in 47 C.F.R. 20.3, as such regulation existed on January 1, 2007;

(viii) Ancillary services; or

(ix) Digital products delivered electronically, including, but not limited to, software, music, video, reading materials, or ring tones;

(bb) Value-added, nonvoice data service means a service that otherwise meets the definition of telecommunications services in which computer processing applications are used to act on the form, content, code, or protocol of the information or data primarily for a purpose other than transmission, conveyance, or routing;

(cc) Vertical service means an ancillary service that is offered in connection with one or more telecommunications services, which offers advanced calling features that allow customers to identify callers and to manage multiple calls and call connections, including conference bridging services; and

(dd) Voice mail service means an ancillary service that enables the customer to store, send, or receive recorded messages. Voice mail service does not include any vertical services that the customer may be required to have in order to utilize the voice mail service.

Source: Laws 2003, LB 282, § 52; Laws 2007, LB223, § 8; Laws 2009, LB165, § 7.
Operative date October 1, 2009.

Cross References

Enhanced Wireless 911 Services Act, see section 86-442.
Nebraska Telecommunications Universal Service Fund Act, see section 86-316.
Telecommunications Relay System Act, see section 86-301.

77-2704.09 Insulin; prescription drugs; mobility enhancing equipment; medical equipment; exemptions.

(1) Sales and use taxes shall not be imposed on the gross receipts from the sale, lease, or rental of and the storage, use, or other consumption in this state of (a) insulin, (b) mobility enhancing equipment and drugs, not including over-the-counter drugs, when sold for a patient's use under a prescription, and (c) the following when sold for a patient's use under a prescription and which are of the type eligible for coverage under the medical assistance program established pursuant to the Medical Assistance Act: Durable medical equipment; home medical supplies; prosthetic devices; oxygen; and oxygen equipment.

(2) For purposes of this section:

(a) Drug means a compound, substance, preparation, and component of a compound, substance, or preparation, other than food and food ingredients, dietary supplements, or alcoholic beverages:

(i) Recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, and any supplement to any of them;

(ii) Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease; or

(iii) Intended to affect the structure or any function of the body;

(b) Durable medical equipment means equipment which can withstand repeated use, is primarily and customarily used to serve a medical purpose, generally is not useful to a person in the absence of illness or injury, is appropriate for use in the home, and is not worn in or on the body. Durable medical equipment includes repair and replacement parts for such equipment;

(c) Home medical supplies means supplies primarily and customarily used to serve a medical purpose which are appropriate for use in the home and are generally not useful to a person in the absence of illness or injury;

(d) Mobility enhancing equipment means equipment which is primarily and customarily used to provide or increase the ability to move from one place to another, which is not generally used by persons with normal mobility, and which is appropriate for use either in a home or a motor vehicle. Mobility enhancing equipment includes repair and replacement parts for such equipment. Mobility enhancing equipment does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer;

(e) Over-the-counter drug means a drug that contains a label that identifies the product as a drug as required by 21 C.F.R. 201.66, as such regulation existed on January 1, 2003. The over-the-counter drug label includes a drug facts panel or a statement of the active ingredients with a list of those ingredients contained in the compound, substance, or preparation;

(f) Oxygen equipment means oxygen cylinders, cylinder transport devices including sheaths and carts, cylinder studs and support devices, regulators, flowmeters, tank wrenches, oxygen concentrators, liquid oxygen base dispensers, liquid oxygen portable dispensers, oxygen tubing, nasal cannulas, face masks, oxygen humidifiers, and oxygen fittings and accessories;

(g) Prescription means an order, formula, or recipe issued in any form of oral, written, electronic, or other means of transmission by a duly licensed practitioner authorized under the Uniform Credentialing Act; and

(h) Prosthetic devices means a replacement, corrective, or supportive device worn on or in the body to artificially replace a missing portion of the body, prevent or correct physical deformity or malfunction, or support a weak or deformed portion of the body, and includes any supplies used with such device and repair and replacement parts.

Source: Laws 1992, LB 871, § 33; Laws 1993, LB 345, § 39; Laws 1994, LB 901, § 5; Laws 1999, LB 280, § 1; Laws 2003, LB 282, § 53; Laws 2005, LB 256, § 95; Laws 2006, LB 1248, § 85; Laws 2007, LB463, § 1308; Laws 2008, LB916, § 17; Laws 2009, LB165, § 8. Operative date October 1, 2009.

Cross References

Medical Assistance Act, see section 68-901.
Uniform Credentialing Act, see section 38-101.

77-2704.13 Fuel, energy, or water sources; exemption.

Sales and use taxes shall not be imposed on the gross receipts from the sale, lease, or rental of and the storage, use, or other consumption in this state of:

(1) Sales and purchases of electricity, coal, gas, fuel oil, diesel fuel, tractor fuel, propane, gasoline, coke, nuclear fuel, butane, wood as fuel, and corn as fuel when more than fifty percent of the amount purchased is for use directly in irrigation or farming;

(2) Sales and purchases of such energy sources or fuels made before April 1, 1993, or after March 31, 1994, when more than fifty percent of the amount purchased is for use directly in processing, manufacturing, or refining, in the generation of electricity, or by any hospital. The state tax paid on purchases of

such energy sources or fuels during the period beginning April 1, 1993, and ending March 31, 1994, shall not exceed one hundred thousand dollars for any one location when more than fifty percent of the amount purchased is for use directly in processing, manufacturing, or refining or by any hospital. All purchases of such energy sources or fuels for use in the generation of electricity during the period beginning April 1, 1993, and ending March 31, 1994, shall be taxable. Any taxpayer who has paid the limit of state tax on such energy sources or fuels at one location shall be exempt on all other qualifying purchases at such location. Such taxpayer shall be entitled to a refund of any amount of state or local option tax paid on an energy source or fuel exempt under this subdivision. A refund shall be made pursuant to section 77-2708; and

(3) Sales and purchases of water used for irrigation of agricultural lands and manufacturing purposes.

Source: Laws 1992, LB 871, § 37; Laws 1992, Fourth Spec. Sess., LB 1, § 27; Laws 1993, LB 345, § 43; Laws 1994, LB 977, § 4; Laws 2003, LB 282, § 55; Laws 2009, LB9, § 4.
Operative date April 1, 2009.

77-2704.15 Purchases by state, schools, or governmental units; exemption; purchasing agents.

(1) Sales and use taxes shall not be imposed on the gross receipts from the sale, lease, or rental of and the storage, use, or other consumption in this state of purchases by the state, including public educational institutions recognized or established under the provisions of Chapter 85, or by any county, township, city, village, rural or suburban fire protection district, city airport authority, county airport authority, joint airport authority, drainage district organized under sections 31-401 to 31-450, natural resources district, elected county fair board, housing agency as defined in section 71-1575 except for purchases for any commercial operation that does not exclusively benefit the residents of an affordable housing project, or joint entity or agency formed to fulfill the purposes described in the Integrated Solid Waste Management Act by any combination of two or more counties, townships, cities, or villages pursuant to the Interlocal Cooperation Act, the Integrated Solid Waste Management Act, or the Joint Public Agency Act, except for purchases for use in the business of furnishing gas, water, electricity, or heat, or by any irrigation or reclamation district, the irrigation division of any public power and irrigation district, or public schools or learning communities established under Chapter 79.

(2) The appointment of purchasing agents shall be recognized for the purpose of altering the status of the construction contractor as the ultimate consumer of building materials which are physically annexed to the structure and which subsequently belong to the state or the governmental unit. The appointment of purchasing agents shall be in writing and occur prior to having any building materials annexed to real estate in the construction, improvement, or repair. The contractor who has been appointed as a purchasing agent may apply for a refund of or use as a credit against a future use tax liability the tax paid on inventory items annexed to real estate in the construction, improvement, or repair of a project for the state or a governmental unit.

(3) Any governmental unit listed in subsection (1) of this section, except the state, which enters into a contract of construction, improvement, or repair upon property annexed to real estate without first issuing a purchasing agent

authorization to a contractor or repairperson prior to the building materials being annexed to real estate in the project may apply to the Tax Commissioner for a refund of any sales and use tax paid by the contractor or repairperson on the building materials physically annexed to real estate in the construction, improvement, or repair.

Source: Laws 1992, LB 871, § 39; Laws 1993, LB 345, § 44; Laws 1994, LB 977, § 5; Laws 1994, LB 1207, § 16; Laws 1999, LB 87, § 86; Laws 1999, LB 232, § 1; Laws 2000, LB 557, § 1; Laws 2002, LB 123, § 1; Laws 2004, LB 1017, § 14; Laws 2006, LB 1189, § 6; Laws 2009, LB392, § 8.
Effective date May 27, 2009.

Cross References

Integrated Solid Waste Management Act, see section 13-2001.
Interlocal Cooperation Act, see section 13-801.
Joint Public Agency Act, see section 13-2501.

77-2704.19 Repealed. Laws 2009, LB 154, § 27.

77-2704.52 Prepaid calling service or prepaid wireless calling service; exemption.

Sales and use taxes shall not be imposed on the gross receipts from the sale, lease, or rental of and the storage, use, or other consumption in this state of services rendered using a prepaid calling service or a prepaid wireless calling service.

Source: Laws 2003, LB 282, § 67; Laws 2009, LB165, § 9.
Operative date October 1, 2009.

77-2704.57 Personal property used in C-BED project or community-based energy development project; exemption; Tax Commissioner; powers and duties; Department of Revenue; recover tax not paid.

(1) Sales and use tax shall not be imposed on the gross receipts from the sale, lease, or rental of personal property for use in a C-BED project or community-based energy development project. This exemption shall be conditioned upon filing requirements for the exemption as imposed by the Tax Commissioner. The requirements imposed by the Tax Commissioner shall be related to ensuring that the property purchased qualifies for the exemption. The Tax Commissioner may require the filing of the documents showing compliance with section 70-1907, the organization of the project, the distribution of the payments, the power purchase agreements, the project pro forma, articles of incorporation, operating agreements, and any amendments or changes to these documents during the life of the power purchase agreement.

(2) The Tax Commissioner shall notify an electric utility that has a power purchase agreement with a C-BED project if there is a change in project ownership which makes the project no longer eligible as a C-BED project. Purchase of a C-BED project by an electric utility prior to the end of the power purchase agreement disqualifies the C-BED project for the exemption, but the Department of Revenue may not recover the amount of the sales and use tax that was not paid by the project prior to the purchase.

(3) For purposes of this section:

(a) C-BED project or community-based energy development project means a new wind energy project that:

(i) Has an ownership structure as follows:

(A) For a C-BED project that consists of more than two turbines, has one or more qualified owners with no single individual qualified owner owning directly or indirectly more than fifteen percent of the project and with at least thirty-three percent of the gross power purchase agreement payments flowing to the qualified owner or owners or local community; or

(B) For a C-BED project that consists of one or two turbines, has one or more qualified owners with at least thirty-three percent of the gross power purchase agreement payments flowing to a qualified owner or owners or local community; and

(ii) Has a resolution of support adopted:

(A) By the county board of each county in which the C-BED project is to be located; or

(B) By the tribal council for a C-BED project located within the boundaries of an Indian reservation;

(b) Debt financing payments means principal, interest, and other typical financing costs paid by the C-BED project company to one or more third-party financial institutions for the financing or refinancing of the construction of the C-BED project. Debt financing payments does not include the repayment of principal at the time of a refinancing;

(c) New wind energy project means any tangible personal property incorporated into the manufacture, installation, construction, repair, or replacement of a device, such as a wind charger, windmill, or wind turbine, which is used to convert wind energy to electrical energy or for the transmission of electricity to the purchaser; and

(d) Qualified owner means:

(i) A Nebraska resident;

(ii) A limited liability company that is organized under the Limited Liability Company Act and that is entirely made up of members who are Nebraska residents;

(iii) A Nebraska nonprofit corporation organized under the Nebraska Nonprofit Corporation Act;

(iv) An electric supplier as defined in section 70-1001.01, except that ownership in a single C-BED project is limited to no more than:

(A) Fifteen percent either directly or indirectly by a single electric supplier; and

(B) A combined total of twenty-five percent ownership either directly or indirectly by multiple electric suppliers; or

(v) A tribal council.

(4) Gross power purchase agreement payments are the total amount of payments during the life of the agreement. For power purchase agreements entered into on or before December 31, 2011, if the qualified owners have a combined total of at least thirty-three percent of the equity ownership in the C-BED project, gross power purchase agreement payments shall be reduced by the debt financing payments. For the purpose of determining eligibility of the project, an estimate of the payments and their recipients shall be used.

(5) Payments to the local community include, but are not limited to, lease payments to property owners on whose property a turbine is located, wind energy easement payments, and real and personal property tax receipts from the C-BED project.

(6) The Department of Revenue may examine the actual payments and the distribution of the payments to determine if the projected distributions were met. If the payment distributions to qualified owners do not meet the requirements of this section, the department may recover the amount of the sales or use tax that was not paid by the project at any time up until the end of three years after the end of the power purchase agreement.

(7) At any time prior to the end of the power purchase agreements, the project may voluntarily surrender the exemption granted by the Tax Commissioner and pay the amount of sales and use tax that would have otherwise have been due.

(8) The amount of the tax due under either subsection (6) or (7) of this section shall be increased by interest at the rate specified in section 45-104.02, as such rate may from time to time be adjusted, from the date the tax would have been due if no exemption was granted until the date paid.

Source: Laws 2007, LB367, § 11; Laws 2008, LB916, § 21; Laws 2009, LB561, § 5.
Effective date August 30, 2009.

Cross References

Limited Liability Company Act, see section 21-2601.
Nebraska Nonprofit Corporation Act, see section 21-1901.

77-2704.60 Mineral oil applied to grain as dust suppressant; exemption.

Sales and use taxes shall not be imposed on the gross receipts from the sale, lease, or rental of and the storage, use, or other consumption in this state of mineral oil to be applied to grain as a dust suppressant.

Source: Laws 2009, LB9, § 1.
Operative date October 1, 2009.

77-2711 Sales and use tax; Tax Commissioner; enforcement; records; retain; reports; wrongful disclosures; exceptions; information provided to municipality; penalty; waiver; streamlined sales and use tax agreement; confidentiality rights.

(1)(a) The Tax Commissioner shall enforce sections 77-2701.04 to 77-2713 and may prescribe, adopt, and enforce rules and regulations relating to the administration and enforcement of such sections.

(b) The Tax Commissioner may prescribe the extent to which any ruling or regulation shall be applied without retroactive effect.

(2) The Tax Commissioner may employ accountants, auditors, investigators, assistants, and clerks necessary for the efficient administration of the Nebraska Revenue Act of 1967 and may delegate authority to his or her representatives to conduct hearings, prescribe regulations, or perform any other duties imposed by such act.

(3)(a) Every seller, every retailer, and every person storing, using, or otherwise consuming in this state property purchased from a retailer shall keep such

records, receipts, invoices, and other pertinent papers in such form as the Tax Commissioner may reasonably require.

(b) Every such seller, retailer, or person shall keep such records for not less than three years from the making of such records unless the Tax Commissioner in writing sooner authorized their destruction.

(4) The Tax Commissioner or any person authorized in writing by him or her may examine the books, papers, records, and equipment of any person selling property and any person liable for the use tax and may investigate the character of the business of the person in order to verify the accuracy of any return made or, if no return is made by the person, to ascertain and determine the amount required to be paid. In the examination of any person selling property or of any person liable for the use tax, an inquiry shall be made as to the accuracy of the reporting of city sales and use taxes for which the person is liable under the Local Option Revenue Act or sections 13-319, 13-324, and 13-2813 and the accuracy of the allocation made between the various counties, cities, villages, and municipal counties of the tax due. The Tax Commissioner may make or cause to be made copies of resale or exemption certificates and may pay a reasonable amount to the person having custody of the records for providing such copies.

(5) The taxpayer shall have the right to keep or store his or her records at a point outside this state and shall make his or her records available to the Tax Commissioner at all times.

(6) In administration of the use tax, the Tax Commissioner may require the filing of reports by any person or class of persons having in his, her, or their possession or custody information relating to sales of property, the storage, use, or other consumption of which is subject to the tax. The report shall be filed when the Tax Commissioner requires and shall set forth the names and addresses of purchasers of the property, the sales price of the property, the date of sale, and such other information as the Tax Commissioner may require.

(7) It shall be a Class I misdemeanor for the Tax Commissioner or any official or employee of the Tax Commissioner, the State Treasurer, or the Department of Administrative Services to make known in any manner whatever the business affairs, operations, or information obtained by an investigation of records and activities of any retailer or any other person visited or examined in the discharge of official duty or the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth or disclosed in any return, or to permit any return or copy thereof, or any book containing any abstract or particulars thereof to be seen or examined by any person not connected with the Tax Commissioner. Nothing in this section shall be construed to prohibit (a) the delivery to a taxpayer, his or her duly authorized representative, or his or her successors, receivers, trustees, executors, administrators, assignees, or guarantors, if directly interested, of a certified copy of any return or report in connection with his or her tax, (b) the publication of statistics so classified as to prevent the identification of particular reports or returns and the items thereof, (c) the inspection by the Attorney General, other legal representative of the state, or county attorney of the reports or returns of any taxpayer when either (i) information on the reports or returns is considered by the Attorney General to be relevant to any action or proceeding instituted by the taxpayer or against whom an action or proceeding is being considered or has been commenced by any state agency or the county or (ii) the taxpayer has instituted an action to

review the tax based thereon or an action or proceeding against the taxpayer for collection of tax or failure to comply with the Nebraska Revenue Act of 1967 is being considered or has been commenced, (d) the furnishing of any information to the United States Government or to states allowing similar privileges to the Tax Commissioner, (e) the disclosure of information and records to a collection agency contracting with the Tax Commissioner pursuant to sections 77-377.01 to 77-377.04, (f) the disclosure to another party to a transaction of information and records concerning the transaction between the taxpayer and the other party, or (g) the disclosure of information pursuant to section 77-27,195 or 77-5731.

(8) Notwithstanding the provisions of subsection (7) of this section, the Tax Commissioner may permit the Postal Inspector of the United States Postal Service or his or her delegates to inspect the reports or returns of any person filed pursuant to the Nebraska Revenue Act of 1967 when information on the reports or returns is relevant to any action or proceeding instituted or being considered by the United States Postal Service against such person for the fraudulent use of the mails to carry and deliver false and fraudulent tax returns to the Tax Commissioner with the intent to defraud the State of Nebraska or to evade the payment of Nebraska state taxes.

(9) Notwithstanding the provisions of subsection (7) of this section, the Tax Commissioner may permit other tax officials of this state to inspect the tax returns, reports, and applications filed under sections 77-2701.04 to 77-2713, but such inspection shall be permitted only for purposes of enforcing a tax law and only to the extent and under the conditions prescribed by the rules and regulations of the Tax Commissioner.

(10) Notwithstanding the provisions of subsection (7) of this section, the Tax Commissioner may, upon request, provide the county board of any county which has exercised the authority granted by section 81-1254 with a list of the names and addresses of the hotels located within the county for which lodging sales tax returns have been filed or for which lodging sales taxes have been remitted for the county's County Visitors Promotion Fund under the Nebraska Visitors Development Act.

The information provided by the Tax Commissioner shall indicate only the names and addresses of the hotels located within the requesting county for which lodging sales tax returns have been filed for a specified period and the fact that lodging sales taxes remitted by or on behalf of the hotel have constituted a portion of the total sum remitted by the state to the county for a specified period under the provisions of the Nebraska Visitors Development Act. No additional information shall be revealed.

(11)(a) Notwithstanding the provisions of subsection (7) of this section, the Tax Commissioner shall, upon written request by the Auditor of Public Accounts or the Legislative Performance Audit Committee, make tax returns and tax return information open to inspection by or disclosure to Auditor of Public Accounts or Legislative Performance Audit Section employees for the purpose of and to the extent necessary in making an audit of the Department of Revenue pursuant to section 50-1205 or 84-304. Confidential tax returns and tax return information shall be audited only upon the premises of the Department of Revenue. All audit workpapers pertaining to the audit of the Department of Revenue shall be stored in a secure place in the Department of Revenue.

(b) No employee of the Auditor of Public Accounts or Legislative Performance Audit Section shall disclose to any person, other than another Auditor of Public Accounts or Legislative Performance Audit Section employee whose official duties require such disclosure or as provided in subsections (2) and (3) of section 50-1213, any return or return information described in the Nebraska Revenue Act of 1967 in a form which can be associated with or otherwise identify, directly or indirectly, a particular taxpayer.

(c) Any person who violates the provisions of this subsection shall be guilty of a Class I misdemeanor. For purposes of this subsection, employee includes a former Auditor of Public Accounts or Legislative Performance Audit Section employee.

(12) For purposes of this subsection and subsection (11) of this section:

(a) Disclosure means the making known to any person in any manner a tax return or return information;

(b) Return information means:

(i) A taxpayer's identification number and (A) the nature, source, or amount of his or her income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments, whether the taxpayer's return was, is being, or will be examined or subject to other investigation or processing or (B) any other data received by, recorded by, prepared by, furnished to, or collected by the Tax Commissioner with respect to a return or the determination of the existence or possible existence of liability or the amount of liability of any person for any tax, penalty, interest, fine, forfeiture, or other imposition or offense; and

(ii) Any part of any written determination or any background file document relating to such written determination; and

(c) Tax return or return means any tax or information return or claim for refund required by, provided for, or permitted under sections 77-2701 to 77-2713 which is filed with the Tax Commissioner by, on behalf of, or with respect to any person and any amendment or supplement thereto, including supporting schedules, attachments, or lists which are supplemental to or part of the filed return.

(13) Notwithstanding the provisions of subsection (7) of this section, the Tax Commissioner shall, upon request, provide any municipality which has adopted the local option sales tax under the Local Option Revenue Act with a list of the names and addresses of the retailers which have collected the local option sales tax for the municipality. The request may be made annually and shall be submitted to the Tax Commissioner on or before June 30 of each year. The information provided by the Tax Commissioner shall indicate only the names and addresses of the retailers. The Tax Commissioner may provide additional information to a municipality so long as the information does not include any data detailing the specific revenue, expenses, or operations of any particular business.

(14) In all proceedings under the Nebraska Revenue Act of 1967, the Tax Commissioner may act for and on behalf of the people of the State of Nebraska. The Tax Commissioner in his or her discretion may waive all or part of any penalties provided by the provisions of such act or interest on delinquent taxes specified in section 45-104.02, as such rate may from time to time be adjusted.

(15)(a) The purpose of this subsection is to set forth the state's policy for the protection of the confidentiality rights of all participants in the system operated pursuant to the streamlined sales and use tax agreement and of the privacy interests of consumers who deal with model 1 sellers.

(b) For purposes of this subsection:

(i) Anonymous data means information that does not identify a person;

(ii) Confidential taxpayer information means all information that is protected under a member state's laws, regulations, and privileges; and

(iii) Personally identifiable information means information that identifies a person.

(c) The state agrees that a fundamental precept for model 1 sellers is to preserve the privacy of consumers by protecting their anonymity. With very limited exceptions, a certified service provider shall perform its tax calculation, remittance, and reporting functions without retaining the personally identifiable information of consumers.

(d) The governing board of the member states in the streamlined sales and use tax agreement may certify a certified service provider only if that certified service provider certifies that:

(i) Its system has been designed and tested to ensure that the fundamental precept of anonymity is respected;

(ii) Personally identifiable information is only used and retained to the extent necessary for the administration of model 1 with respect to exempt purchasers;

(iii) It provides consumers clear and conspicuous notice of its information practices, including what information it collects, how it collects the information, how it uses the information, how long, if at all, it retains the information, and whether it discloses the information to member states. Such notice shall be satisfied by a written privacy policy statement accessible by the public on the web site of the certified service provider;

(iv) Its collection, use, and retention of personally identifiable information is limited to that required by the member states to ensure the validity of exemptions from taxation that are claimed by reason of a consumer's status or the intended use of the goods or services purchased; and

(v) It provides adequate technical, physical, and administrative safeguards so as to protect personally identifiable information from unauthorized access and disclosure.

(e) The state shall provide public notification to consumers, including exempt purchasers, of the state's practices relating to the collection, use, and retention of personally identifiable information.

(f) When any personally identifiable information that has been collected and retained is no longer required for the purposes set forth in subdivision (15)(d)(iv) of this section, such information shall no longer be retained by the member states.

(g) When personally identifiable information regarding an individual is retained by or on behalf of the state, it shall provide reasonable access by such individual to his or her own information in the state's possession and a right to correct any inaccurately recorded information.

(h) If anyone other than a member state, or a person authorized by that state's law or the agreement, seeks to discover personally identifiable informa-

tion, the state from whom the information is sought should make a reasonable and timely effort to notify the individual of such request.

(i) This privacy policy is subject to enforcement by the Attorney General.

(j) All other laws and regulations regarding the collection, use, and maintenance of confidential taxpayer information remain fully applicable and binding. Without limitation, this subsection does not enlarge or limit the state's authority to:

(i) Conduct audits or other reviews as provided under the agreement and state law;

(ii) Provide records pursuant to the federal Freedom of Information Act, disclosure laws with governmental agencies, or other regulations;

(iii) Prevent, consistent with state law, disclosure of confidential taxpayer information;

(iv) Prevent, consistent with federal law, disclosure or misuse of federal return information obtained under a disclosure agreement with the Internal Revenue Service; and

(v) Collect, disclose, disseminate, or otherwise use anonymous data for governmental purposes.

Source: Laws 1967, c. 487, § 11, p. 1566; Laws 1969, c. 683, § 7, p. 2641; Laws 1977, LB 39, § 239; Laws 1981, LB 170, § 6; Laws 1982, LB 705, § 2; Laws 1984, LB 962, § 12; Laws 1985, LB 344, § 4; Laws 1987, LB 523, § 17; Laws 1991, LB 773, § 10; Laws 1992, LB 871, § 61; Laws 1992, Fourth Spec. Sess., LB 1, § 31; Laws 1993, LB 345, § 60; Laws 1994, LB 1175, § 1; Laws 1995, LB 134, § 3; Laws 1996, LB 1177, § 18; Laws 2001, LB 142, § 56; Laws 2003, LB 282, § 73; Laws 2005, LB 216, § 9; Laws 2005, LB 312, § 11; Laws 2006, LB 588, § 8; Laws 2007, LB94, § 1; Laws 2007, LB223, § 9; Laws 2008, LB914, § 8; Laws 2009, LB165, § 10.
Operative date October 1, 2009.

Cross References

Local Option Revenue Act, see section 77-27,148.
Nebraska Visitors Development Act, see section 81-1263.

77-2712.05 Streamlined sales and use tax agreement; requirements.

By agreeing to the terms of the streamlined sales and use tax agreement, this state agrees to abide by the following requirements:

(1) Uniform state rate. The state shall comply with restrictions to achieve over time more uniform state rates through the following:

(a) Limiting the number of state rates;

(b) Limiting the application of maximums on the amount of state tax that is due on a transaction; and

(c) Limiting the application of thresholds on the application of state tax;

(2) Uniform standards. The state hereby establishes uniform standards for the following:

(a) Sourcing of transactions to taxing jurisdictions as provided in sections 77-2703.01 to 77-2703.04;

(b) Administration of exempt sales as set out by the agreement and using procedures as determined by the governing board;

(c) Allowances a seller can take for bad debts as provided in section 77-2708; and

(d) Sales and use tax returns and remittances. To comply with the agreement, the Tax Commissioner shall:

(i) Require only one remittance for each return except as provided in this subdivision. If any additional remittance is required, it may only be required from retailers that collect more than thirty thousand dollars in sales and use taxes in the state during the preceding calendar year as provided in this subdivision. The amount of any additional remittance may be determined through a calculation method rather than actual collections. Any additional remittance shall not require the filing of an additional return;

(ii) Require, at his or her discretion, all remittances from sellers under models 1, 2, and 3 to be remitted electronically;

(iii) Allow for electronic payments by both automated clearinghouse credit and debit;

(iv) Provide an alternative method for making same day payments if an electronic funds transfer fails;

(v) Provide that if a due date falls on a legal banking holiday, the taxes are due to that state on the next succeeding business day; and

(vi) Require that any data that accompanies a remittance be formatted using uniform tax type and payment type codes approved by the governing board of the member states to the streamlined sales and use tax agreement;

(3) Uniform definitions. (a) The state shall utilize the uniform definitions of sales and use tax terms as provided in the agreement. The definitions enable Nebraska to preserve its ability to make taxability and exemption choices not inconsistent with the uniform definitions.

(b) The state may enact a product-based exemption without restriction if the agreement does not have a definition for the product or for a term that includes the product. If the agreement has a definition for the product or for a term that includes the product, the state may exempt all items included within the definition but shall not exempt only part of the items included within the definition unless the agreement sets out the exemption for part of the items as an acceptable variation.

(c) The state may enact an entity-based or a use-based exemption without restriction if the agreement does not have a definition for the product whose use or purchase by a specific entity is exempt or for a term that includes the product. If the agreement has a definition for the product whose use or specific purchase is exempt, states may enact an entity-based or a use-based exemption that applies to that product as long as the exemption utilizes the agreement definition of the product. If the agreement does not have a definition for the product whose use or specific purchase is exempt but has a definition for a term that includes the product, states may enact an entity-based or a use-based exemption for the product without restriction.

(d) For purposes of complying with the requirements in this section, the inclusion of a product within the definition of tangible personal property is disregarded;

(4) Central registration. The state shall participate in an electronic central registration system that allows a seller to register to collect and remit sales and use taxes for all member states. Under the system:

(a) A retailer registering under the agreement is registered in this state;

(b) The state agrees not to require the payment of any registration fees or other charges for a retailer to register in the state if the retailer has no legal requirement to register;

(c) A written signature from the retailer is not required;

(d) An agent may register a retailer under uniform procedures adopted by the member states pursuant to the agreement;

(e) A retailer may cancel its registration under the system at any time under uniform procedures adopted by the governing board. Cancellation does not relieve the retailer of its liability for remitting to the proper states any taxes collected;

(f) When registering, the retailer that is registered under the agreement may select one of the following methods of remittances or other method allowed by state law to remit the taxes collected:

(i) Model 1, wherein a seller selects a certified service provider as an agent to perform all the seller's sales or use tax functions, other than the seller's obligation to remit tax on its own purchases;

(ii) Model 2, wherein a seller selects a certified automated system to use which calculates the amount of tax due on a transaction; and

(iii) Model 3, wherein a seller utilizes its own proprietary automated sales tax system that has been certified as a certified automated system; and

(g) Sellers who register within twelve months after this state's first approval of a certified service provider are relieved from liability, including the local option tax, for tax not collected or paid if the seller was not registered between October 1, 2004, and September 30, 2005. Such relief from liability shall be in accordance with the terms of the agreement;

(5) No nexus attribution. The state agrees that registration with the central registration system and the collection of sales and use taxes in the state will not be used as a factor in determining whether the seller has nexus with the state for any tax at any time;

(6) Local sales and use taxes. The agreement requires the reduction of the burdens of complying with local sales and use taxes as provided in sections 13-319, 13-324, 13-326, 77-2701.03, 77-27,142, 77-27,143, and 77-27,144 that require the following:

(a) No variation between the state and local tax bases;

(b) Statewide administration of all sales and use taxes levied by local jurisdictions within the state so that sellers collecting and remitting these taxes will not have to register or file returns with, remit funds to, or be subject to independent audits from local taxing jurisdictions;

(c) Limitations on the frequency of changes in the local sales and use tax rates and setting effective dates for the application of local jurisdictional boundary changes to local sales and use taxes; and

(d) Uniform notice of changes in local sales and use tax rates and of changes in the boundaries of local taxing jurisdictions;

(7) Complete a taxability matrix approved by the governing board. (a) Notice of changes in the taxability of the products or services listed will be provided as required by the governing board.

(b) The entries in the matrix shall be provided and maintained in a data base that is in a downloadable format approved by the governing board.

(c) Sellers, model 2 sellers, and certified service providers are relieved from liability, including the local option tax, for having charged and collected the incorrect amount of sales or use tax resulting from the seller or certified service provider relying on erroneous data provided by the member state in the taxability matrix or for relying on product-based classifications that have been reviewed and approved by the state. The state shall notify the certified service provider or model 2 seller if an item or transaction is incorrectly classified as to its taxability.

(d) Purchasers are relieved from liability for penalty for having failed to pay the correct amount of tax resulting from the purchaser's reliance on erroneous data provided by the member state in the taxability matrix or rates and boundaries data bases or for relying on product-based classifications that have been reviewed and approved by the state;

(8) Monetary allowances. The state agrees to allow any monetary allowances that are to be provided by the states to sellers or certified service providers in exchange for collecting sales and use taxes as provided in Article VI of the agreement;

(9) State compliance. The agreement requires the state to certify compliance with the terms of the agreement prior to joining and to maintain compliance, under the laws of the member state, with all provisions of the agreement while a member;

(10) Consumer privacy. The state hereby adopts a uniform policy for certified service providers that protects the privacy of consumers and maintains the confidentiality of tax information as provided in section 77-2711; and

(11) Advisory councils. The state agrees to the recognition of an advisory council of private-sector representatives and an advisory council of member and nonmember state representatives to consult with in the administration of the agreement.

Source: Laws 2001, LB 172, § 6; Laws 2003, LB 282, § 77; Laws 2004, LB 1017, § 20; Laws 2005, LB 16, § 1; Laws 2006, LB 887, § 4; Laws 2007, LB223, § 11; Laws 2009, LB165, § 11.
Operative date October 1, 2009.

(c) INCOME TAX

77-2715.07 Income tax credits.

(1) There shall be allowed to qualified resident individuals as a nonrefundable credit against the income tax imposed by the Nebraska Revenue Act of 1967:

(a) A credit equal to the federal credit allowed under section 22 of the Internal Revenue Code; and

(b) A credit for taxes paid to another state as provided in section 77-2730.

(2) There shall be allowed to qualified resident individuals against the income tax imposed by the Nebraska Revenue Act of 1967:

(a) For returns filed reporting federal adjusted gross incomes of greater than twenty-nine thousand dollars, a nonrefundable credit equal to twenty-five percent of the federal credit allowed under section 21 of the Internal Revenue Code of 1986, as amended;

(b) For returns filed reporting federal adjusted gross income of twenty-nine thousand dollars or less, a refundable credit equal to a percentage of the federal credit allowable under section 21 of the Internal Revenue Code of 1986, as amended, whether or not the federal credit was limited by the federal tax liability. The percentage of the federal credit shall be one hundred percent for incomes not greater than twenty-two thousand dollars, and the percentage shall be reduced by ten percent for each one thousand dollars, or fraction thereof, by which the reported federal adjusted gross income exceeds twenty-two thousand dollars;

(c) A refundable credit as provided in section 77-5209.01 for individuals who qualify for an income tax credit as a qualified beginning farmer or livestock producer under the Beginning Farmer Tax Credit Act for all taxable years beginning or deemed to begin on or after January 1, 2006, under the Internal Revenue Code of 1986, as amended;

(d) A refundable credit for individuals who qualify for an income tax credit under the Nebraska Advantage Microenterprise Tax Credit Act or the Nebraska Advantage Research and Development Act; and

(e) A refundable credit equal to ten percent of the federal credit allowed under section 32 of the Internal Revenue Code of 1986, as amended.

(3) There shall be allowed to all individuals as a nonrefundable credit against the income tax imposed by the Nebraska Revenue Act of 1967:

(a) A credit for personal exemptions allowed under section 77-2716.01;

(b) A credit for contributions to certified community betterment programs as provided in the Community Development Assistance Act. Each partner, each shareholder of an electing subchapter S corporation, each beneficiary of an estate or trust, or each member of a limited liability company shall report his or her share of the credit in the same manner and proportion as he or she reports the partnership, subchapter S corporation, estate, trust, or limited liability company income; and

(c) A credit for investment in a biodiesel facility as provided in section 77-27,236.

(4) There shall be allowed as a credit against the income tax imposed by the Nebraska Revenue Act of 1967:

(a) A credit to all resident estates and trusts for taxes paid to another state as provided in section 77-2730;

(b) A credit to all estates and trusts for contributions to certified community betterment programs as provided in the Community Development Assistance Act; and

(c) A refundable credit for individuals who qualify for an income tax credit as an owner of agricultural assets under the Beginning Farmer Tax Credit Act for all taxable years beginning or deemed to begin on or after January 1, 2009, under the Internal Revenue Code of 1986, as amended. The credit allowed for each partner, shareholder, member, or beneficiary of a partnership, corporation, limited liability company, or estate or trust qualifying for an income tax credit as an owner of agricultural assets under the Beginning Farmer Tax

Credit Act shall be equal to the partner's, shareholder's, member's, or beneficiary's portion of the amount of tax credit distributed pursuant to subsection (4) of section 77-5211.

(5)(a) For all taxable years beginning on or after January 1, 2007, and before January 1, 2009, under the Internal Revenue Code of 1986, as amended, there shall be allowed to each partner, shareholder, member, or beneficiary of a partnership, subchapter S corporation, limited liability company, or estate or trust a nonrefundable credit against the income tax imposed by the Nebraska Revenue Act of 1967 equal to fifty percent of the partner's, shareholder's, member's, or beneficiary's portion of the amount of franchise tax paid to the state under sections 77-3801 to 77-3807 by a financial institution.

(b) For all taxable years beginning on or after January 1, 2009, under the Internal Revenue Code of 1986, as amended, there shall be allowed to each partner, shareholder, member, or beneficiary of a partnership, subchapter S corporation, limited liability company, or estate or trust a nonrefundable credit against the income tax imposed by the Nebraska Revenue Act of 1967 equal to the partner's, shareholder's, member's, or beneficiary's portion of the amount of franchise tax paid to the state under sections 77-3801 to 77-3807 by a financial institution.

(c) Each partner, shareholder, member, or beneficiary shall report his or her share of the credit in the same manner and proportion as he or she reports the partnership, subchapter S corporation, limited liability company, or estate or trust income. If any partner, shareholder, member, or beneficiary cannot fully utilize the credit for that year, the credit may not be carried forward or back.

Source: Laws 1987, LB 773, § 6; Laws 1989, LB 739, § 2; Laws 1993, LB 5, § 3; Laws 1993, LB 121, § 503; Laws 1993, LB 240, § 4; Laws 1993, LB 815, § 23; Laws 1994, LB 977, § 12; Laws 1996, LB 898, § 5; Laws 1998, LB 1028, § 2; Laws 1999, LB 630, § 1; Laws 2001, LB 433, § 4; Laws 2005, LB 312, § 12; Laws 2006, LB 968, § 8; Laws 2006, LB 990, § 1; Laws 2007, LB343, § 3; Laws 2007, LB367, § 20; Laws 2007, LB456, § 1; Laws 2009, LB165, § 12.
Operative date April 9, 2009.

Cross References

Beginning Farmer Tax Credit Act, see section 77-5201.
Community Development Assistance Act, see section 13-201.
Nebraska Advantage Microenterprise Tax Credit Act, see section 77-5901.
Nebraska Advantage Research and Development Act, see section 77-5801.

77-2753 Income tax; withholding from wages and other payments.

(1)(a) Every employer and payor maintaining an office or transacting business within this state and making payment of any wages or other payments as defined in subsection (6) of this section which are taxable under the Nebraska Revenue Act of 1967 to any individual shall deduct and withhold from such wages for each payroll period and from such payments a tax computed in such manner as to result, so far as practicable, in withholding from the employee's wages and payments to the payee during each calendar year an amount substantially equivalent to the tax reasonably estimated to be due from the employee or payee under such act with respect to the amount of such wages and payments included in his or her taxable income during the calendar year. The method of determining the amount to be withheld shall be prescribed by

rules and regulations of the Tax Commissioner. Such rules and regulations may allow withholding to be computed at a percentage of the federal withholding or at a comparable flat percentage for gambling winnings or supplemental payments, including bonuses, commissions, overtime pay, and sales awards which are not paid at the same time as other wages, or payments to independent contractors. Any withholding tables prescribed by the Tax Commissioner shall be provided to the budget division of the Department of Administrative Services and the Legislative Fiscal Analyst for review at least sixty days before the tables become effective.

(b) Notwithstanding the amount of federal withholding or the rules and regulations of the Department of Revenue determining the amount of withholding, every employer and payor employing twenty-five or more employees shall withhold at least one and one-half percent of the gross wages minus tax qualified deductions of each employee unless the employee provides satisfactory evidence that a lesser amount of withholding is justified in the employee's particular circumstances. Such satisfactory evidence may include birth certificates or social security information for dependents or other evidence that reasonably assures the employer that the employee is not improperly or fraudulently evading or defeating the income tax by reducing or eliminating withholding.

(2)(a) Every payor who is either (i) making a payment or payments in excess of five thousand dollars or (ii) maintaining an office or transacting business within this state and making a payment or payments related to such business in excess of six hundred dollars, and such payment or payments are for personal services performed or to be performed substantially within this state, to a nonresident individual, other than an employee, who is not subject to withholding on such payment under the Internal Revenue Code or a corporation, partnership, or limited liability company described in subdivision (c) of this subsection, shall be deemed an employer, and the individual performing the personal services shall be deemed an employee for the purposes of this section. The payor shall deduct and withhold from such payments the percentage of such payments prescribed in subdivision (b) of this subsection. If the individual performing the personal services provides the payor with a statement of the expenses reasonably related to the personal services, the total payment or payments may be reduced by the total expenses before computing the amount to deduct and withhold, except that such reduction shall not be more than fifty percent of such payment or payments.

(b) For any payment or payments for the same service, award, or purse that totals less than twenty-eight thousand dollars, the percentage deducted from such payment or payments pursuant to this subsection shall be four percent, and for all other payments, the percentage shall be six percent.

(c) For any corporation, partnership, or limited liability company that receives compensation for personal services in this state and of which all or substantially all of the shareholders, partners, or members are the individuals performing the personal services, including, but not limited to, individual athletes, entertainers, performers, or public speakers performing such personal services, such compensation shall be deemed wages of the individuals performing the personal services and subject to the income tax imposed on individuals by the Nebraska Revenue Act of 1967.

(d) The withholding required by this subsection shall not apply to any payment to a nonresident alien, corporation, partnership, or limited liability company if such individual, shareholder, partner, or member provides the payor with a statement that the income earned is not subject to tax because of a treaty obligation of the United States or if such payment is subject to withholding under subsection (3) of this section.

(3)(a) Every contractor who is maintaining an office or transacting business within this state and making a payment or payments to any contractor or any person that is not an employee for construction services performed within this state shall deduct and withhold five percent of such payments.

(b) The withholding required by this subsection shall not apply to any payment made to (i) a person that provides the payor with a statement that the income earned is not subject to tax because of a treaty obligation of the United States, (ii) a contractor if such a payment or payments does not exceed six hundred dollars, or (iii) a contractor when the payor contractor determines that the payee contractor is in the data base required by section 48-2117.

(c) Any contractor who determines that a contractor is in the data base is relieved from liability for withholding under this subsection for any future payments on a contract in existence at the time the determination is made or made during the same calendar year as such determination is made.

(d) Withholding required by this subsection shall be considered to be withholding of income tax for purposes of the Nebraska Revenue Act of 1967.

(e) For purposes of this subsection:

(i) Construction services means services that are provided as a contractor; and

(ii) Contractor has the same meaning as in section 48-2103.

(4) The Tax Commissioner may enter into agreements with the tax departments of other states, which require income tax to be withheld from the payment of wages, salaries, and such other payments, so as to govern the amounts to be withheld from the wages and salaries of and other payments to residents of such states. Such agreements may provide for recognition of anticipated tax credits in determining the amounts to be withheld and, under rules and regulations adopted and promulgated by the Tax Commissioner, may relieve employers and payors in this state from withholding income tax on wages, salaries, and such other payments paid to nonresident employees and payees. The agreements authorized by this subsection shall be subject to the condition that the tax department of such other states grant similar treatment to residents of this state.

(5) The Tax Commissioner shall enter into an agreement with the United States Office of Personnel Management for the withholding of income tax imposed on individuals by the Nebraska Revenue Act of 1967 on civil service annuity payments for those recipients who voluntarily request withholding. The agreement shall be pursuant to 5 U.S.C. 8345 and the rules and regulations adopted and promulgated by the Tax Commissioner.

(6) Wages and other payments subject to withholding shall mean payments that are subject to withholding under the Internal Revenue Code of 1986 and are (a) payments made by employers to employees, except such payments subject to 26 U.S.C. 3406, (b) payments of gambling winnings, (c) pension or

annuity payments when the recipient has requested the payor to withhold from such payments, or (d) payments to independent contractors.

Source: Laws 1967, c. 487, § 53, p. 1594; Laws 1977, LB 355, § 1; Laws 1984, LB 962, § 18; Laws 1986, LB 1027, § 208; Laws 1987, LB 284, § 1; Laws 1987, LB 773, § 21; Laws 1987, LB 523, § 24; Laws 1988, LB 1064, § 1; Laws 1990, LB 896, § 1; Laws 1993, LB 121, § 509; Laws 1993, LB 345, § 61; Laws 1994, LB 1175, § 2; Laws 2005, LB 216, § 13; Laws 2007, LB223, § 12; Laws 2008, LB1001, § 9; Laws 2008, LB1004, § 1; Laws 2009, LB162, § 9.
Operative date January 1, 2010.

77-2761 Income tax; return; required by whom.

An income tax return with respect to the income tax imposed by the provisions of the Nebraska Revenue Act of 1967 shall be made by the following:

(1) Every resident individual who is required to file a federal income tax return for the taxable year;

(2) Every nonresident individual who has income from sources in this state;

(3) Every resident estate or trust which is required to file a federal income tax return except a simple trust not required to file under subsection (2) of section 77-2717;

(4) Every nonresident estate or trust which has taxable income from sources within this state;

(5) Every corporation or any other entity taxed as a corporation under the Internal Revenue Code which is required to file a federal income tax return except the small business corporations not required to file under subsection (7) of section 77-2734.01;

(6) Every limited liability company having one or more nonresident members or with taxable income derived from sources outside the state except the limited liability companies not required to file under subsection (7) of section 77-2734.01; and

(7) Every partnership having one or more nonresident partners or with taxable income derived from sources outside the state.

Source: Laws 1967, c. 487, § 61, p. 1598; Laws 1987, LB 523, § 25; Laws 1993, LB 121, § 510; Laws 2009, LB165, § 13.
Operative date April 9, 2009.

77-2780 Income tax; Tax Commissioner; action on taxpayer's protest; when final.

The action of the Tax Commissioner on the taxpayer's protest shall be final upon the expiration of thirty days after the date when the Tax Commissioner mails notice of his or her action to the taxpayer unless within this period the taxpayer seeks review of the Tax Commissioner's determination as provided in the Nebraska Revenue Act of 1967.

Source: Laws 1967, c. 487, § 80, p. 1605; Laws 1993, LB 345, § 65; Laws 1994, LB 977, § 18; Laws 2008, LB914, § 12; Laws 2009, LB165, § 14.
Operative date October 1, 2009.

(e) GOVERNMENTAL SUBDIVISION AID

77-27,136 Aid to certain governmental subdivisions; appropriation.

The Legislature may appropriate funds collected by a general sales tax and income tax for aid to incorporated municipalities, counties, and natural resources districts.

Source: Laws 1967, c. 488, § 1, p. 1638; Laws 1971, LB 707, § 1; Laws 1976, LB 903, § 4; Laws 1977, LB 514, § 2; Laws 1982, LB 816, § 3; Laws 1986, LB 258, § 18; Laws 1992, LB 1063, § 185; Laws 1992, Second Spec. Sess., LB 1, § 157; Laws 2009, LB218, § 4. Operative date July 1, 2011.

77-27,137 Repealed. Laws 2009, LB 218, § 14.

Note: This section was repealed by Laws 2009, LB218, section 14, operative on July 1, 2011.

77-27,137.01 Aid to incorporated municipalities; distribution; manner.

The appropriation made pursuant to the authority in section 77-27,136 for aid to incorporated municipalities shall be allocated by the Tax Commissioner to the various incorporated municipalities. The Tax Commissioner shall determine the amount to be distributed to the incorporated municipalities and certify such amounts by voucher to the Director of Administrative Services. Each amount shall be distributed in seven as nearly as possible equal monthly payments on the last business day of each month beginning in December. The State Treasurer shall, on the business day preceding the last business day of each month, notify the Director of Administrative Services of the amount of funds available in the General Fund for payment purposes. The Director of Administrative Services shall, on the last business day of each month, draw warrants against funds appropriated. The Tax Commissioner shall compute the amount due the incorporated municipalities on the ratio of the population of the particular incorporated municipality to the total population of all incorporated municipalities in the state as determined by the most recent federal census figures certified by the Tax Commissioner as provided in section 77-3,119, which amounts shall be placed in the general fund of such municipalities.

Source: Laws 1971, LB 707, § 3; Laws 1975, Spec. Sess., LB 3, § 5; Laws 1976, LB 903, § 6; Laws 1977, LB 514, § 4; Laws 1982, LB 816, § 5; Laws 1983, LB 59, § 3; Laws 1986, LB 929, § 3; Laws 1993, LB 726, § 11; Laws 1994, LB 1127, § 7; Laws 2003, LB 440, § 3; Laws 2005, LB 426, § 16; Laws 2009, LB218, § 5.
Operative date July 1, 2011.

77-27,137.02 Aid to natural resources districts; distribution; manner.

The appropriation made pursuant to the authority in section 77-27,136 for aid to natural resources districts shall be distributed to the various natural resources districts of the state on the basis of the ratio of the total amount of property taxes levied by the particular natural resources district to the total amount of property taxes levied by all natural resources districts within the state based on amounts stated in the most recent certificate of taxes levied statement and schedules submitted by each county to the Tax Commissioner pursuant to section 77-1613.01. The Tax Commissioner shall determine the

amount to be distributed to the various natural resources districts and certify such amounts by voucher to the Director of Administrative Services. Each amount shall be distributed in seven as nearly as possible equal monthly payments between the fifth and twentieth day of each month beginning December 1, 1982, and each December thereafter. The State Treasurer shall, between the fifth and twentieth day of each month, notify the Director of Administrative Services of the amount of funds available in the General Fund for payment purposes. The Director of Administrative Services shall, upon receipt of such notification and vouchers, draw warrants against funds appropriated. The proceeds of the payments received by the various natural resources districts shall be credited to the general fund of the district.

Source: Laws 1982, LB 816, § 6; Laws 1985, LB 268, § 29; Laws 1994, LB 480, § 30; Laws 1996, LB 108, § 77; Laws 2004, LB 962, § 109; Laws 2009, LB218, § 6.
Operative date July 1, 2011.

77-27,137.03 Aid to counties; distribution; manner.

The Legislature shall appropriate funds as aid to counties in an amount equal to a percentage of the total real and personal property valuation of all counties, such percent to be not less than .0075 percent nor more than .0125 percent.

Of the appropriation, each county shall receive thirty thousand dollars and the remaining amount shall be distributed to each county on the basis of the ratio of the total real and personal property valuation in the county to the total real and personal property valuation in the state.

The Tax Commissioner shall determine the amount to be distributed to the various counties under this section and certify such amounts to the Director of Administrative Services on or before July 1 of each year. Each amount shall be distributed in nine as nearly as possible equal monthly payments on the last business day of each month beginning in September.

Source: Laws 2009, LB218, § 7.
Operative date July 1, 2011.

77-27,139 Political subdivision; funds received; consideration in determining tax levy.

Each political subdivision receiving funds as provided by sections 77-27,136 to 77-27,137.03 shall take into consideration the amount it will receive under such sections during its fiscal year in determining its tax levy for that fiscal year.

Source: Laws 1967, c. 488, § 4, p. 1639; Laws 1992, LB 1063, § 187; Laws 1992, Second Spec. Sess., LB 1, § 159; Laws 2009, LB218, § 8.
Operative date July 1, 2011.

(g) LOCAL OPTION REVENUE ACT

77-27,142.01 Incorporated municipalities; sales and use tax; modification; election required, when.

The governing body of any incorporated municipality may submit the question of changing any terms and conditions of a sales and use tax previously

authorized under section 77-27,142. The question of modification shall be submitted to the voters at any primary or general election or at a special election if the governing body submits a certified copy of the resolution proposing modification to the election commissioner or county clerk within the time prior to the primary, general, or special election prescribed in section 77-27,142.02.

Source: Laws 1978, LB 394, § 2; Laws 1997, LB 182A, § 7; Laws 2009, LB501, § 4.
Effective date August 30, 2009.

77-27,142.02 Incorporated municipalities; sales and use tax; election; question; effect.

Except as otherwise provided by section 77-27,142, after February 14, 1978, the power granted by section 77-27,142 shall not be exercised unless and until the question has been submitted at a primary, general, or special election held within the incorporated municipality and in which all qualified electors shall be entitled to vote on such question. The officials of the incorporated municipality shall order the submission of the question by submitting a certified copy of the resolution proposing the tax to the election commissioner or county clerk by March 1 for a primary election, by September 1 for a general election, or at least fifty days before a special election. The question may include any terms and conditions set forth in the resolution proposing the tax, such as a termination date or the specific project or program for which the revenue received from such tax will be allocated, and shall include the following language: Shall the governing body of the incorporated municipality impose a sales and use tax upon the same transactions within such municipality on which the State of Nebraska is authorized to impose a tax? If a majority of the votes cast upon such question shall be in favor of such tax, then the governing body of such incorporated municipality shall be empowered as provided by section 77-27,142 and shall forthwith proceed to impose a tax pursuant to the Local Option Revenue Act. If a majority of those voting on the question shall be opposed to such tax, then the governing body of the incorporated municipality shall not impose such a tax.

Source: Laws 1978, LB 394, § 3; Laws 1985, LB 116, § 2; Laws 1986, LB 890, § 2; Laws 2009, LB501, § 5.
Effective date August 30, 2009.

77-27,142.03 Incorporated municipality; sales and use tax; petition to submit question.

(1) If the qualified electors of any municipality, equal in number to at least ten percent of the votes cast at the last preceding municipal election, petition the governing body to submit the question at least seventy-five days before the next primary, general, or special election, the governing body shall submit the question at the next primary, general, or special election.

(2) The question of imposing a sales and use tax which has been submitted to the electors and failed shall not be submitted to the electors of an incorporated municipality again until twenty-three months after such failure.

Source: Laws 1978, LB 394, § 4; Laws 1986, LB 890, § 3; Laws 1994, LB 1175, § 3; Laws 2009, LB501, § 6.
Effective date August 30, 2009.

(j) SETOFF FOR CHILD, SPOUSAL, AND MEDICAL SUPPORT DEBTS

77-27,166 Submission of certified debt; when effective; Lottery Division of the Department of Revenue; duties.

(1) The Department of Health and Human Services may submit any certified debt of twenty-five dollars or more to the Department of Revenue except when the validity of the debt is legitimately in dispute. The submission of debts of past due support shall be a continuous submission process that allows the amount of past due support to fluctuate up or down depending on the actual amount owed. Any submission shall be effective only to initiate setoff for a claim against a refund that would be made for the calendar year subsequent to the year in which such submission is made.

(2) The Lottery Division of the Department of Revenue shall review all current debts on the records of the Department of Health and Human Services at the time of redeeming a lottery ticket for a state lottery prize to certify a debt owed by a winner of a state lottery prize.

Source: Laws 1984, LB 845, § 12; Laws 1993, LB 138, § 73; Laws 1996, LB 1044, § 803; Laws 1997, LB 307, § 204; Laws 2009, LB288, § 36.
Operative date January 1, 2010.

(m) NEBRASKA ADVANTAGE RURAL DEVELOPMENT ACT

77-27,187 Act, how cited.

Sections 77-27,187 to 77-27,195 shall be known and may be cited as the Nebraska Advantage Rural Development Act.

Source: Laws 1986, LB 1124, § 1; Laws 1987, LB 270, § 1; Laws 1997, LB 886, § 1; Laws 1998, LB 1104, § 14; Laws 2002, LB 93, § 19; Laws 2003, LB 608, § 1; Laws 2005, LB 312, § 16; Laws 2009, LB403, § 8.
Operative date October 1, 2009.

77-27,187.02 Application; contents; fee; written agreement; contents.

(1) To earn the incentives set forth in the Nebraska Advantage Rural Development Act, the taxpayer shall file an application for an agreement with the Tax Commissioner.

(2) The application shall contain:

(a) A written statement describing the full expected employment or type of livestock production and the investment amount for a qualified business, as described in section 77-27,189, in this state;

(b) Sufficient documents, plans, and specifications as required by the Tax Commissioner to support the plan and to define a project; and

(c) An application fee of five hundred dollars. The fee shall be remitted to the State Treasurer for credit to the Nebraska Incentives Fund. The application and all supporting information shall be confidential except for the name of the taxpayer, the location of the project, and the amounts of increased employment or investment.

(3)(a) The Tax Commissioner shall approve the application and authorize the total amount of credits expected to be earned as a result of the project if he or

she is satisfied that the plan in the application defines a project that (i) meets the requirements established in section 77-27,188 and such requirements will be reached within the required time period and (ii) for projects other than livestock modernization or expansion projects, is located in an eligible county, city, or village.

(b) The Tax Commissioner shall not approve further applications once the expected credits from the approved projects total two million five hundred thousand dollars in each of fiscal years 2004-05 and 2005-06, three million dollars in each of fiscal years 2006-07 through 2008-09, and four million dollars in fiscal year 2009-10. For applications filed in calendar year 2010 and each calendar year thereafter, the Tax Commissioner shall not approve further applications once the expected credits from the approved projects total four million dollars. Four hundred dollars of the application fee shall be refunded to the applicant if the application is not approved because the expected credits from approved projects exceed such amounts.

(c) Applications for benefits shall be considered in the order in which they are received.

(d) Applications shall be filed by November 1 and shall be complete by December 1 of each calendar year. Any application that is filed after November 1 or that is not complete on December 1 shall be considered to be filed during the following calendar year.

(4) After approval, the taxpayer and the Tax Commissioner shall enter into a written agreement. The taxpayer shall agree to complete the project, and the Tax Commissioner, on behalf of the State of Nebraska, shall designate the approved plans of the taxpayer as a project and, in consideration of the taxpayer's agreement, agree to allow the taxpayer to use the incentives contained in the Nebraska Advantage Rural Development Act up to the total amount that were authorized by the Tax Commissioner at the time of approval. The application, and all supporting documentation, to the extent approved, shall be considered a part of the agreement. The agreement shall state:

(a) The levels of employment and investment required by the act for the project;

(b) The time period under the act in which the required level must be met;

(c) The documentation the taxpayer will need to supply when claiming an incentive under the act;

(d) The date the application was filed; and

(e) The maximum amount of credits authorized.

Source: Laws 2003, LB 608, § 3; Laws 2005, LB 312, § 18; Laws 2006, LB 990, § 3; Laws 2007, LB223, § 17; Laws 2008, LB895, § 3; Laws 2008, LB914, § 17; Laws 2009, LB164, § 2.
Operative date August 30, 2009.

77-27,188.03 Employees; verification of status required; exclusion.

(1) The Tax Commissioner shall not approve or grant to any person any tax incentive under the Nebraska Advantage Rural Development Act unless the taxpayer provides evidence satisfactory to the Tax Commissioner that the taxpayer electronically verified the work eligibility status of all newly hired employees employed in Nebraska.

(2) For purposes of calculating any tax incentive available under the act, the Tax Commissioner shall exclude hours worked and compensation paid to an employee that is not eligible to work in Nebraska as verified under subsection (1) of this section.

(3) This section does not apply to any application filed under the act prior to October 1, 2009.

Source: Laws 2009, LB403, § 9.
Operative date October 1, 2009.

ARTICLE 31

REGISTRATION BY NONRESIDENT CONTRACTORS

Section
77-3101. Repealed. Laws 2009, LB 162, § 12.
77-3102. Repealed. Laws 2009, LB 162, § 12.
77-3103. Repealed. Laws 2009, LB 162, § 12.
77-3104. Repealed. Laws 2009, LB 162, § 12.
77-3105. Repealed. Laws 2009, LB 162, § 12.
77-3106. Repealed. Laws 2009, LB 162, § 12.
77-3107. Repealed. Laws 2009, LB 162, § 12.
77-3108. Repealed. Laws 2009, LB 162, § 12.
77-3109. Repealed. Laws 2009, LB 162, § 12.
77-3110. Repealed. Laws 2009, LB 162, § 12.
77-3111. Repealed. Laws 2009, LB 162, § 12.
77-3112. Repealed. Laws 2009, LB 162, § 12.

77-3101 Repealed. Laws 2009, LB 162, § 12.
(Operative date January 1, 2010.)

77-3102 Repealed. Laws 2009, LB 162, § 12.
(Operative date January 1, 2010.)

77-3103 Repealed. Laws 2009, LB 162, § 12.
(Operative date January 1, 2010.)

77-3104 Repealed. Laws 2009, LB 162, § 12.
(Operative date January 1, 2010.)

77-3105 Repealed. Laws 2009, LB 162, § 12.
(Operative date January 1, 2010.)

77-3106 Repealed. Laws 2009, LB 162, § 12.
(Operative date January 1, 2010.)

77-3107 Repealed. Laws 2009, LB 162, § 12.
(Operative date January 1, 2010.)

77-3108 Repealed. Laws 2009, LB 162, § 12.
(Operative date January 1, 2010.)

77-3109 Repealed. Laws 2009, LB 162, § 12.
(Operative date January 1, 2010.)

77-3110 Repealed. Laws 2009, LB 162, § 12.
(Operative date January 1, 2010.)

77-3111 Repealed. Laws 2009, LB 162, § 12.
(Operative date January 1, 2010.)

77-3112 Repealed. Laws 2009, LB 162, § 12.
(Operative date January 1, 2010.)

ARTICLE 32
LAND REUTILIZATION AUTHORITY

Section
77-3201. Land Reutilization Authority; created; powers; purpose.
77-3203. Land Reutilization Commission; created; members; appointment; serve without compensation.
77-3204. Reutilization commission; meeting; officers; bond; oath.
77-3205. Authority; seal; adopt; conveyances; requirements.
77-3207. Authority; employees; disbursements; fiscal year; audit; warrants.
77-3211. Sheriff; no bids; authority deemed purchaser; payment.

77-3201 Land Reutilization Authority; created; powers; purpose.

(1) There may be created within each county an authority for the management, sale, transfer, and other disposition of tax-delinquent lands, which authority shall be known as the Land Reutilization Authority of the County of . . . . It shall have authority to accept the grant of any interest in real property made to it or to accept gifts and grant-in-aid assistance. The authority shall have and exercise all the powers conferred by the Land Reutilization Act necessary and incidental to the effective management, sale, transfer, or other disposition of real estate acquired under and by virtue of the foreclosure of the lien for delinquent real estate taxes, and in the exercise of its powers, the authority shall be deemed to be a public corporation acting in a governmental capacity and a political subdivision of this state.

(2) The authority shall foster the public purpose of returning land which is in a nonrevenue-generating nontax-producing status to effective utilization in

order to provide housing, new industry, and jobs for the citizens of the county and new tax revenue for the county.

(3) In counties in which a city of the metropolitan class is located, such a city may create an authority for the management, sale, transfer, and other disposition of tax-delinquent lands which shall be known as the Land Reutilization Authority of the City of ..... . Such authority shall have all of the powers and duties granted to an authority by the act with regard to property located within the corporate boundaries of that city. Such an authority shall be a division of the planning department of such city and shall not be deemed to be a public corporation acting in a governmental capacity or a political subdivision of this state, independent of the city creating the authority. All of the acts of such an authority shall be the acts of such city. If a land reutilization authority for the county in which is situated a city of the metropolitan class exists at the time of creation of an authority by a city of the metropolitan class, the existing authority of the county with regard to property located within the corporate boundaries of the city shall cease to exist within one hundred eighty days after the creation of the land reutilization authority of such city and any real property located within the corporate boundaries of the city held by such land reutilization authority of the county shall be conveyed to the newly created authority of the city of the metropolitan class.

(4) Pursuant to the provisions of the Interlocal Cooperation Act, a city of the metropolitan class that creates a land reutilization authority may enter into an agreement with any county to authorize the city's land reutilization authority to exercise on behalf of such county the authority provided by the Land Reutilization Act for its own land reutilization authority upon such terms and conditions as the city and county may agree.

Source: Laws 1973, LB 73, § 1; Laws 1980, LB 862, § 1; Laws 1997, LB 489, § 1; Laws 2009, LB360, § 1.
Effective date August 30, 2009.

Cross References

Interlocal Cooperation Act, see section 13-801.

77-3203 Land Reutilization Commission; created; members; appointment; serve without compensation.

(1) In each county which creates an authority pursuant to subsection (1) of section 77-3201, there is hereby created a Land Reutilization Commission which shall be composed of at least three members, one of whom shall be appointed by the governing body of the most populous city within the county, one of whom shall be appointed by the board of county commissioners, and one of whom shall be appointed by the board of education of the school district serving the most populous city of the county. At the request of the governing body of a city of the first or second class within the county, which is not the most populous city in the county, or the board of education of a school district located predominately within the county, which is not serving the most populous city of the county, the county board shall authorize the appointment of additional members to the Land Reutilization Commission, not to exceed a maximum total of seven members of the commission. The additional members of the commission shall be appointed by the governing body of the respective city or cities of the first or second class or by the board of education of the respective school district or districts. If necessary to establish an odd number of

commission members, the county board may appoint a member from a municipality or school district within the county which is not represented on the commission. The members shall serve at the pleasure of the respective appointing authority and may be employees of the appointing authority. No member shall receive compensation for serving on the commission.

(2) Any vacancy in the office of commissioner shall be filled by the same appointing authority which made the original appointment.

(3) In a city of the metropolitan class which determines to create an authority pursuant to subsection (3) of section 77-3201, the city by ordinance may create a Land Reutilization Commission which shall be composed of a minimum of three members of the planning department of the city of the metropolitan class, appointed by its director. The members shall serve at the pleasure of the director. No member shall receive compensation for serving on the commission.

Source: Laws 1973, LB 73, § 3; Laws 1990, LB 831, § 1; Laws 1997, LB 489, § 2; Laws 2009, LB360, § 2.
Effective date August 30, 2009.

77-3204 Reutilization commission; meeting; officers; bond; oath.

(1) The members of a Land Reutilization Commission shall meet immediately after being appointed and qualified and shall select a chairperson, a vice-chairperson, and a secretary.

(2) Each commissioner shall furnish a surety bond in a penal sum of not less than fifteen thousand dollars, the premium of such bond to be paid by the authority from which the commissioner was appointed or which he or she represents. The bond shall be issued by a surety company licensed to do business in the State of Nebraska, shall be conditioned to guarantee the faithful performance of all duties under the Land Reutilization Act, and shall be written to cover all the commissioners.

(3) Before entering upon the duties of his or her office, each commissioner shall take and subscribe to the following oath:

State of Nebraska)

) ss.

County of . . . . . .)

I, ... , do solemnly swear that I will support the Constitution of the United States, and the Constitution of the State of Nebraska, that I will faithfully and impartially discharge my duties as a member of the Land Reutilization Authority of the county, that I will, according to my best knowledge and judgment, administer tax-delinquent lands held by me in trust according to the laws of this state and for the benefit of the public bodies and the tax bill owners which I represent, so help me God.

. . . . . .

Subscribed and sworn to this ..... day of . . . . . 20....

My commission expires: . . . . . .

. . . . . .
Notary Public

Source: Laws 1973, LB 73, § 4; Laws 1997, LB 489, § 3; Laws 2004, LB 813, § 34; Laws 2009, LB360, § 3.
Effective date August 30, 2009.

77-3205 Authority; seal; adopt; conveyances; requirements.

(1) The authority shall be a continuing body and shall have and adopt an official seal which shall bear on its face the words Land Reutilization Authority of the County of . . . . . or City of . . . . . , and shall have the power to issue deeds in its name, which deeds shall be signed by the chairperson or vice-chairperson and attested by the secretary, and shall have the general power to administer its business as any other corporate body. A land reutilization authority of a city of the metropolitan class shall issue deeds in the name of such city and such city, through its employees designated as the commission members, shall have general powers to administer the authority's business.

(2) The authority may convey title to any real estate sold or conveyed by it by general or special warranty deed, and may convey an absolute title in fee simple, without in any case procuring any consent, conveyance, or other instrument from the beneficiaries for which it acts. Each such deed shall recite whether the selling price represents a consideration equal to or in excess of two-thirds of the appraised value of such real estate so sold or conveyed. If such selling price represents a consideration of less than two-thirds of the appraised value of such real estate, the approval of such selling price shall be by unanimous action of the authority and evidenced by a copy of such action duly certified to by its secretary and attached to and made a part of such deed. In the event that unanimous action of the authority is not obtained, then the commissioners shall first procure the consent to such selling price of not less than a majority of the appointing authorities, which consent shall be evidenced by a copy of the action of each such appointing authority duly certified to by its clerk or secretary and attached to and made a part of such deed. In the case of a land reutilization authority for a city of the metropolitan class, the commissioners shall procure the planning director's consent.

Source: Laws 1973, LB 73, § 5; Laws 1980, LB 862, § 2; Laws 1997, LB 489, § 4; Laws 2009, LB360, § 4.
Effective date August 30, 2009.

77-3207 Authority; employees; disbursements; fiscal year; audit; warrants.

(1) The commissioners may appoint a director and such other employees as are deemed necessary to carry out the responsibilities and duties imposed by the Land Reutilization Act and may incur such other reasonable and proper costs and expenses related thereto. A land reutilization authority of a city of the metropolitan class shall utilize only city employees for such responsibilities and duties. If such costs and expenses exceed the amount of funds available to the authority under the act, the authority shall obtain approval for such additional or supplemental needs. Such appropriations shall be considered advances to the authority subject to repayment from funds accumulated by the authority under the act.

The county treasurer's office, or city treasurer's office in the case of an authority created pursuant to subsection (3) of section 77-3201, shall handle all such appropriated expense funds and disburse the same under the provisions for handling other expenditures.

The authority shall deposit all funds received under the act with the county treasurer of the county, or the city treasurer in the case of an authority created pursuant to subsection (3) of section 77-3201, and make disbursements therefrom upon receipt of vouchers duly authorized by the authority under the act and in accordance with standard procedures adopted by and approved by the county treasurer, or the city treasurer in the case of an authority created pursuant to subsection (3) of section 77-3201.

(2) The fiscal year of the authority shall commence on January 1 of each year. The authority shall audit all claims for the expenditure of money and the chairperson or vice-chairperson thereof shall draw warrants therefor from time to time, or the city treasurer in the case of an authority created pursuant to subsection (3) of section 77-3201.

Source: Laws 1973, LB 73, § 7; Laws 2008, LB710, § 3; Laws 2009, LB360, § 5.
Effective date August 30, 2009.

77-3211 Sheriff; no bids; authority deemed purchaser; payment.

(1) If, when the sheriff offers the parcels of real estate for sale under the tax foreclosure laws of this state, there is no bid equal to the full amount of all tax bills included in the judgment, interest, penalties, fees, and costs then due thereon made or received at such sale, the authority shall be deemed to have bid the full amount of all tax bills included in the judgment, interest, penalties, fees, and costs then due, and if no other earlier or later bid be then received by the sheriff as allowed by law in excess of the bid of the authority, then the bid of the authority shall be announced as accepted. The sheriff shall report any such bid or bids so made by the authority in the same way as his or her report of other bids is made.

(2) The authority shall pay, if possible, any penalties, fees, or costs included in the judgment of foreclosure of such parcel of real estate when such parcel is sold or otherwise disposed of by such authority. Upon confirmation by the court of such bid at such sale by such authority, and upon notification by the sheriff, the county treasurer, or the city treasurer in the case of an authority created pursuant to subsection (3) of section 77-3201, shall mark the tax bills to the date of such confirmation as canceled by sale to the authority, and shall take credit for the full amount of such tax bills, including principal amount, interest, penalties, fees, and costs, on his or her books and his or her statements with any other taxing authorities.

Source: Laws 1973, LB 73, § 11; Laws 1982, LB 630, § 2; Laws 2009, LB360, § 6.
Effective date August 30, 2009.

ARTICLE 34
POLITICAL SUBDIVISIONS, BUDGET LIMITATIONS

(d) LIMITATION ON PROPERTY TAXES

(d) LIMITATION ON PROPERTY TAXES

77-3442 Property tax levies; maximum levy; exceptions.

(1) Property tax levies for the support of local governments for fiscal years beginning on or after July 1, 1998, shall be limited to the amounts set forth in this section except as provided in section 77-3444.

(2)(a) Except as provided in subdivision (2)(e) of this section, school districts and multiple-district school systems, except learning communities and school districts that are members of learning communities, may levy a maximum levy of one dollar and five cents per one hundred dollars of taxable valuation of property subject to the levy.

(b) For each fiscal year, learning communities may levy a maximum levy for the general fund budgets of member school districts of ninety-five cents per one hundred dollars of taxable valuation of property subject to the levy. The proceeds from the levy pursuant to this subdivision shall be distributed pursuant to section 79-1073.

(c) Except as provided in subdivision (2)(e) of this section, for each fiscal year, school districts that are members of learning communities may levy for purposes of such districts' general fund budget and special building funds a maximum combined levy of the difference of one dollar and five cents on each one hundred dollars of taxable property subject to the levy minus the learning community levies pursuant to subdivisions (2)(b) and (2)(g) of this section for such learning community.

(d) Excluded from the limitations in subdivisions (2)(a) and (2)(c) of this section are amounts levied to pay for sums agreed to be paid by a school district to certificated employees in exchange for a voluntary termination of employment and amounts levied to pay for special building funds and sinking funds established for projects commenced prior to April 1, 1996, for construction, expansion, or alteration of school district buildings. For purposes of this subsection, commenced means any action taken by the school board on the record which commits the board to expend district funds in planning, constructing, or carrying out the project.

(e) Federal aid school districts may exceed the maximum levy prescribed by subdivision (2)(a) or (2)(c) of this section only to the extent necessary to qualify to receive federal aid pursuant to Title VIII of Public Law 103-382, as such title existed on September 1, 2001. For purposes of this subdivision, federal aid school district means any school district which receives ten percent or more of the revenue for its general fund budget from federal government sources pursuant to Title VIII of Public Law 103-382, as such title existed on September 1, 2001.

(f) For school fiscal year 2002-03 through school fiscal year 2007-08, school districts and multiple-district school systems may, upon a three-fourths majority vote of the school board of the school district, the board of the unified system, or the school board of the high school district of the multiple-district school system that is not a unified system, exceed the maximum levy prescribed by subdivision (2)(a) of this section in an amount equal to the net difference between the amount of state aid that would have been provided under the Tax Equity and Educational Opportunities Support Act without the temporary aid adjustment factor as defined in section 79-1003 for the ensuing school fiscal year for the school district or multiple-district school system and the amount provided with the temporary aid adjustment factor. The State Department of Education shall certify to the school districts and multiple-district school systems the amount by which the maximum levy may be exceeded for the next school fiscal year pursuant to this subdivision (f) of this subsection on or before February 15 for school fiscal years 2004-05 through 2007-08.

(g) For each fiscal year, learning communities may levy a maximum levy of two cents on each one hundred dollars of taxable property subject to the levy for special building funds for member school districts. The proceeds from the levy pursuant to this subdivision shall be distributed pursuant to section 79-1073.01.

(h) For each fiscal year, learning communities may levy a maximum levy of five cents on each one hundred dollars of taxable property subject to the levy for elementary learning center facilities and for up to fifty percent of the estimated cost for capital projects approved by the learning community coordinating council pursuant to section 79-2111.

(3) Community colleges may levy a maximum levy calculated pursuant to the Community College Foundation and Equalization Aid Act on each one hundred dollars of taxable property subject to the levy.

(4)(a) Natural resources districts may levy a maximum levy of four and one-half cents per one hundred dollars of taxable valuation of property subject to the levy.

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

(c) In addition, natural resources districts located in a river basin, subbasin, or reach that has been determined to be fully appropriated pursuant to section 46-714 or designated as overappropriated pursuant to section 46-713 by the Department of Natural Resources shall also have the power and authority to levy a tax equal to the dollar amount by which their restricted funds budgeted to administer and implement ground water management activities and integrated management activities under the Nebraska Ground Water Management and Protection Act exceed their restricted funds budgeted to administer and implement ground water management activities and integrated management activities for FY2005-06, not to exceed three cents on each one hundred dollars of

taxable valuation on all of the taxable property within the district for fiscal year 2006-07 and each fiscal year thereafter through fiscal year 2011-12.

(5) Any educational service unit authorized to levy a property tax pursuant to section 79-1225 may levy a maximum levy of one and one-half cents per one hundred dollars of taxable valuation of property subject to the levy.

(6)(a) Incorporated cities and villages which are not within the boundaries of a municipal county may levy a maximum levy of forty-five cents per one hundred dollars of taxable valuation of property subject to the levy plus an additional five cents per one hundred dollars of taxable valuation to provide financing for the municipality's share of revenue required under an agreement or agreements executed pursuant to the Interlocal Cooperation Act or the Joint Public Agency Act. The maximum levy shall include amounts levied to pay for sums to support a library pursuant to section 51-201, museum pursuant to section 51-501, visiting community nurse, home health nurse, or home health agency pursuant to section 71-1637, or statue, memorial, or monument pursuant to section 80-202.

(b) Incorporated cities and villages which are within the boundaries of a municipal county may levy a maximum levy of ninety cents per one hundred dollars of taxable valuation of property subject to the levy. The maximum levy shall include amounts paid to a municipal county for county services, amounts levied to pay for sums to support a library pursuant to section 51-201, a museum pursuant to section 51-501, a visiting community nurse, home health nurse, or home health agency pursuant to section 71-1637, or a statue, memorial, or monument pursuant to section 80-202.

(7) Sanitary and improvement districts which have been in existence for more than five years may levy a maximum levy of forty cents per one hundred dollars of taxable valuation of property subject to the levy, and sanitary and improvement districts which have been in existence for five years or less shall not have a maximum levy. Unconsolidated sanitary and improvement districts which have been in existence for more than five years and are located in a municipal county may levy a maximum of eighty-five cents per hundred dollars of taxable valuation of property subject to the levy.

(8) Counties may levy or authorize a maximum levy of fifty cents per one hundred dollars of taxable valuation of property subject to the levy, except that five cents per one hundred dollars of taxable valuation of property subject to the levy may only be levied to provide financing for the county's share of revenue required under an agreement or agreements executed pursuant to the Interlocal Cooperation Act or the Joint Public Agency Act. The maximum levy shall include amounts levied to pay for sums to support a library pursuant to section 51-201 or museum pursuant to section 51-501. The county may allocate up to fifteen cents of its authority to other political subdivisions subject to allocation of property tax authority under subsection (1) of section 77-3443 and not specifically covered in this section to levy taxes as authorized by law which do not collectively exceed fifteen cents per one hundred dollars of taxable valuation on any parcel or item of taxable property. The county may allocate to one or more other political subdivisions subject to allocation of property tax authority by the county under subsection (1) of section 77-3443 some or all of the county's five cents per one hundred dollars of valuation authorized for support of an agreement or agreements to be levied by the political subdivision for the purpose of supporting that political subdivision's share of revenue

required under an agreement or agreements executed pursuant to the Interlocal Cooperation Act or the Joint Public Agency Act. If an allocation by a county would cause another county to exceed its levy authority under this section, the second county may exceed the levy authority in order to levy the amount allocated. Property tax levies for costs of reassumption of the assessment function pursuant to section 77-1340 or 77-1340.04 are not included in the levy limits established in this subsection for fiscal years 2010-11 through 2013-14.

(9) Municipal counties may levy or authorize a maximum levy of one dollar per one hundred dollars of taxable valuation of property subject to the levy. The municipal county may allocate levy authority to any political subdivision or entity subject to allocation under section 77-3443.

(10) Property tax levies for judgments, except judgments or orders from the Commission of Industrial Relations, obtained against a political subdivision which require or obligate a political subdivision to pay such judgment, to the extent such judgment is not paid by liability insurance coverage of a political subdivision, for preexisting lease-purchase contracts approved prior to July 1, 1998, for bonded indebtedness approved according to law and secured by a levy on property except as provided in section 44-4317 for bonded indebtedness issued by educational service units and school districts, and for payments by a public airport to retire interest-free loans from the Department of Aeronautics in lieu of bonded indebtedness at a lower cost to the public airport are not included in the levy limits established by this section.

(11) The limitations on tax levies provided in this section are to include all other general or special levies provided by law. Notwithstanding other provisions of law, the only exceptions to the limits in this section are those provided by or authorized by sections 77-3442 to 77-3444.

(12) Tax levies in excess of the limitations in this section shall be considered unauthorized levies under section 77-1606 unless approved under section 77-3444.

(13) For purposes of sections 77-3442 to 77-3444, political subdivision means a political subdivision of this state and a county agricultural society.

(14) For school districts that file a binding resolution on or before May 9, 2008, with the county assessors, county clerks, and county treasurers for all counties in which the school district has territory pursuant to subsection (7) of section 79-458, if the combined levies, except levies for bonded indebtedness approved by the voters of the school district and levies for the refinancing of such bonded indebtedness, are in excess of the greater of (a) one dollar and twenty cents per one hundred dollars of taxable valuation of property subject to the levy or (b) the maximum levy authorized by a vote pursuant to section 77-3444, all school district levies, except levies for bonded indebtedness approved by the voters of the school district and levies for the refinancing of such bonded indebtedness, shall be considered unauthorized levies under section 77-1606.

Source: Laws 1996, LB 1114, § 1; Laws 1997, LB 269, § 56; Laws 1998, LB 306, § 36; Laws 1998, LB 1104, § 17; Laws 1999, LB 87, § 87; Laws 1999, LB 141, § 11; Laws 1999, LB 437, § 26; Laws 2001, LB 142, § 57; Laws 2002, LB 568, § 9; Laws 2002, LB 898, § 1; Laws 2002, LB 1085, § 19; Laws 2003, LB 540, § 2; Laws 2004, LB 962, § 110; Laws 2004, LB 1093, § 1; Laws 2005, LB 38, § 2; Laws 2006, LB 968, § 12; Laws 2006, LB 1024, § 14;

Laws 2006, LB 1226, § 30; Laws 2007, LB342, § 31; Laws 2007, LB641, § 4; Laws 2007, LB701, § 33; Laws 2008, LB988, § 2; Laws 2008, LB1154, § 5; Laws 2009, LB121, § 11.
Operative date August 30, 2009.

Cross References

Community College Foundation and Equalization Aid Act, see section 85-2201.
Interlocal Cooperation Act, see section 13-801.
Joint Public Agency Act, see section 13-2501.
Nebraska Ground Water Management and Protection Act, see section 46-701.
Tax Equity and Educational Opportunities Support Act, see section 79-1001.

(e) BASE LIMITATION

77-3446 Base limitation, defined.

Base limitation means the budget limitation rate applicable to school districts and the limitation on growth of restricted funds applicable to other political subdivisions prior to any increases in the rate as a result of special actions taken by a supermajority of any governing board or of any exception allowed by law. The base limitation is two and one-half percent until adjusted, except that the base limitation for school districts for school fiscal years 2009-10 through 2012-13 is one and one-half percent. The base limitation may be adjusted annually by the Legislature to reflect changes in the prices of services and products used by school districts and political subdivisions.

Source: Laws 1998, LB 989, § 15; Laws 2001, LB 365, § 1; Laws 2003, LB 540, § 3; Laws 2009, LB545, § 2.
Effective date May 20, 2009.

ARTICLE 35
HOMESTEAD EXEMPTION

Section

77-3501 Definitions, where found.

For purposes of sections 77-3501 to 77-3529, unless the context otherwise requires, the definitions found in sections 77-3501.01 to 77-3505.05 shall be used.

Source: Laws 1979, LB 65, § 1; Laws 1984, LB 809, § 1; Laws 1987, LB 376A, § 1; Laws 1989, LB 84, § 7; Laws 1994, LB 902, § 25; Laws 1995, LB 483, § 2; Laws 1997, LB 182, § 1; Laws 2009, LB94, § 1.
Effective date May 27, 2009.

77-3505.05 Medical condition, defined.

Medical condition means a disease, physical ailment, or injury requiring inpatient care in a hospital, hospice, or residential care facility or involving any period of incapacity due to a condition for which treatment may not be effective.

Source: Laws 2009, LB94, § 2.
Effective date May 27, 2009.

77-3509.01 Transfer of exemption to new homestead; procedure.

The owner of a homestead which has been granted an exemption provided in sections 77-3507 to 77-3509, who becomes the owner of another homestead prior to August 15 during the year for which the exemption was granted, may file an application with the county assessor of the county where the new homestead is located, on or before August 15 of such year, for a transfer of the exemption to the new homestead. The county assessor shall examine each application and determine whether or not the new homestead, except for the January 1 through August 15 ownership and occupancy requirement and the income requirements, is eligible for exemption under sections 77-3507 to 77-3509. If the application is approved by the county assessor, he or she shall make a deduction upon the assessment rolls using the same criteria as previously applied to the original homestead. The county assessor may allow the application for transfer to also be considered an application for a homestead exemption for the subsequent year.

Source: Laws 1983, LB 494, § 5; Laws 1984, LB 809, § 4; Laws 1985, Second Spec. Sess., LB 6, § 1; Laws 1987, LB 376A, § 6; Laws 1988, LB 834, § 1; Laws 1996, LB 921, § 1; Laws 2009, LB302, § 1.
Effective date May 27, 2009.

77-3509.02 Transfer of exemption to new homestead; disallowance for original homestead; county assessor; duties.

If the owner of any homestead granted an exemption under sections 77-3507 to 77-3509 becomes the owner of another homestead on or before August 15 of any year pursuant to section 77-3509.01 and makes the application for transfer of the homestead exemption and such application is approved, the exemption shall be disallowed for such year as applied to the original homestead if the exemption was granted based on the status of such owner. If the transfer involves property in more than one county, the county assessor of the county where the new homestead is located shall notify the other county assessor and the Department of Revenue of the application for transfer within ten days after receipt of the application.

Source: Laws 1983, LB 494, § 6; Laws 1984, LB 809, § 5; Laws 1985, Second Spec. Sess., LB 6, § 2; Laws 1987, LB 376A, § 7; Laws 1988, LB 834, § 2; Laws 1996, LB 921, § 2; Laws 2009, LB302, § 2.
Effective date May 27, 2009.

77-3512 Homestead; exemption; application; when filed.

It shall be the duty of each owner who applies for the homestead exemption provided in sections 77-3507 to 77-3509 to file an application therefor with the county assessor of the county in which the homestead is located after February 1 and on or before June 30 of each year. Failure to do so shall constitute a waiver of the exemption for that year, except that:

(1) The county board of the county in which the homestead is located may, by majority vote, extend the deadline for an applicant to on or before July 20. An extension shall not be granted to an applicant who received an extension in the immediately preceding year; and

(2) An owner may file a late application pursuant to section 77-3514.01 if he or she includes documentation of a medical condition which impaired the owner's ability to file the application in a timely manner.

Source: Laws 1979, LB 65, § 12; Laws 1980, LB 647, § 7; Laws 1983, LB 195, § 5; Laws 1983, LB 396, § 2; Laws 1984, LB 809, § 8; Laws 1985, Second Spec. Sess., LB 6, § 4; Laws 1989, LB 84, § 12; Laws 1991, LB 9, § 5; Laws 1991, LB 773, § 21; Laws 1995, LB 133, § 1; Laws 1996, LB 1039, § 5; Laws 1997, LB 397, § 27; Laws 2003, LB 192, § 2; Laws 2009, LB94, § 3.
Effective date May 27, 2009.

77-3513 Homestead; exemption; filing requirements; notice; contents.

(1) Except as required by section 77-3514, if an owner is granted a homestead exemption as provided in section 77-3507 or 77-3509 or subdivision (1)(b)(ii) or (iii) of section 77-3508, no reapplication need be filed for succeeding years, in which case the county assessor and Tax Commissioner shall determine whether the claimant qualifies for the homestead exemption in such succeeding years as otherwise provided in sections 77-3501 to 77-3529 as though a claim were made.

(2) It shall be the duty of each claimant who wants the homestead exemption provided in subdivision (1)(b)(i) of section 77-3508 to file an application therefor with the county assessor on or before June 30 of each year. Failure to do so shall constitute a waiver of the exemption for such year, except that:

(a) The county board of the county in which the homestead is located may, by majority vote, extend the deadline for an applicant to on or before July 20. An extension shall not be granted to an applicant who received an extension in the immediately preceding year; and

(b) A claimant may file a late application pursuant to section 77-3514.01 if he or she includes documentation of a medical condition which impaired the claimant's ability to file the application in a timely manner.

(3) The county assessor shall mail a notice on or before April 1 to claimants who are the owners of a homestead which was granted an exemption under subdivision (1)(b)(i) of section 77-3508 in the preceding year unless the claimant has already filed the application for the current year or the county assessor has reason to believe there has been a change of circumstances so that the claimant no longer qualifies. The notice shall include the claimant's name, the application deadlines for the current year, a list of documents that must be filed

with the application, and the county assessor's office address and telephone number.

Source: Laws 1979, LB 65, § 13; Laws 1980, LB 647, § 8; Laws 1983, LB 195, § 6; Laws 1983, LB 396, § 3; Laws 1984, LB 809, § 9; Laws 1985, Second Spec. Sess., LB 6, § 5; Laws 1986, LB 1258, § 6; Laws 1987, LB 376A, § 10; Laws 1991, LB 773, § 22; Laws 1994, LB 902, § 38; Laws 1995, LB 133, § 2; Laws 1996, LB 1039, § 6; Laws 1997, LB 397, § 28; Laws 1999, LB 179, § 4; Laws 2005, LB 54, § 19; Laws 2007, LB145, § 2; Laws 2009, LB94, § 4. Effective date May 27, 2009.

77-3514 Homestead; exemption; certification of status; notice; failure to certify; penalty; lien.

A claimant who is the owner of a homestead which has been granted an exemption under sections 77-3507 to 77-3509, except subdivision (1)(b)(i) of section 77-3508, shall certify to the county assessor on or before June 30 of each year that a change in the homestead exemption status has occurred or that no change in the homestead exemption status has occurred. The county board of the county in which the homestead is located may, by majority vote, extend the deadline for certification by a claimant to on or before July 20. An extension shall not be granted to an applicant who received an extension in the immediately preceding year. In addition, a claimant may make such certification late pursuant to section 77-3514.01 if he or she includes documentation of a medical condition which impaired the claimant's ability to certify in a timely manner. The county assessor shall mail a notice on or before April 1 to claimants who are the owners of a homestead which has been granted an exemption under sections 77-3507 to 77-3509, except subdivision (1)(b)(i) of section 77-3508, in the preceding year unless the claimant has already filed the certification for the current year or the county assessor has reason to believe there has been a change of circumstances so that the claimant no longer qualifies. The notice shall include the claimant's name, the certification deadlines for the current year, a list of documents that must be filed with the certification, and the county assessor's office address and telephone number. For purposes of this section, change in the homestead exemption status shall include any change in the name of the owner, ownership, residence, occupancy, marital status, veteran status, or rating by the United States Department of Veterans Affairs or any other change that would affect the qualification for or type of exemption granted, except income checked by the Tax Commissioner under section 77-3517. The certificate shall require the attachment of an income statement as prescribed by the Tax Commissioner fully accounting for all household income. The certification and the information contained on any attachments to the certification shall be confidential and available to tax officials only. In addition, a claimant who is the owner of a homestead which has been granted an exemption under sections 77-3507 to 77-3509 may notify the county assessor by August 15 of each year of any change in the homestead exemption status occurring in the preceding portion of the calendar year as a result of a transfer of the homestead exemption pursuant to sections 77-3509.01 and 77-3509.02. If by his or her failure to give such notice any property owner permits the allowance of the homestead exemption for any year, or in the year of application in the case of transfers pursuant to sections 77-3509.01 and 77-3509.02, after the homestead exemption status of such property has

changed, an amount equal to the amount of the taxes lawfully due but not paid by reason of such unlawful and improper allowance of homestead exemption, together with penalty and interest on such total sum as provided by statute on delinquent ad valorem taxes, shall be due and shall upon entry of the amount thereof on the books of the county treasurer be a lien on such property while unpaid. Such lien may be enforced in the manner provided for liens for other delinquent taxes. Any person who has permitted the improper and unlawful allowance of such homestead exemption on his or her property shall, as an additional penalty, also forfeit his or her right to a homestead exemption on any property in this state for the two succeeding years.

Source: Laws 1979, LB 65, § 14; Laws 1983, LB 494, § 4; Laws 1983, LB 195, § 7; Laws 1983, LB 396, § 4; Laws 1984, LB 809, § 10; Laws 1985, Second Spec. Sess., LB 6, § 6; Laws 1987, LB 376A, § 11; Laws 1988, LB 834, § 3; Laws 1988, LB 1105, § 5; Laws 1991, LB 2, § 18; Laws 1991, LB 773, § 23; Laws 1994, LB 902, § 39; Laws 1995, LB 133, § 3; Laws 1995, LB 135, § 2; Laws 1996, LB 1039, § 7; Laws 1997, LB 397, § 29; Laws 2005, LB 54, § 20; Laws 2007, LB145, § 3; Laws 2009, LB94, § 5.
Effective date May 27, 2009.

77-3514.01 Homestead; exemption; late application or certification because of medical condition; filing; form; county assessor; powers and duties; rejection; notice; hearing.

(1) A late application or certification filed pursuant to section 77-3512, 77-3513, or 77-3514 because of a medical condition which impaired the claimant's ability to apply or certify in a timely manner shall only be for the current tax year. The late application or certification shall be filed with the county assessor on or before the date on which the first half of the real estate taxes levied on the property for the current year become delinquent.

(2) The application or certification shall include certification of the medical condition affecting the filing from a physician, physician assistant, or advanced practice registered nurse. The medical certification shall be made on forms prescribed by the Tax Commissioner.

(3) The county assessor shall approve or reject the late filing within thirty days of receipt of the late filing. If approved, the county assessor shall mark it approved and sign the application or certification. In case he or she finds that the exemption should not be allowed by reason of not being in conformity to law, the county assessor shall mark the application or certification as rejected and state the reason for rejection and sign the application or certification. In any case when the county assessor rejects an exemption, he or she shall notify the applicant of such action by mailing written notice to the applicant at the address shown in the application or certification. The notice shall be on forms prescribed by the Tax Commissioner. In any case when the county assessor rejects an exemption, such applicant may obtain a hearing before the county board of equalization in the manner described by section 77-3519.

Source: Laws 2009, LB94, § 7.
Effective date May 27, 2009.

77-3516 Homestead; exemption; application; county assessor; duties.

The county assessor shall examine each application for homestead exemption filed with him or her for an exemption pursuant to sections 77-3507 to 77-3509 and shall determine, except for the income requirements, whether or not such application should be approved or rejected. If the application is approved, the county assessor shall mark the same approved and sign the application. In case he or she finds that the exemption should not be allowed by reason of not being in conformity to law, the county assessor shall mark the application rejected and state thereon the reason for such rejection and sign the application. In any case when the county assessor rejects an application for exemption, he or she shall notify the applicant of such action by mailing written notice to the applicant at the address shown in the application, which notice shall be mailed not later than July 31 of each year, except that in cases of a change in ownership or occupancy from January 1 through August 15 or a late application authorized by the county board or permitted because of a medical condition which impaired the applicant's ability to file in a timely manner, the notice shall be sent within a reasonable time. The notice shall be on forms prescribed by the Tax Commissioner.

Source: Laws 1979, LB 65, § 16; Laws 1980, LB 647, § 9; Laws 1983, LB 396, § 5; Laws 1984, LB 809, § 11; Laws 1985, Second Spec. Sess., LB 6, § 7; Laws 1986, LB 1258, § 7; Laws 1987, LB 376A, § 12; Laws 1989, LB 84, § 13; Laws 1991, LB 9, § 6; Laws 1991, LB 773, § 24; Laws 1995, LB 133, § 4; Laws 1996, LB 1039, § 8; Laws 1997, LB 397, § 30; Laws 2009, LB94, § 6.
Effective date May 27, 2009.

77-3523 Homestead; exemption; county treasurer; certify tax revenue lost within county; reimbursed; manner; distribution.

The county treasurer shall, on or before November 30 of each year, certify to the Tax Commissioner the total tax revenue that will be lost to all taxing agencies within his or her county from taxes levied and assessed in that year because of exemptions allowed under sections 77-3501 to 77-3529. The county treasurer may amend the certification to show any change or correction in the total tax that will be lost until May 30 of the next succeeding year. If a homestead exemption is approved, denied, or corrected by the Tax Commissioner under subsection (2) of section 77-3517 after May 1 of the next year, the county treasurer shall prepare and submit amended reports to the Tax Commissioner and the political subdivisions covering any affected year and shall adjust the reimbursement to the county and the other political subdivisions by adjusting the reimbursement due under this section in later years. The Tax Commissioner shall, on or before January 1 next following such certification or within thirty days of any amendment to the certification, notify the Director of Administrative Services of the amount so certified to be reimbursed by the state. Reimbursement of the funds lost shall be made to each county according to the certification and shall be distributed in six as nearly as possible equal monthly payments on the last business day of each month beginning in January. The State Treasurer shall, on the business day preceding the last business day of each month, notify the Director of Administrative Services of the amount of funds available in the General Fund for payment purposes. The Director of Administrative Services shall, on the last business day of each month, draw warrants against funds appropriated. Out of the amount so received the county treasurer shall distribute to each of the taxing agencies within his or her county

the full amount so lost by such agency, except that one percent of such amount shall be deposited in the county general fund and that the amount due a Class V school district shall be paid to the district and the county shall be compensated pursuant to section 14-554. Each taxing agency shall, in preparing its annual or biennial budget, take into account the amount to be received under this section.

Source: Laws 1979, LB 65, § 23; Laws 1983, LB 494, § 7; Laws 1986, LB 1258, § 10; Laws 1987, LB 376A, § 16; Laws 1994, LB 902, § 42; Laws 1995, LB 499, § 3; Laws 1996, LB 1040, § 5; Laws 1997, LB 397, § 32; Laws 2000, LB 1116, § 17; Laws 2009, LB166, § 18.
Effective date February 27, 2009.

ARTICLE 36
LOCAL GOVERNMENT ASSISTANCE

Section
77-3618. Repealed. Laws 2009, LB 218, § 14.

77-3618 Repealed. Laws 2009, LB 218, § 14.

Note: This section was repealed by Laws 2009, LB218, section 14, operative on July 1, 2011.

ARTICLE 40
TOBACCO PRODUCTS TAX

Section
77-4001. Act, how cited.
77-4002. Definitions; where found.
77-4005.01. Snuff, defined.
77-4008. Tax imposed; payment.
77-4014. Licensee; file return; contents; pay tax.
77-4017. Licensee; records; inspection of business.
77-4025. Tobacco Products Administration Cash Fund; created; use; investment.

77-4001 Act, how cited.

Sections 77-4001 to 77-4025 shall be known and may be cited as the Tobacco Products Tax Act.

Source: Laws 1987, LB 730, § 1; Laws 2009, LB89, § 1.
Operative date October 1, 2009.

77-4002 Definitions; where found.

For purposes of the Tobacco Products Tax Act, unless the context otherwise requires, the definitions found in sections 77-4003 to 77-4007 shall be used.

Source: Laws 1987, LB 730, § 2; Laws 2009, LB89, § 2.
Operative date October 1, 2009.

77-4005.01 Snuff, defined.

Snuff means any finely cut, ground, or powdered tobacco that is not intended to be smoked.

Source: Laws 2009, LB89, § 3.
Operative date October 1, 2009.

77-4008 Tax imposed; payment.

(1)(a) A tax is hereby imposed upon the first owner of tobacco products to be sold in this state.

(b) The tax on snuff shall be forty-four cents per ounce and a proportionate tax at the like rate on all fractional parts of an ounce. Such tax shall be computed based on the net weight as listed by the manufacturer.

(c) The tax on tobacco products other than snuff shall be twenty percent of (i) the purchase price of such tobacco products paid by the first owner or (ii) the price at which a first owner who made, manufactured, or fabricated the tobacco product sells the items to others.

(d) The tax on tobacco products shall be in addition to all other taxes.

(2) Whenever any person who is licensed under section 77-4009 purchases tobacco products from another person licensed under section 77-4009, the seller shall be liable for the payment of the tax.

(3) Amounts collected pursuant to this section shall be used and distributed pursuant to section 77-4025.

Source: Laws 1987, LB 730, § 8; Laws 2002, LB 1085, § 20; Laws 2003, LB 759, § 24; Laws 2009, LB89, § 4.
Operative date October 1, 2009.

77-4014 Licensee; file return; contents; pay tax.

(1) On or before the tenth day of each calendar month, every person licensed under subsection (1) of section 77-4009 shall file a return with the Tax Commissioner showing either the quantity and the price of each tobacco product brought or caused to be brought into this state for sale or the quantity and the price of each tobacco product made, manufactured, or fabricated in this state for sale in this state, whichever is applicable, during the preceding calendar month. For snuff, such return shall also include the net weight as listed by the manufacturer.

(2) Every person licensed pursuant to subsection (2) of section 77-4009 shall, in the manner described in subsection (1) of this section, file a return showing in detail the different kinds, quantity, and wholesale sales price of each tobacco product shipped or transported to retailers in this state to be sold by such retailers during the preceding calendar month. For snuff, such return shall also include the net weight as listed by the manufacturer.

(3) Returns shall be made upon forms furnished and prescribed by the Tax Commissioner. Each return shall be accompanied by a remittance for the full tax liability shown, less an amount of such liability equal to any amount allowed a payer of the sales and use tax pursuant to subdivision (1)(d) of section 77-2708 as compensation to reimburse the licensee for his or her expenses incurred in complying with the Tobacco Products Tax Act.

Source: Laws 1987, LB 730, § 14; Laws 2002, Second Spec. Sess., LB 32, § 4; Laws 2009, LB89, § 5.
Operative date October 1, 2009.

77-4017 Licensee; records; inspection of business.

(1) Every licensee shall keep complete and accurate records for all places of business, including itemized invoices of tobacco products (a) held, purchased, manufactured, or brought in or caused to be brought into this state or (b) for a licensee located outside of this state, shipped or transported to retailers in this

state. For snuff, such records shall also include the net weight as listed by the manufacturer.

(2) All books, records, and other papers and documents required to be kept by this section shall be preserved for a period of at least three years after the due date of the tax imposed by the Tobacco Products Tax Act unless the Tax Commissioner, in writing, authorizes their destruction or disposal at an earlier date.

(3) At any time during usual business hours, duly authorized agents or employees of the Tax Commissioner may enter any place of business of a licensee and inspect the premises, the records required to be kept pursuant to this section, and the tobacco products contained in such place of business for purposes of determining whether or not such licensee is in full compliance with the act. Refusal to permit such inspection by a duly authorized agent or employee of the Tax Commissioner shall be grounds for revocation, cancellation, or suspension of the license.

Source: Laws 1987, LB 730, § 17; Laws 2009, LB89, § 6.
Operative date October 1, 2009.

77-4025 Tobacco Products Administration Cash Fund; created; use; investment.

There is hereby created a cash fund in the Department of Revenue to be known as the Tobacco Products Administration Cash Fund. All revenue collected or received by the Tax Commissioner from the license fees and taxes imposed by the Tobacco Products Tax Act shall be remitted to the State Treasurer for credit to the Tobacco Products Administration Cash Fund. All costs required for administration of the Tobacco Products Tax Act shall be paid from such fund. Credits and refunds allowed under the act shall be paid from the Tobacco Products Administration Cash Fund. Any receipts, after credits and refunds, in excess of the amounts sufficient to cover the costs of administration may be transferred to the General Fund at the direction of the Legislature. Any money in the Tobacco Products 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 1987, LB 730, § 25; Laws 1989, LB 258, § 12; Laws 1994, LB 1066, § 85; Laws 2002, LB 1085, § 21; Laws 2002, LB 1310, § 10; Laws 2009, LB89, § 7.
Operative date October 1, 2009.

Cross References

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

ARTICLE 50
TAX EQUALIZATION AND REVIEW COMMISSION ACT

Section
77-5022. Commission; annual meeting; powers and duties.
77-5023. Commission; power to change value; acceptable range.

77-5022 Commission; annual meeting; powers and duties.

The commission shall annually equalize the assessed value or special value of all real property as submitted by the county assessors on the abstracts of

assessments and equalize the values of real property that is valued by the state. The commission shall have the power to adjourn from time to time until the equalization process is complete. Meetings held pursuant to this section may be held by means of videoconference.

Source: Laws 1903, c. 73, § 130, p. 434; R.S.1913, § 6447; Laws 1921, c. 133, art. XI, § 4, p. 591; C.S.1922, § 5901; C.S.1929, § 77-1004; Laws 1933, c. 129, § 1, p. 505; C.S.Supp.,1941, § 77-1004; R.S. 1943, § 77-505; Laws 1969, c. 653, § 1, p. 2569; Laws 1987, LB 508, § 18; Laws 1992, LB 1063, § 57; Laws 1992, Second Spec. Sess., LB 1, § 55; R.S.1943, (1996), § 77-505; Laws 1997, LB 397, § 40; Laws 1999, LB 140, § 6; Laws 2003, LB 291, § 12; Laws 2004, LB 973, § 63; Laws 2006, LB 808, § 43; Laws 2009, LB166, § 19.
Effective date February 27, 2009.

77-5023 Commission; power to change value; acceptable range.

(1) Pursuant to section 77-5022, the commission shall have the power to increase or decrease the value of a class or subclass of real property in any county or taxing authority or of real property valued by the state so that all classes or subclasses of real property in all counties fall within an acceptable range.

(2) An acceptable range is the percentage of variation from a standard for valuation as measured by an established indicator of central tendency of assessment. Acceptable ranges are: (a) For agricultural land and horticultural land as defined in section 77-1359, sixty-nine to seventy-five percent of actual value; (b) for lands receiving special valuation, sixty-nine to seventy-five percent of special valuation as defined in section 77-1343; and (c) for all other real property, ninety-two to one hundred percent of actual value.

(3) Any increase or decrease shall cause the level of value determined by the commission to be at the midpoint of the applicable acceptable range.

(4) Any decrease or increase to a subclass of property shall also cause the level of value determined by the commission for the class from which the subclass is drawn to be within the applicable acceptable range.

(5) Whether or not the level of value determined by the commission falls within an acceptable range or at the midpoint of an acceptable range may be determined to a reasonable degree of certainty relying upon generally accepted mass appraisal techniques.

Source: Laws 1903, c. 73, § 130, p. 434; R.S.1913, § 6447; Laws 1921, c. 133, art. XI, § 4, p. 591; C.S.1922, § 5901; C.S.1929, § 77-1004; Laws 1933, c. 129, § 1, p. 505; C.S.Supp.,1941, § 77-1004; R.S. 1943, § 77-506; Laws 1955, c. 289, § 4, p. 918; Laws 1957, c. 323, § 1, p. 1145; Laws 1957, c. 320, § 3, p. 1139; Laws 1979, LB 187, § 193; Laws 1985, LB 268, § 2; Laws 1987, LB 508, § 19; Laws 1992, LB 1063, § 58; Laws 1992, Second Spec. Sess., LB 1, § 56; Laws 1995, LB 137, § 1; R.S.1943, (1996), § 77-506; Laws 1997, LB 397, § 41; Laws 2000, LB 968, § 77; Laws 2001, LB 170, § 23; Laws 2003, LB 291, § 13; Laws 2004, LB 973, § 64; Laws 2006, LB 808, § 44; Laws 2006, LB 968, § 15; Laws 2007, LB167, § 9; Laws 2009, LB166, § 20.
Effective date February 27, 2009.

ARTICLE 52
BEGINNING FARMER TAX CREDIT ACT

Section
77-5209. Beginning farmer or livestock producer; qualifications.
77-5211. Owner of agricultural assets; tax credit; when.

77-5209 Beginning farmer or livestock producer; qualifications.

(1) The board shall determine who is qualified as a beginning farmer or livestock producer based on the qualifications found in this section. A qualified beginning farmer or livestock producer shall be an individual who: (a) Has a net worth of not more than two hundred thousand dollars, including any holdings by a spouse or dependent, based on fair market value; (b) provides the majority of the day-to-day physical labor and management of his or her farming or livestock production operations; (c) has, by the judgment of the board, adequate farming or livestock production experience or demonstrates knowledge in the type of farming or livestock production for which he or she seeks assistance from the board; (d) demonstrates to the board a profit potential by submitting board-approved projected earnings statements and agrees that farming or livestock production is intended to become his or her principal source of income; (e) demonstrates to the board a need for assistance; (f) participates in a financial management program approved by the board; (g) submits a nutrient management plan and a soil conservation plan to the board on any applicable agricultural assets purchased or rented from an owner of agricultural assets; and (h) has such other qualifications as specified by the board. The qualified beginning farmer or livestock producer net worth thresholds in subdivision (a) of this subsection shall be adjusted annually beginning October 1, 2009, and each October 1 thereafter, by taking the average Producer Price Index for all commodities, published by the United States Department of Labor, Bureau of Labor Statistics, for the most recent twelve available periods divided by the Producer Price Index for 2008 and multiplying the result by the qualified beginning farmer's or livestock producer's net worth threshold. If the resulting amount is not a multiple of twenty-five thousand dollars, the amount shall be rounded to the next lowest twenty-five thousand dollars.

(2) A qualified beginning farmer or livestock producer who has participated in a board approved and certified three-year rental agreement with an owner of agricultural assets shall not be eligible to file a subsequent application with the board but may refer to the board for additional support and participate in programs, including educational and financial programs and seminars, established or recommended by the board that are applicable to the continued success of such farmer or livestock producer.

Source: Laws 1999, LB 630, § 10; Laws 2000, LB 1223, § 5; Laws 2006, LB 990, § 11; Laws 2008, LB1027, § 7; Laws 2009, LB447, § 1. Effective date August 30, 2009.

77-5211 Owner of agricultural assets; tax credit; when.

(1) Except as otherwise disallowed under subsection (5) of this section, an owner of agricultural assets shall be allowed a credit to be applied against the state income tax liability of such owner for agricultural assets rented on a rental agreement basis, including cash rent of agricultural assets or cash

equivalent of a share-rent rental, to qualified beginning farmers or livestock producers. Such asset shall be rented at prevailing community rates as determined by the board.

(2) The credit allowed shall be for renting agricultural assets used for farming or livestock production. Such credit shall be granted by the Department of Revenue only after approval and certification by the board and a written three-year rental agreement for such assets is entered into between an owner of agricultural assets and a qualified beginning farmer or livestock producer. An owner of agricultural assets or qualified beginning farmer or livestock producer may terminate such agreement for reasonable cause upon approval by the board. If an agreement is terminated without fault on the part of the owner of agricultural assets as determined by the board, the tax credit shall not be retroactively disallowed. If an agreement is terminated with fault on the part of the owner of agricultural assets as determined by the board, any prior tax credits claimed by such owner shall be disallowed and recaptured and shall be immediately due and payable to the State of Nebraska.

(3) A credit may be granted to an owner of agricultural assets for renting agricultural assets, including cash rent of agricultural assets or cash equivalent of a share-rent agreement, to any qualified beginning farmer or livestock producer for a period of three years. An owner of agricultural assets shall not be eligible for further credits under the Beginning Farmer Tax Credit Act unless the rental agreement is terminated prior to the end of the three-year period through no fault of the owner of agricultural assets. If the board finds that such a termination was not the fault of the owner of agricultural assets, it may approve the owner for credits arising from a subsequent qualifying rental agreement with a different qualified beginning farmer or livestock producer.

(4) Any credit allowable to a partnership, a corporation, a limited liability company, or an estate or trust may be distributed to the partners, members, shareholders, or beneficiaries. Any credit distributed shall be distributed in the same manner as income is distributed.

(5) The credit allowed under this section shall not be allowed to an owner of agricultural assets for a rental agreement with a beginning farmer or livestock producer who is a relative, as defined in section 36-702, of the owner of agricultural assets or of a partner, member, shareholder, or trustee of the owner of agricultural assets unless the rental agreement is included in a written succession plan. Such succession plan shall be in the form of a written contract or other instrument legally binding the parties to a process and timetable for the transfer of agricultural assets from the owner of agricultural assets to the beginning farmer or livestock producer. The succession plan shall provide for the transfer of assets to be completed within a period of no longer than thirty years, except that when the asset to be transferred is land owned by an individual, the period of transfer may be for a period up to the date of death of the owner. The owner of agricultural assets shall be allowed the credit provided for qualified rental agreements under this section if the board certifies the plan as providing a reasonable manner and probability of successful transfer.

Source: Laws 1999, LB 630, § 12; Laws 2000, LB 1223, § 7; Laws 2006, LB 990, § 13; Laws 2008, LB1027, § 8; Laws 2009, LB165, § 15. Operative date April 9, 2009.

ARTICLE 57
NEBRASKA ADVANTAGE ACT

Section
77-5701. Act, how cited.
77-5714. Number of new employees, defined.
77-5715. Qualified business, defined.
77-5722.01. Employees; verification of status required; exclusion.
77-5723. Incentives; application; contents; fee; approval; agreements; contents; modification.
77-5725. Tiers; requirements; incentives; enumerated.
77-5726. Credits; use; refund claims; procedures; interest; appointment of purchasing agent; protest; appeal.
77-5727. Recapture or disallowance of incentives.

77-5701 Act, how cited.

Sections 77-5701 to 77-5735 shall be known and may be cited as the Nebraska Advantage Act.

Source: Laws 2005, LB 312, § 23; Laws 2008, LB895, § 6; Laws 2009, LB403, § 10.
Operative date October 1, 2009.

77-5714 Number of new employees, defined.

(1) Number of new employees, for a tier 1, tier 2, tier 3, or tier 4 project, means the number of equivalent employees that are employed at the project during a year that are in excess of the number of equivalent employees during the base year, not to exceed the number of equivalent employees employed at the project during a year who are not base-year employees and who are paid wages at a rate equal to at least sixty percent of the Nebraska average weekly wage for the year of application.

(2) Number of new employees, for a tier 6 project, means the number of equivalent employees that are employed at the project during a year that are in excess of the number of equivalent employees during the base year, not to exceed the number of equivalent employees employed at the project during a year who are not base-year employees and who are paid at a rate equal to or greater than the tier 6 weekly required compensation for the year of application.

(3) Teleworkers working for wages or salaries in Nebraska from their residences for a taxpayer on tasks interdependent with the work performed at the project shall be considered to be employed at the project.

(4) Employees who work at a military installation in Nebraska for a taxpayer on tasks interdependent with the work performed at the project shall be considered to be employed at the project.

Source: Laws 2005, LB 312, § 36; Laws 2008, LB895, § 11; Laws 2009, LB164, § 3.
Operative date August 30, 2009.

77-5715 Qualified business, defined.

(1) For a tier 2, tier 3, tier 4, or tier 5 project, qualified business means any business engaged in:

(a) The conducting of research, development, or testing for scientific, agricultural, animal husbandry, food product, or industrial purposes;

(b) The performance of data processing, telecommunication, insurance, or financial services. For purposes of this subdivision, financial services includes only financial services provided by any financial institution subject to tax under Chapter 77, article 38, or any person or entity licensed by the Department of Banking and Finance or the federal Securities and Exchange Commission and telecommunication services includes community antenna television service, Internet access, satellite ground station, data center, call center, or telemarketing;

(c) The assembly, fabrication, manufacture, or processing of tangible personal property;

(d) The administrative management of the taxpayer's activities, including headquarter facilities relating to such activities or the administrative management of any of the activities of any business entity or entities in which the taxpayer or a group of its shareholders holds any direct or indirect ownership interest of at least ten percent, including headquarter facilities relating to such activities;

(e) The storage, warehousing, distribution, transportation, or sale of tangible personal property;

(f) The sale of tangible personal property if the taxpayer derives at least seventy-five percent or more of the sales or revenue attributable to such activities relating to the project from sales to consumers who are not related persons and are located outside the state;

(g) The sale of software development services, computer systems design, product testing services, or guidance or surveillance systems design services or the licensing of technology if the taxpayer derives at least seventy-five percent of the sales or revenue attributable to such activities relating to the project from sales or licensing either to customers who are not related persons and located outside the state or to the United States Government;

(h) The research, development, and maintenance of an Internet web portal. For purposes of this subdivision, Internet web portal means an Internet site that allows users to access, search, and navigate the Internet; or

(i) Any combination of the activities listed in this subsection.

(2) For a tier 1 project, qualified business means any business engaged in:

(a) The conducting of research, development, or testing for scientific, agricultural, animal husbandry, food product, or industrial purposes;

(b) The assembly, fabrication, manufacture, or processing of tangible personal property;

(c) The sale of software development services, computer systems design, product testing services, or guidance or surveillance systems design services or the licensing of technology if the taxpayer derives at least seventy-five percent of the sales or revenue attributable to such activities relating to the project from sales or licensing either to customers who are not related persons and are located outside the state or to the United States Government; or

(d) Any combination of activities listed in this subsection.

(3) For a tier 6 project, qualified business means any business except a business excluded by subsection (4) of this section.

(4) Except for business activity described in subdivision (1)(f) of this section, qualified business does not include any business activity in which eighty percent or more of the total sales are sales to the ultimate consumer of (a) food prepared for immediate consumption or (b) tangible personal property which is not assembled, fabricated, manufactured, or processed by the taxpayer or used by the purchaser in any of the activities listed in subsection (1) or (2) of this section.

Source: Laws 2005, LB 312, § 37; Laws 2007, LB223, § 29; Laws 2008, LB895, § 12; Laws 2009, LB164, § 4.
Operative date August 30, 2009.

77-5722.01 Employees; verification of status required; exclusion.

(1) The Tax Commissioner shall not approve or grant to any person any tax incentive under the Nebraska Advantage Act unless the taxpayer provides evidence satisfactory to the Tax Commissioner that the taxpayer electronically verified the work eligibility status of all newly hired employees employed in Nebraska.

(2) For purposes of calculating any tax incentive under the act, the Tax Commissioner shall exclude hours worked and compensation paid to an employee that is not eligible to work in Nebraska as verified under subsection (1) of this section.

(3) This section does not apply to any application filed under the Nebraska Advantage Act prior to October 1, 2009.

Source: Laws 2009, LB403, § 11.
Operative date October 1, 2009.

77-5723 Incentives; application; contents; fee; approval; agreements; contents; modification.

(1) In order to utilize the incentives set forth in the Nebraska Advantage Act, the taxpayer shall file an application, on a form developed by the Tax Commissioner, requesting an agreement with the Tax Commissioner.

(2) The application shall contain:

(a) A written statement describing the plan of employment and investment for a qualified business in this state;

(b) Sufficient documents, plans, and specifications as required by the Tax Commissioner to support the plan and to define a project;

(c) If more than one location within this state is involved, sufficient documentation to show that the employment and investment at different locations are interdependent parts of the plan. A headquarters shall be presumed to be interdependent with each other location directly controlled by such headquarters. A showing that the parts of the plan would be considered parts of a unitary business for corporate income tax purposes shall not be sufficient to show interdependence for the purposes of this subdivision;

(d) A nonrefundable application fee of one thousand dollars for a tier 1 project, two thousand five hundred dollars for a tier 2, tier 3, or tier 5 project, five thousand dollars for a tier 4 project, and ten thousand dollars for a tier 6 project. The fee shall be credited to the Nebraska Incentives Fund; and

(e) A timetable showing the expected sales tax refunds and what year they are expected to be claimed. The timetable shall include both direct refunds due to investment and credits taken as sales tax refunds as accurately as possible.

The application and all supporting information shall be confidential except for the name of the taxpayer, the location of the project, the amounts of increased employment and investment, and the information required to be reported by sections 77-5731 and 77-5734.

(3) An application must be complete to establish the date of the application. An application shall be considered complete once it contains the items listed in subsection (2) of this section, regardless of the Tax Commissioner's additional needs pertaining to information or clarification in order to approve or not approve the application.

(4) Once satisfied that the plan in the application defines a project consistent with the purposes stated in the Nebraska Advantage Act in one or more qualified business activities within this state, that the taxpayer and the plan will qualify for benefits under the act, and that the required levels of employment and investment for the project will be met prior to the end of the fourth year after the year in which the application was submitted for a tier 1, tier 3, or tier 6 project or the end of the sixth year after the year in which the application was submitted for a tier 2, tier 4, or tier 5 project, the Tax Commissioner shall approve the application.

(5) After approval, the taxpayer and the Tax Commissioner shall enter into a written agreement. The taxpayer shall agree to complete the project, and the Tax Commissioner, on behalf of the State of Nebraska, shall designate the approved plan of the taxpayer as a project and, in consideration of the taxpayer's agreement, agree to allow the taxpayer to use the incentives contained in the Nebraska Advantage Act. The application, and all supporting documentation, to the extent approved, shall be considered a part of the agreement. The agreement shall state:

(a) The levels of employment and investment required by the act for the project;

(b) The time period under the act in which the required levels must be met;

(c) The documentation the taxpayer will need to supply when claiming an incentive under the act;

(d) The date the application was filed; and

(e) A requirement that the company update the Department of Revenue annually on any changes in plans or circumstances which affect the timetable of sales tax refunds as set out in the application. If the company fails to comply with this requirement, the Tax Commissioner may defer any pending sales tax refunds until the company does comply.

(6) The incentives contained in section 77-5725 shall be in lieu of the tax credits allowed by the Nebraska Advantage Rural Development Act for any project. In computing credits under the act, any investment or employment which is eligible for benefits or used in determining benefits under the Nebraska Advantage Act shall be subtracted from the increases computed for determining the credits under section 77-27,188. New investment or employment at a project location that results in the meeting or maintenance of the employment or investment requirements, the creation of credits, or refunds of taxes under the Employment and Investment Growth Act shall not be considered new

investment or employment for purposes of the Nebraska Advantage Act. The use of carryover credits under the Employment and Investment Growth Act, the Invest Nebraska Act, the Nebraska Advantage Rural Development Act, or the Quality Jobs Act shall not preclude investment and employment from being considered new investment or employment under the Nebraska Advantage Act. The use of property tax exemptions at the project under the Employment and Investment Growth Act shall not preclude investment not eligible for the property tax exemption from being considered new investment under the Nebraska Advantage Act.

(7) A taxpayer and the Tax Commissioner may enter into agreements for more than one project and may include more than one project in a single agreement. The projects may be either sequential or concurrent. A project may involve the same location as another project. No new employment or new investment shall be included in more than one project for either the meeting of the employment or investment requirements or the creation of credits. When projects overlap and the plans do not clearly specify, then the taxpayer shall specify in which project the employment or investment belongs.

(8) The taxpayer may request that an agreement be modified if the modification is consistent with the purposes of the act and does not require a change in the description of the project. An agreement may not be modified to a tier that would grant a higher level of benefits to the taxpayer or to a tier 1 project. Once satisfied that the modification to the agreement is consistent with the purposes stated in the act, the Tax Commissioner and taxpayer may amend the agreement. For a tier 6 project, the taxpayer must agree to limit the project to qualified activities allowable under tier 2 and tier 4.

Source: Laws 2005, LB 312, § 45; Laws 2006, LB 1003, § 13; Laws 2008, LB895, § 15; Laws 2008, LB914, § 22; Laws 2009, LB164, § 5. Operative date August 30, 2009.

Cross References

Employment and Investment Growth Act, see section 77-4101.
Invest Nebraska Act, see section 77-5501.
Nebraska Advantage Rural Development Act, see section 77-27,187.
Quality Jobs Act, see section 77-4901.

77-5725 Tiers; requirements; incentives; enumerated.

(1) Applicants may qualify for benefits under the Nebraska Advantage Act in one of six tiers:

(a) Tier 1, investment in qualified property of at least one million dollars and the hiring of at least ten new employees. There shall be no new project applications for benefits under this tier filed after December 31, 2015, without further authorization of the Legislature. All complete project applications filed on or before December 31, 2015, shall be considered by the Tax Commissioner and approved if the project and taxpayer qualify for benefits. Agreements may be executed with regard to completed project applications filed on or before December 31, 2015. All project agreements pending, approved, or entered into before such date shall continue in full force and effect;

(b) Tier 2, investment in qualified property of at least three million dollars and the hiring of at least thirty new employees;

(c) Tier 3, the hiring of at least thirty new employees. There shall be no new project applications for benefits under this tier filed after December 31, 2015,

without further authorization of the Legislature. All complete project applications filed on or before December 31, 2015, shall be considered by the Tax Commissioner and approved if the project and taxpayer qualify for benefits. Agreements may be executed with regard to completed project applications filed on or before December 31, 2015. All project agreements pending, approved, or entered into before such date shall continue in full force and effect;

(d) Tier 4, investment in qualified property of at least ten million dollars and the hiring of at least one hundred new employees;

(e) Tier 5, investment in qualified property of at least thirty million dollars. Failure to maintain an average number of equivalent employees as defined in section 77-5727 greater than or equal to the number of equivalent employees in the base year shall result in a partial recapture of benefits; and

(f) Tier 6, investment in qualified property of at least ten million dollars and the hiring of at least seventy-five new employees or the investment in qualified property of at least one hundred million dollars and the hiring of at least fifty new employees. Agreements may be executed with regard to completed project applications filed before January 1, 2016. All project agreements pending, approved, or entered into before such date shall continue in full force and effect.

(2) When the taxpayer has met the required levels of employment and investment contained in the agreement for a tier 1, tier 2, tier 4, tier 5, or tier 6 project, the taxpayer shall be entitled to the following incentives:

(a) A refund of all sales and use taxes for a tier 2, tier 4, tier 5, or tier 6 project or a refund of one-half of all sales and use taxes for a tier 1 project paid under the Local Option Revenue Act, the Nebraska Revenue Act of 1967, and sections 13-319, 13-324, and 13-2813 from the date of the application through the meeting of the required levels of employment and investment for all purchases, including rentals, of:

(i) Qualified property used as a part of the project;

(ii) Property, excluding motor vehicles, based in this state and used in both this state and another state in connection with the project except when any such property is to be used for fundraising for or for the transportation of an elected official;

(iii) Tangible personal property by the owner of the improvement to real estate that is incorporated into real estate as a part of a project; and

(iv) Tangible personal property by a contractor or repairperson after appointment as a purchasing agent of the owner of the improvement to real estate. The refund shall be based on fifty percent of the contract price, excluding any land, as the cost of materials subject to the sales and use tax; and

(b) A refund of all sales and use taxes for a tier 2, tier 4, tier 5, or tier 6 project or a refund of one-half of all sales and use taxes for a tier 1 project paid under the Local Option Revenue Act, the Nebraska Revenue Act of 1967, and sections 13-319, 13-324, and 13-2813 on the types of purchases, including rentals, listed in subdivision (a) of this subsection for such taxes paid during each year of the entitlement period in which the taxpayer is at or above the required levels of employment and investment.

(3) Any taxpayer who qualifies for a tier 1, tier 2, tier 3, or tier 4 project shall be entitled to a credit equal to three percent times the average wage of new employees times the number of new employees if the average wage of the new

employees equals at least sixty percent of the Nebraska average annual wage for the year of application. The credit shall equal four percent times the average wage of new employees times the number of new employees if the average wage of the new employees equals at least seventy-five percent of the Nebraska average annual wage for the year of application. The credit shall equal five percent times the average wage of new employees times the number of new employees if the average wage of the new employees equals at least one hundred percent of the Nebraska average annual wage for the year of application. The credit shall equal six percent times the average wage of new employees times the number of new employees if the average wage of the new employees equals at least one hundred twenty-five percent of the Nebraska average annual wage for the year of application. For computation of such credit:

(a) Average annual wage means the total compensation paid to employees during the year at the project who are not base-year employees and who are paid wages equal to at least sixty percent of the Nebraska average weekly wage for the year of application, excluding any compensation in excess of one million dollars paid to any one employee during the year, divided by the number of equivalent employees making up such total compensation;

(b) Average wage of new employees means the average annual wage paid to employees during the year at the project who are not base-year employees and who are paid wages equal to at least sixty percent of the Nebraska average weekly wage for the year of application, excluding any compensation in excess of one million dollars paid to any one employee during the year; and

(c) Nebraska average annual wage means the Nebraska average weekly wage times fifty-two.

(4) Any taxpayer who qualifies for a tier 6 project shall be entitled to a credit equal to ten percent times the total compensation paid to all employees, other than base-year employees, excluding any compensation in excess of one million dollars paid to any one employee during the year, employed at the project.

(5) Any taxpayer who has met the required levels of employment and investment for a tier 2 or tier 4 project shall receive a credit equal to ten percent of the investment made in qualified property at the project. Any taxpayer who has met the required levels of investment and employment for a tier 1 project shall receive a credit equal to three percent of the investment made in qualified property at the project. Any taxpayer who has met the required levels of investment and employment for a tier 6 project shall receive a credit equal to fifteen percent of the investment made in qualified property at the project.

(6) The credits prescribed in subsections (3), (4), and (5) of this section shall be allowable for compensation paid and investments made during each year of the entitlement period that the taxpayer is at or above the required levels of employment and investment.

(7) The credit prescribed in subsection (5) of this section shall also be allowable during the first year of the entitlement period for investment in qualified property at the project after the date of the application and before the required levels of employment and investment were met.

(8)(a) A taxpayer who has met the required levels of employment and investment for a tier 4 or tier 6 project shall receive the incentive provided in this subsection. A taxpayer who has a project for an Internet web portal and

who has met the required level of investment for a tier 5 project shall receive the incentive provided in this subsection for property in subdivision (8)(b)(ii) of this section. Such investment and hiring of new employees shall be considered a required level of investment and employment for this subsection and for the recapture of benefits under this subsection only.

(b) The following property used in connection with such project or projects and acquired by the taxpayer, whether by lease or purchase, after the date the application was filed shall constitute separate classes of personal property:

(i) Turbine-powered aircraft, including turboprop, turbojet, and turbofan aircraft, except when any such aircraft is used for fundraising for or for the transportation of an elected official;

(ii) Computer systems, made up of equipment that is interconnected in order to enable the acquisition, storage, manipulation, management, movement, control, display, transmission, or reception of data involving computer software and hardware, used for business information processing which require environmental controls of temperature and power and which are capable of simultaneously supporting more than one transaction and more than one user. A computer system includes peripheral components which require environmental controls of temperature and power connected to such computer systems. Peripheral components shall be limited to additional memory units, tape drives, disk drives, power supplies, cooling units, data switches, and communication controllers;

(iii) Depreciable personal property used for a distribution facility, including, but not limited to, storage racks, conveyor mechanisms, forklifts, and other property used to store or move products;

(iv) Personal property which is business equipment located in a single project if the business equipment is involved directly in the manufacture or processing of agricultural products; and

(v) For a tier 6 project, any other personal property located at the project.

(c) Such property shall be eligible for exemption from the tax on personal property from the first January 1 following the date of acquisition for property in subdivision (8)(b)(i) of this section, or from the first January 1 following the end of the year during which the required levels were exceeded for property in subdivisions (8)(b)(ii), (iii), (iv), and (v) of this section, through the ninth December 31 after the first year any property included in subdivisions (8)(b)(ii), (iii), (iv), and (v) of this section qualifies for the exemption. In order to receive the property tax exemptions allowed by subdivision (8)(b) of this section, the taxpayer shall annually file a claim for exemption with the Tax Commissioner on or before May 1. The form and supporting schedules shall be prescribed by the Tax Commissioner and shall list all property for which exemption is being sought under this section. A separate claim for exemption must be filed for each project and each county in which property is claimed to be exempt. A copy of this form must also be filed with the county assessor in each county in which the applicant is requesting exemption. The Tax Commissioner shall determine the eligibility of each item listed for exemption and, on or before August 1, certify such to the taxpayer and to the affected county assessor. In determining the eligibility of items of personal property for exemption, the Tax Commissioner is limited to the question of whether the property claimed as exempt by the taxpayer falls within the classes of property described in subdivision (8)(b) of this section. The determination of whether a taxpayer is eligible to obtain

exemption for personal property based on meeting the required levels of investment and employment is the responsibility of the Tax Commissioner.

(9)(a) The investment thresholds in this section for a particular year of application shall be adjusted by the method provided in this subsection.

(b) For tier 1, tier 2, tier 4, and tier 5, beginning October 1, 2006, and each October 1 thereafter, the average Producer Price Index for all commodities, published by the United States Department of Labor, Bureau of Labor Statistics, for the most recent twelve available periods shall be divided by the Producer Price Index for the first quarter of 2006 and the result multiplied by the applicable investment threshold. The investment thresholds shall be adjusted for cumulative inflation since 2006.

(c) For tier 6, beginning October 1, 2008, and each October 1 thereafter, the average Producer Price Index for all commodities, published by the United States Department of Labor, Bureau of Labor Statistics, for the most recent twelve available periods shall be divided by the Producer Price Index for the first quarter of 2008 and the result multiplied by the applicable investment threshold. The investment thresholds shall be adjusted for cumulative inflation since 2008.

(d) If the resulting amount is not a multiple of one million dollars, the amount shall be rounded to the next lowest one million dollars.

(e) The investment thresholds established by this subsection apply for purposes of project qualifications for all applications filed on or after January 1 of the following year for all years of the project. Adjustments do not apply to projects after the year of application.

Source: Laws 2005, LB 312, § 47; Laws 2006, LB 1003, § 14; Laws 2007, LB223, § 30; Laws 2007, LB334, § 98; Laws 2008, LB895, § 16; Laws 2008, LB965, § 22; Laws 2009, LB164, § 6.
Operative date January 1, 2009.

Cross References

Local Option Revenue Act, see section 77-27,148.
Nebraska Revenue Act of 1967, see section 77-2701.

77-5726 Credits; use; refund claims; procedures; interest; appointment of purchasing agent; protest; appeal.

(1)(a) The credits prescribed in section 77-5725 shall be established by filing the forms required by the Tax Commissioner with the income tax return for the year. The credits may be used and shall be applied in the order in which they were first allowed. The credits may be used after any other nonrefundable credits to reduce the taxpayer's income tax liability imposed by sections 77-2714 to 77-27,135. Any decision on how part of the credit is applied shall not limit how the remaining credit could be applied under this section.

(b) The taxpayer may use the credit provided in subsection (3) of section 77-5725 to reduce the taxpayer's income tax withholding employer or payor tax liability under section 77-2756 or 77-2757 to the extent such liability is attributable to the number of new employees at the project, excluding any compensation in excess of one million dollars paid to any one employee during the year. The taxpayer may use the credit provided in subsection (4) of section 77-5725 to reduce the taxpayer's income tax withholding employer or payor tax liability under section 77-2756 or 77-2757 to the extent such liability is

attributable to all employees employed at the project, other than base-year employees and excluding any compensation in excess of one million dollars paid to any one employee during the year. To the extent of the credit used, such withholding shall not constitute public funds or state tax revenue and shall not constitute a trust fund or be owned by the state. The use by the taxpayer of the credit shall not change the amount that otherwise would be reported by the taxpayer to the employee under section 77-2754 as income tax withheld and shall not reduce the amount that otherwise would be allowed by the state as a refundable credit on an employee's income tax return as income tax withheld under section 77-2755.

For a tier 1, tier 2, tier 3, or tier 4 project, the amount of credits used against income tax withholding shall not exceed the withholding attributable to new employees employed at the project, excluding any compensation in excess of one million dollars paid to any one employee during the year.

For a tier 6 project, the amount of credits used against income tax withholding shall not exceed the withholding attributable to all employees employed at the project, other than base-year employees and excluding any compensation in excess of one million dollars paid to any one employee during the year.

If the amount of credit used by the taxpayer against income tax withholding exceeds this amount, the excess withholding shall be returned to the Department of Revenue in the manner provided in section 77-2756, such excess amount returned shall be considered unused, and the amount of unused credits may be used as otherwise permitted in this section or shall carry over to the extent authorized in subdivision (1)(d) of this section.

(c) Credits may be used to obtain a refund of sales and use taxes under the Local Option Revenue Act, the Nebraska Revenue Act of 1967, and sections 13-319, 13-324, and 13-2813 which are not otherwise refundable that are paid on purchases, including rentals, for use at the project for a tier 1, tier 2, tier 3, or tier 4 project or for use within this state for a tier 6 project.

(d) The credits earned for a tier 6 project may be used to obtain a payment from the state equal to the real property taxes due after the year the required levels of employment and investment were met and before the end of the carryover period, for real property that is included in such project and acquired by the taxpayer, whether by lease or purchase, after the date the application was filed. The payment from the state shall be made only after payment of the real property taxes have been made to the county as required by law. Payments shall not be allowed for any taxes paid on real property for which the taxes are divided under section 18-2147 or 58-507.

(e) Credits may be carried over until fully utilized, except that such credits may not be carried over more than nine years after the year of application for a tier 1 or tier 3 project, fourteen years after the year of application for a tier 2 or tier 4 project, or more than one year past the end of the entitlement period for a tier 6 project.

(2)(a) No refund claims shall be filed until after the required levels of employment and investment have been met.

(b) Refund claims shall be filed no more than once each quarter for refunds under the Nebraska Advantage Act, except that any claim for a refund in excess of twenty-five thousand dollars may be filed at any time.

(c) Any refund claim for sales and use taxes on materials incorporated into real estate as a part of the project shall be filed by and the refund paid to the owner of the improvement to real estate. A refund claim for such materials purchased by a purchasing agent shall include a copy of the purchasing agent appointment, the contract price, and a certification by the contractor or repairperson of the percentage of the materials incorporated into the project on which sales and use taxes were paid to Nebraska after appointment as purchasing agent.

(d) All refund claims shall be filed, processed, and allowed as any other claim under section 77-2708, except that the amounts allowed to be refunded under the Nebraska Advantage Act shall be deemed to be overpayments and shall be refunded notwithstanding any limitation in subdivision (2)(a) of section 77-2708. The refund may be allowed if the claim is filed within three calendar years from the end of the year the required levels of employment and investment are met or within the period set forth in section 77-2708.

(e) If a claim for a refund of sales and use taxes under the Local Option Revenue Act or sections 13-319, 13-324, and 13-2813 of more than twenty-five thousand dollars is filed by June 15 of a given year, the refund shall be made on or after November 15 of the same year. If such a claim is filed on or after June 16 of a given year, the refund shall not be made until on or after November 15 of the following year. The Tax Commissioner shall notify the affected city, village, county, or municipal county of the amount of refund claims of sales and use taxes under the Local Option Revenue Act or sections 13-319, 13-324, and 13-2813 that are in excess of twenty-five thousand dollars on or before July 1 of the year before the claims will be paid under this section.

(f) Interest shall not be allowed on any taxes refunded under the Nebraska Advantage Act.

(3) The appointment of purchasing agents shall be recognized for the purpose of changing the status of a contractor or repairperson as the ultimate consumer of tangible personal property purchased after the date of the appointment which is physically incorporated into the project and becomes the property of the owner of the improvement to real estate. The purchasing agent shall be jointly liable for the payment of the sales and use tax on the purchases with the owner of the improvement to real estate.

(4) A determination that a taxpayer is not engaged in a qualified business or has failed to meet or maintain the required levels of employment or investment for incentives, exemptions, or recapture may be protested within sixty days after the mailing of the written notice of the proposed determination. If the notice of proposed determination is not protested within the sixty-day period, the proposed determination is a final determination. If the notice is protested, the Tax Commissioner shall issue a written order resolving such protests. The written order of the Tax Commissioner resolving a protest may be appealed to the district court of Lancaster County within thirty days after the issuance of the order.

Source: Laws 2005, LB 312, § 48; Laws 2008, LB895, § 17; Laws 2008, LB914, § 23; Laws 2009, LB164, § 7.
Operative date January 1, 2009.

Cross References

Local Option Revenue Act, see section 77-27,148.
Nebraska Revenue Act of 1967, see section 77-2701.

77-5727 Recapture or disallowance of incentives.

(1)(a) If the taxpayer fails either to meet the required levels of employment or investment for the applicable project by the end of the fourth year after the end of the year the application was submitted for a tier 1, tier 3, or tier 6 project or by the end of the sixth year after the end of the year the application was submitted for a tier 2, tier 4, or tier 5 project or to utilize such project in a qualified business at employment and investment levels at or above those required in the agreement for the entire entitlement period, all or a portion of the incentives set forth in the Nebraska Advantage Act shall be recaptured or disallowed.

(b) In the case of a taxpayer who has failed to meet the required levels of investment or employment within the required time period, all reduction in the personal property tax because of the act shall be recaptured.

(2) In the case of a taxpayer who has failed to maintain the project at the required levels of employment or investment for the entire entitlement period, any reduction in the personal property tax, any refunds in tax allowed under subsection (2) of section 77-5725, and any refunds or reduction in tax allowed because of the use of a credit allowed under section 77-5725 shall be partially recaptured from either the taxpayer or the owner of the improvement to real estate and any carryovers of credits shall be partially disallowed. The amount of the recapture shall be a percentage equal to the number of years the taxpayer did not maintain the project at or above the required levels of investment and employment divided by the number of years of the project's entitlement period multiplied by the refunds allowed, reduction in personal property tax, the credits used, and the remaining carryovers. In addition, the last remaining year of personal property tax exemption shall be disallowed for each year the taxpayer did not maintain such project at or above the required levels of employment or investment.

(3) In the case of a taxpayer qualified under tier 5 who has failed to maintain the average number of equivalent employees at the project at the end of the six years following the year the taxpayer attained the required amount of investment, any refunds in tax allowed under subsection (2) of section 77-5725 or any reduction in the personal property tax under section 77-5725 shall be partially recaptured from the taxpayer. The amount of recapture shall be the total amount of refunds and reductions in tax allowed for all years times the reduction in the average number of equivalent employees employed at the end of the entitlement period from the number of equivalent employees employed in the base year divided by the number of equivalent employees employed in the base year. For purposes of this subsection, the average number of equivalent employees shall be calculated at the end of the entitlement period by adding the number of equivalent employees in the year the taxpayer attains the required level of investment and each of the next following six years and dividing the result by seven.

(4) If the taxpayer receives any refunds or reduction in tax to which the taxpayer was not entitled or which were in excess of the amount to which the taxpayer was entitled, the refund or reduction in tax shall be recaptured separate from any other recapture otherwise required by this section. Any amount recaptured under this subsection shall be excluded from the amounts subject to recapture under other subsections of this section.

(5) Any refunds or reduction in tax due, to the extent required to be recaptured, shall be deemed to be an underpayment of the tax and shall be immediately due and payable. When tax benefits were received in more than one year, the tax benefits received in the most recent year shall be recovered first and then the benefits received in earlier years up to the extent of the required recapture.

(6) Any personal property tax that would have been due except for the exemption allowed under the Nebraska Advantage Act, to the extent it becomes due under this section, shall be considered delinquent and shall be immediately due and payable to the county or counties in which the property was located when exempted. All amounts received by a county under this section shall be allocated to each taxing unit levying taxes on tangible personal property in the county in the same proportion that the levy on tangible personal property of such taxing unit bears to the total levy of all of such taxing units.

(7) Notwithstanding any other limitations contained in the laws of this state, collection of any taxes deemed to be underpayments by this section shall be allowed for a period of three years after the end of the entitlement period.

(8) Any amounts due under this section shall be recaptured notwithstanding other allowable credits and shall not be subsequently refunded under any provision of the Nebraska Advantage Act unless the recapture was in error.

(9) The recapture required by this section shall not occur if the failure to maintain the required levels of employment or investment was caused by an act of God or national emergency.

Source: Laws 2005, LB 312, § 49; Laws 2006, LB 1003, § 15; Laws 2008, LB895, § 18; Laws 2009, LB164, § 8.
Operative date August 30, 2009.

ARTICLE 58

NEBRASKA ADVANTAGE RESEARCH AND DEVELOPMENT ACT

77-5801 Act, how cited.

Sections 77-5801 to 77-5808 shall be known and may be cited as the Nebraska Advantage Research and Development Act.

Source: Laws 2005, LB 312, § 59; Laws 2009, LB403, § 12.
Operative date October 1, 2009.

77-5803 Research tax credit; amount.

(1)(a) Except as provided in subdivision (1)(b) of this section, any business firm which makes expenditures in research and experimental activities as defined in section 174 of the Internal Revenue Code of 1986, as amended, in this state shall be allowed a research tax credit as provided in the Nebraska Advantage Research and Development Act. The credit amount under this subdivision shall equal fifteen percent of the federal credit allowed under section 41 of the Internal Revenue Code of 1986, as amended, or as appor-

tioned to this state under subsection (2) of this section. The credit shall be allowed for the first tax year it is claimed and for the four tax years immediately following.

(b) Any business firm which makes expenditures in research and experimental activities as defined in section 174 of the Internal Revenue Code of 1986, as amended, on the campus of a college or university in this state or at a facility owned by a college or university in this state shall be allowed a research tax credit as provided in the Nebraska Advantage Research and Development Act. The credit amount under this subdivision shall equal thirty-five percent of the federal credit allowed under section 41 of the Internal Revenue Code of 1986, as amended, or as apportioned to this state under subsection (2) of this section. The credit shall be allowed for the first tax year it is claimed and for the four tax years immediately following.

(2) For any business firm doing business both within and without this state, the amount of the federal credit may be determined either by dividing the amount expended in research and experimental activities in this state in any tax year by the total amount expended in research and experimental activities or by apportioning the amount of the credit on the federal income tax return to the state based on the average of the property factor as determined in section 77-2734.12 and the payroll factor as determined in section 77-2734.13.

Source: Laws 2005, LB 312, § 61; Laws 2007, LB223, § 31; Laws 2008, LB915, § 7; Laws 2009, LB555, § 1.
Operative date January 1, 2009.

77-5804 Research tax credit; use; interest.

(1) The credit allowed under section 77-5803 may be used to obtain a refund of state sales and use taxes paid, may be used against the income tax liability of the taxpayer, or may be used as a refundable credit claimed on an income tax return of the taxpayer. The return need not reflect any income tax liability owed by the taxpayer.

(2) A claim for the credit may be filed quarterly for refund of the state sales and use taxes paid, either directly or indirectly, after the filing of the income tax return for the tax year in which the credit was first allowed.

(3) The credit may be used to obtain a refund of state sales and use taxes paid before the end of the tax year for which the credit was allowed, except that the amount refunded under this subsection shall not exceed the amount of the state sales and use taxes paid, either directly or indirectly, by the taxpayer on the qualifying expenditures.

(4) Credits distributed to a partner, limited liability company member, shareholder, or beneficiary may be used against the income tax liability of the partner, member, shareholder, or beneficiary receiving the credits.

(5) Interest shall not be allowed on any taxes refunded under the Nebraska Advantage Research and Development Act.

Source: Laws 2005, LB 312, § 62; Laws 2009, LB164, § 9.
Operative date August 30, 2009.

77-5806 Applicability of act.

The Nebraska Advantage Research and Development Act shall be operative for all tax years beginning or deemed to begin on or after January 1, 2006,

under the Internal Revenue Code of 1986, as amended. No business firm shall be allowed to first claim the credit for any tax year beginning or deemed to begin after December 31, 2015, under the Internal Revenue Code of 1986, as amended.

Source: Laws 2005, LB 312, § 64; Laws 2009, LB164, § 10.
Operative date August 30, 2009.

77-5808 Employees; verification of status required.

The Tax Commissioner shall not approve or grant to any person any tax incentive under the Nebraska Advantage Research and Development Act unless the taxpayer provides evidence satisfactory to the Tax Commissioner that the taxpayer electronically verified the work eligibility status of all newly hired employees employed in Nebraska. This section does not apply to any credit claimed in a tax year beginning or deemed to begin before January 1, 2009, under the Internal Revenue Code of 1986, as amended.

Source: Laws 2009, LB403, § 13.
Operative date October 1, 2009.

ARTICLE 59

NEBRASKA ADVANTAGE MICROENTERPRISE TAX CREDIT ACT

Section
77-5901. Act, how cited.
77-5903. Terms, defined.
77-5905. Applications; approval; limit.
77-5906. Tax credit; amount; claim; expiration; interest.
77-5908. Employees; verification of status required; exclusion.

77-5901 Act, how cited.

Sections 77-5901 to 77-5908 shall be known and may be cited as the Nebraska Advantage Microenterprise Tax Credit Act.

Source: Laws 2005, LB 312, § 66; Laws 2009, LB403, § 14.
Operative date October 1, 2009.

77-5903 Terms, defined.

For purposes of the Nebraska Advantage Microenterprise Tax Credit Act:

(1) Actively engaged in the operation of a microbusiness means personal involvement on a continuous basis in the daily management and operation of the business;

(2) Distressed area means a municipality, county, unincorporated area within a county, or census tract in Nebraska that has (a) an unemployment rate which exceeds the statewide average unemployment rate, (b) a per capita income below the statewide average per capita income, or (c) had a population decrease between the two most recent federal decennial censuses;

(3) Equivalent employees means the number of employees computed by dividing the total hours paid in a year by the product of forty times the number of weeks in a year;

(4) Microbusiness means any business employing five or fewer equivalent employees at the time of application. Microbusiness does not include a farm or livestock operation unless (a) the person actively engaged in the operation of

the microbusiness has a net worth of not more than three hundred fifty thousand dollars, including any holdings by a spouse or dependent, based on fair market value, or (b) the investment or employment is in the processing or marketing of agricultural products, aquaculture, agricultural tourism, or the production of fruits, herbs, tree products, vegetables, tree nuts, dried fruits, organic crops, or nursery crops;

(5) New employment means the amount by which the total compensation plus the employer cost for health insurance for employees paid during the tax year to or for employees who are Nebraska residents exceeds the total compensation paid plus the employer cost for health insurance for employees to or for employees who are Nebraska residents in the tax year prior to application. New employment does not include compensation to any employee that is in excess of one hundred fifty percent of the Nebraska average weekly wage. Nebraska average weekly wage means the most recent average weekly wage paid by all employers as reported by October 1 by the Department of Labor;

(6) New investment means the increase during the tax year over the year prior to the application in the applicant's (a) purchases of buildings and depreciable personal property located in Nebraska, (b) expenditures on repairs and maintenance on property located in Nebraska, neither subdivision (a) or (b) of this subdivision to include vehicles required to be registered for operation on the roads and highways of this state, and (c) expenditures on advertising, legal, and professional services. If the buildings or depreciable personal property is leased, the amount of new investment shall be the increase in average net annual rents multiplied by the number of years of the lease for which the taxpayer is bound, not to exceed ten years;

(7) Related persons means (a) any corporation, partnership, limited liability company, cooperative, including cooperatives exempt under section 521 of the Internal Revenue Code of 1986, as amended, limited cooperative association, or joint venture which is or would otherwise be a member of the same unitary group, if incorporated, or any person who is considered to be a related person under either section 267(b) and (c) or section 707(b) of the Internal Revenue Code of 1986, as amended, and (b) any individual who is a spouse, parent if the taxpayer is a minor, or minor son or daughter of the taxpayer; and

(8) Taxpayer means any person subject to the income tax imposed by the Nebraska Revenue Act of 1967, any corporation, partnership, limited liability company, cooperative, including a cooperative exempt under section 521 of the Internal Revenue Code of 1986, as amended, limited cooperative association, or joint venture that is or would otherwise be a member of the same unitary group, if incorporated, which is, or whose partners, members, or owners representing an ownership interest of at least ninety percent of such entity are, subject to such tax, and any other partnership, limited liability company, subchapter S corporation, cooperative, including a cooperative exempt under section 521 of the Internal Revenue Code of 1986, as amended, limited cooperative association, or joint venture when the partners, shareholders, or members representing an ownership interest of at least ninety percent of such entity are subject to such tax.

The changes made to this section by Laws 2008, LB 177, shall be operative for all applications for benefits received on or after July 18, 2008.

Source: Laws 2005, LB 312, § 68; Laws 2006, LB 1003, § 17; Laws 2007, LB368, § 141; Laws 2008, LB177, § 1; Laws 2009, LB531, § 1. Effective date August 30, 2009.

Cross References

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

77-5905 Applications; approval; limit.

(1) If the Department of Revenue determines that an application meets the requirements of section 77-5904 and that the investment or employment is eligible for the credit and (a) the applicant is actively engaged in the operation of the microbusiness or will be actively engaged in the operation upon its establishment, (b) the majority of the assets of the microbusiness are located in a distressed area or will be upon its establishment, (c) the applicant will make new investment or employment in the microbusiness, and (d) the new investment or employment will create new income or jobs in the distressed area, the department shall approve the application and authorize tentative tax credits to the applicant within the limits set forth in this section and certify the amount of tentative tax credits approved for the applicant. Applications for tax credits shall be considered in the order in which they are received.

(2) The department may approve applications up to the adjusted limit for each calendar year beginning January 1, 2006, through December 31, 2015. After applications totaling the adjusted limit have been approved for a calendar year, no further applications shall be approved for that year. The adjusted limit in a given year is two million dollars plus tentative tax credits that were not granted by the end of the preceding year. Tax credits shall not be allowed for a taxpayer receiving benefits under the Employment and Investment Growth Act, the Nebraska Advantage Act, or the Nebraska Advantage Rural Development Act.

Source: Laws 2005, LB 312, § 70; Laws 2009, LB164, § 11.
Operative date August 30, 2009.

Cross References

Employment and Investment Growth Act, see section 77-4101.
Nebraska Advantage Act, see section 77-5701.
Nebraska Advantage Rural Development Act, see section 77-27,187.

77-5906 Tax credit; amount; claim; expiration; interest.

Taxpayers shall be entitled to refundable tax credits equal to twenty percent of the taxpayer's new investment or employment in the microbusiness during the tax year not to exceed the amount of tentative tax credits approved by the department under section 77-5905. The taxpayer shall claim the tax credit by filing a form developed by the Tax Commissioner and attaching the tentative tax credit certification granted by the department. Tentative tax credits expire after the end of the tax year following the year the tentative tax credit was certified. The total lifetime tax credits claimed by any one taxpayer and any related person under the Nebraska Advantage Microenterprise Tax Credit Act shall be limited to ten thousand dollars. Interest shall not be allowed on any taxes refunded under the act.

Source: Laws 2005, LB 312, § 71; Laws 2009, LB164, § 12.
Operative date August 30, 2009.

77-5908 Employees; verification of status required; exclusion.

(1) The Tax Commissioner shall not approve or grant to any person any tax incentive under the Nebraska Advantage Microenterprise Tax Credit Act unless

the taxpayer provides evidence satisfactory to the Tax Commissioner that the taxpayer electronically verified the work eligibility status of all newly hired employees employed in Nebraska.

(2) For purposes of calculating any tax incentive available under the act, the Tax Commissioner shall exclude the hours worked and compensation paid to an employee that is not eligible to work in Nebraska as verified under subsection (1) of this section.

(3) This section does not apply to any application filed under the act prior to October 1, 2009.

Source: Laws 2009, LB403, § 15.
Operative date October 1, 2009.

ARTICLE 60

TAX POLICY REFORM COMMISSION

Section
77-6001. Repealed. Laws 2009, LB 154, § 27.
77-6002. Repealed. Laws 2009, LB 154, § 27.
77-6003. Repealed. Laws 2009, LB 154, § 27.
77-6004. Repealed. Laws 2009, LB 154, § 27.
77-6005. Repealed. Laws 2009, LB 154, § 27.
77-6006. Repealed. Laws 2009, LB 154, § 27.
77-6007. Repealed. Laws 2009, LB 154, § 27.

77-6001 Repealed. Laws 2009, LB 154, § 27.

77-6002 Repealed. Laws 2009, LB 154, § 27.

77-6003 Repealed. Laws 2009, LB 154, § 27.

77-6004 Repealed. Laws 2009, LB 154, § 27.

77-6005 Repealed. Laws 2009, LB 154, § 27.

77-6006 Repealed. Laws 2009, LB 154, § 27.

77-6007 Repealed. Laws 2009, LB 154, § 27.

CHAPTER 79
SCHOOLS

Article.
2. Provisions Relating to Students.
   (c) Admission Requirements. 79-217.
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   (l) Special Education Services Task Force. 79-11,151 to 79-11,154. Repealed.
12. Educational Service Units Act. 79-1204 to 79-1241.03.
16. Private, Denominational, or Parochial Schools. 79-1601, 79-1606.
21. Learning Community. 79-2104 to 79-2120.

ARTICLE 2
PROVISIONS RELATING TO STUDENTS

(c) ADMISSION REQUIREMENTS

Section
79-217. School board and governing authority; student; immunization against certain contagious diseases; exception.

(e) ENROLLMENT OPTION PROGRAM

79-233. Terms, defined.
79-234. Enrollment option program; established; limitations.

(c) ADMISSION REQUIREMENTS

79-217 School board and governing authority; student; immunization against certain contagious diseases; exception.

(1) Except as provided in sections 79-221 and 79-222, the school board or board of education of each school district and the governing authority of each private, denominational, or parochial school in this state shall require each student to be protected against measles, mumps, rubella, poliomyelitis, diphtheria, pertussis, and tetanus by immunization prior to enrollment. Any student who does not comply with this section shall not be permitted to continue in school until he or she so complies, except as provided by section 79-222. Each school district shall make diligent efforts to inform families prior to the date of school registration of the immunization requirements of this section.

(2) Except as provided in sections 79-221 and 79-222, on and after July 1, 2010, every student entering the seventh grade shall have a booster immunization containing diphtheria and tetanus toxoids and an acellular pertussis vaccine which meets the standards approved by the United States Public Health Service for such biological products, as such standards existed on January 1, 2009.

(3) Except as provided in the Childhood Vaccine Act, the cost of such immunizations shall be borne by the parent or guardian of each student who is immunized or by the Department of Health and Human Services for those students whose parent or guardian is financially unable to meet such cost.

Source: Laws 1973, LB 173, § 1; Laws 1973, LB 546, § 1; Laws 1979, LB 59, § 2; Laws 1992, LB 431, § 8; Laws 1993, LB 536, § 109; Laws 1994, LB 1223, § 128; R.S.1943, (1994), § 79-444.01; Laws 1996, LB 900, § 21; Laws 1996, LB 1044, § 811; Laws 2005, LB 301, § 63; Laws 2007, LB296, § 707; Laws 2009, LB464, § 1. Effective date August 30, 2009.

Cross References

Childhood Vaccine Act, see section 71-526.

(e) ENROLLMENT OPTION PROGRAM

79-233 Terms, defined.

For purposes of sections 79-232 to 79-246:

(1) Enrollment option program means the program established in section 79-234;

(2) Option school district means the public school district that an option student chooses to attend instead of his or her resident school district;

(3) Option student means a student that has chosen to attend an option school district, including a student who resides in a learning community and began attendance as an option student in an option school district in such learning community prior to the end of the first full school year for which the option school district will be a member of such learning community, but not including a student who resides in a learning community and who attends pursuant to section 79-2110 another school district in such learning community;

(4) Resident school district means the public school district in which a student resides or the school district in which the student is admitted as a resident of the school district pursuant to section 79-215; and

(5) Siblings means all children residing in the same household on a permanent basis who have the same mother or father or who are stepbrother or stepsister to each other.

Source: Laws 1989, LB 183, § 2; Laws 1990, LB 843, § 3; Laws 1992, LB 1001, § 36; R.S.1943, (1994), § 79-3402; Laws 1996, LB 900, § 37; Laws 1997, LB 347, § 4; Laws 2006, LB 1024, § 18; Laws 2008, LB988, § 3; Laws 2009, LB62, § 1; Laws 2009, LB549, § 4.

Note: Changes made by LB62 became effective February 13, 2009. Changes made by LB549 became effective August 30, 2009.

79-234 Enrollment option program; established; limitations.

(1) An enrollment option program is hereby established to enable any kindergarten through twelfth grade Nebraska student to attend a school in a Nebraska public school district in which the student does not reside subject to the limitations prescribed in section 79-238. The option shall be available only once to each student prior to graduation unless (a) the student relocates to a different resident school district, (b) the option school district merges with another district, (c) the option school district is a Class I district, (d) the option would allow the student to continue current enrollment in a school district, or (e) the option would allow the student to enroll in a school district in which the student was previously enrolled as a resident student. In the case of an event described in subdivision (1)(a) or (b) of this section, the student's parent or guardian shall submit an application to the new option school district within thirty days after the date of relocation or the effective date of the merger. This subsection does not relieve a parent or guardian from the compulsory attendance requirements in section 79-201 during the pendency of such application or approval.

(2) The program shall not apply to any student who resides in a district which has entered into an annexation agreement pursuant to section 79-473, except

that such student may transfer to another district which accepts option students.

Source: Laws 1989, LB 183, § 3; Laws 1990, LB 843, § 4; Laws 1991, LB 207, § 3; Laws 1993, LB 348, § 64; R.S.1943, (1994), § 79-3403; Laws 1996, LB 900, § 38; Laws 2008, LB1154, § 7; Laws 2009, LB549, § 5.
Effective date August 30, 2009.

79-237 Attendance; application; cancellation; forms.

(1) For a student to begin attendance as an option student in an option school district which is not in a learning community in which the student resides, the student's parent or legal guardian shall submit an application to the school board of the option school district between September 1 and March 15 for attendance during the following and subsequent school years. Applications submitted after March 15 shall contain a release approval from the resident school district on the application form prescribed and furnished by the State Department of Education pursuant to subsection (7) of this section. A district may not accept or approve any applications submitted after such date without such a release approval. The option school district shall provide the resident school district with the name of the applicant on or before April 1 or, in the case of an application submitted after March 15, within sixty days after submission. The option school district shall notify, in writing, the parent or legal guardian of the student, the resident school district, and the State Department of Education whether the application is accepted or rejected on or before April 1 or, in the case of an application submitted after March 15, within sixty days after submission.

(2) For a student who resides in a learning community to begin attendance in an option school district which is a member of such learning community, the student's parent or legal guardian shall submit an application to the school board of the option school district (a) for any learning community established prior to February 13, 2009, between February 13, 2009, and April 1, 2009, or (b) for any learning community established thereafter, between September 1 and March 15. Applications submitted after such deadlines shall be accompanied by a written release from the resident school district. Students who reside in a learning community shall only begin attendance in an option school district which is a member of such learning community prior to the end of the first full school year for which the option school district is a member of such learning community. The option school district shall provide the resident school district with the name of the applicant within five days after the applicable deadline. The option school district shall notify, in writing, the parent or legal guardian of the student, the resident school district, and the State Department of Education whether the application is accepted or rejected on or before April 10 for applications submitted for school year 2009-10 and on or before April 1 for applications submitted for any school year thereafter. A parent or guardian may provide information on the application regarding the applicant's potential qualification for free or reduced-price lunches. Any such information provided shall be subject to verification and shall only be used for the purposes of subsection (4) of section 79-238. Nothing in this subsection requires a parent or guardian to provide such information. Determinations about an applicant's qualification for free or reduced-price lunches for purposes of subsection (4) of section 79-238 shall be based on any verified information provided on the

application. If no such information is provided, the student shall be presumed not to qualify for free or reduced-price lunches for the purposes of subsection (4) of section 79-238.

(3) Applications for students who do not actually attend the option school district may be withdrawn in good standing upon mutual agreement by both the resident and option school districts.

(4) No option student shall attend an option school district for less than one school year unless the student relocates to a different resident school district, completes requirements for graduation prior to the end of his or her senior year, transfers to a private or parochial school, or upon mutual agreement of the resident and option school districts cancels the enrollment option and returns to the resident school district.

(5) Except as provided in subsection (4) of this section, the option student shall attend the option school district until graduation unless the student relocates in a different resident school district, transfers to a private or parochial school, or chooses to return to the resident school district.

(6) In each case of cancellation pursuant to subsections (4) and (5) of this section, the student's parent or legal guardian shall provide written notification to the school board of the option school district, the resident school district, and the department on forms prescribed and furnished by the department under subsection (7) of this section in advance of such cancellation.

(7) The application and cancellation forms shall be prescribed and furnished by the State Department of Education.

(8) An option student who subsequently chooses to attend a private or parochial school shall be automatically accepted to return to either the resident school district or option school district upon the completion of the grade levels offered at the private or parochial school. If such student chooses to return to the option school district, the student's parent or legal guardian shall submit another application to the school board of the option school district which shall be automatically accepted, and the deadlines prescribed in this section shall be waived.

Source: Laws 1989, LB 183, § 6; Laws 1990, LB 843, § 7; Laws 1993, LB 348, § 66; Laws 1993, LB 838, § 1; R.S.1943, (1994), § 79-3406; Laws 1996, LB 900, § 41; Laws 2001, LB 797, § 6; Laws 2006, LB 1024, § 19; Laws 2009, LB62, § 2; Laws 2009, LB549, § 6.

Note: Changes made by LB62 became effective February 13, 2009. Changes made by LB549 became effective August 30, 2009.

79-238 Application acceptance and rejection; standards; request for release; standards and conditions.

(1) Except as provided in section 79-240, the school board of the option school district shall adopt by resolution specific standards for acceptance and rejection of applications. Standards may include the capacity of a program, class, grade level, or school building or the availability of appropriate special education programs operated by the option school district. Capacity shall be determined by setting a maximum number of option students that a district will accept in any program, class, grade level, or school building, based upon available staff, facilities, projected enrollment of resident students, projected number of students with which the option school district will contract based on existing contractual arrangements, and availability of appropriate special education programs. The school board of the option school district may by

resolution declare a program, a class, or a school unavailable to option students due to lack of capacity. Standards shall not include previous academic achievement, athletic or other extracurricular ability, disabilities, proficiency in the English language, or previous disciplinary proceedings except as provided in section 79-266.01. False or substantively misleading information submitted by a parent or guardian on an application to an option school district may be cause for the option school district to reject a previously accepted application if the rejection occurs prior to the student's attendance as an option student.

(2) The school board of every school district shall also adopt standards and conditions for acceptance or rejection of a request for release of a resident student submitting an application to an option school district after March 15 under subsection (1) of section 79-237.

(3) Any option school district shall give first priority for enrollment to siblings of option students, except that the option school district shall not be required to accept the sibling of an option student if the district is at capacity except as provided in subsection (1) of section 79-240.

(4) Any option school district that is in a learning community shall give second priority for enrollment to students who reside in the learning community and who contribute to the socioeconomic diversity of enrollment as defined in section 79-2110 at the school building to which the student will be assigned pursuant to section 79-235.

Source: Laws 1989, LB 183, § 7; Laws 1990, LB 843, § 8; Laws 1991, LB 207, § 5; Laws 1992, LB 1001, § 37; Laws 1994, LB 930, § 2; R.S.1943, (1994), § 79-3407; Laws 1996, LB 900, § 42; Laws 1997, LB 346, § 2; Laws 2001, LB 797, § 7; Laws 2006, LB 1024, § 20; Laws 2009, LB62, § 3; Laws 2009, LB549, § 7.

Note: Changes made by LB62 became effective February 13, 2009. Changes made by LB549 became effective August 30, 2009.

79-239 Application; request for release; rejection; notice; appeal.

If an application is rejected by the option school district or if the resident school district rejects a request for release under subsection (1) of section 79-237, the rejecting school district shall provide written notification to the parent or guardian stating the reasons for the rejection and the process for appealing such rejection to the State Board of Education. Such notification shall be sent by certified mail. The parent or legal guardian may appeal a rejection to the State Board of Education by filing a written request, together with a copy of the rejection notice, with the State Board of Education. Such request and copy of the notice must be received by the board within thirty days after the date the notification of the rejection was received by the parent or legal guardian. Such hearing shall be held in accordance with the Administrative Procedure Act and shall determine whether the procedures of sections 79-234 to 79-241 have been followed.

Source: Laws 1989, LB 183, § 8; Laws 1992, LB 1001, § 38; Laws 1993, LB 348, § 67; R.S.1943, (1994), § 79-3408; Laws 1996, LB 900, § 43; Laws 2009, LB549, § 8.
Effective date August 30, 2009.

Cross References

Administrative Procedure Act, see section 84-920.

79-240 Relocation; automatic acceptance; deadlines waived.

(1) The application of a student who relocates in a different school district but wants to continue attending his or her original resident school district and who has been enrolled in his or her original resident school district for the immediately preceding two years shall be automatically accepted, and the deadlines prescribed in section 79-237 shall be waived.

(2) The application of an option student who relocates in a different school district but wants to continue attending the option school district shall be automatically accepted, and the deadlines prescribed in section 79-237 shall be waived.

Source: Laws 1989, LB 183, § 9; Laws 1990, LB 843, § 9; Laws 1991, LB 207, § 6; Laws 1992, LB 1001, § 39; Laws 1993, LB 348, § 68; R.S.1943, (1994), § 79-3409; Laws 1996, LB 900, § 44; Laws 1996, LB 1050, § 9; Laws 2009, LB549, § 9.
Effective date August 30, 2009.

(i) STUDENT FILES

79-2,104 Access to school files or records; limitation; fees; disciplinary material; removed and destroyed; when.

(1) Any student in any public school or his or her parents, guardians, teachers, counselors, or school administrators shall have access to the school's files or records maintained concerning such student, including the right to inspect, review, and obtain copies of such files or records. No other person shall have access to such files or records except (a) when a parent, guardian, or student of majority age provides written consent or (b) as provided in subsection (3) of this section. The contents of such files or records shall not be divulged in any manner to any unauthorized person. All such files or records shall be maintained so as to separate academic and disciplinary matters, and all disciplinary material shall be removed and destroyed after a student's continuous absence from the school for a period of three years.

(2) Each public school may establish a schedule of fees representing a reasonable cost of reproduction for copies of a student's files or records for the parents or guardians of such student, except that the imposition of a fee shall not prevent parents of students from exercising their right to inspect and review the students' files or records and no fee shall be charged to search for or retrieve any student's files or records.

(3)(a) This section does not preclude authorized representatives of (i) auditing officials of the United States, (ii) auditing officials of this state, or (iii) state educational authorities from having access to student or other records which are necessary in connection with the audit and evaluation of federally supported or state-supported education programs or in connection with the enforcement of legal requirements which relate to such programs, except that, when collection of personally identifiable data is specifically authorized by law, any data collected by such officials with respect to individual students shall be protected in a manner which shall not permit the personal identification of students and their parents by other than the officials listed in this subsection. Personally identifiable data shall be destroyed when no longer needed for such audit, evaluation, or enforcement of legal requirements.

(b) This section does not preclude or prohibit the disclosure of student records to any other person or entity which may be allowed to have access

pursuant to the federal Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g, as such act existed on January 1, 2009, and regulations adopted thereunder.

Source: Laws 1973, LB 370, § 2; Laws 1979, LB 133, § 1; Laws 1986, LB 642, § 1; R.S.1943, (1994), § 79-4,157; Laws 1996, LB 900, § 108; Laws 2009, LB549, § 10.
Effective date August 30, 2009.

79-2,105 School files or records; provided upon student's transfer.

A copy of a public or private school's files or records concerning a student, including academic material and any disciplinary material relating to any suspension or expulsion, shall be provided at no charge, upon request, to any public or private school to which the student transfers.

Source: Laws 1986, LB 642, § 2; R.S.1943, (1994), § 79-4,157.01; Laws 1996, LB 900, § 109; Laws 2009, LB549, § 11.
Effective date August 30, 2009.

(p) LINDSAY ANN BURKE ACT AND DATING VIOLENCE

79-2,138 Act, how cited.

Sections 79-2,138 to 79-2,142 shall be known and may be cited as the Lindsay Ann Burke Act.

Source: Laws 2009, LB63, § 43.
Effective date May 28, 2009.

79-2,139 Legislative findings and intent.

The Legislature finds and declares that all students have a right to work and study in a safe, supportive environment that is free from harassment, intimidation, and violence. The Legislature further finds that when a student is a victim of dating violence, his or her academic life suffers and his or her safety at school is jeopardized. The Legislature therefor finds and declares that a policy to create a better understanding and awareness of dating violence shall be adopted by each school district. It is the intent of the Legislature to require each school district to establish a policy for educating staff and students about dating violence.

Source: Laws 2009, LB63, § 44.
Effective date May 28, 2009.

79-2,140 Terms, defined.

For purposes of the Lindsay Ann Burke Act, unless the context otherwise requires:

(1) Dating partner means any person, regardless of gender, involved in an intimate relationship with another person primarily characterized by the expectation of affectionate involvement whether casual, serious, or long-term;

(2) Dating violence means a pattern of behavior where one person uses threats of, or actually uses, physical, sexual, verbal, or emotional abuse, to control his or her dating partner;

(3) Department means the State Department of Education; and

(4) School district has the same meaning as in section 79-101.

Source: Laws 2009, LB63, § 45.
Effective date May 28, 2009.

79-2,141 Model dating violence policy; department; school district; duties; publication; staff training; redress under other law.

(1) On or before March 1, 2010, the department shall develop and adopt a model dating violence policy to assist school districts in developing policies for dating violence.

(2) On or before July 1, 2010, each school district shall develop and adopt a specific policy to address incidents of dating violence involving students at school, which shall be made a part of the requirements for accreditation in accordance with section 79-703. Such policy shall include a statement that dating violence will not be tolerated.

(3) To ensure notice of a school district's dating violence policy, the policy shall be published in any school district handbook, manual, or similar publication that sets forth the comprehensive rules, procedures, and standards of conduct for students at school.

(4) Each school district shall provide dating violence training to staff deemed appropriate by a school district's administration. The dating violence training shall include, but not be limited to, basic awareness of dating violence, warning signs of dating violence, and the school district's dating violence policy. The dating violence training may be provided by any school district or combination of school districts, an educational service unit, or any combination of educational service units.

(5) Each school district shall inform the students' parents or legal guardians of the school district's dating violence policy. If requested, the school district shall provide the parents or legal guardians a copy of the school district's dating violence policy and relevant information.

(6) This section does not prevent a victim of dating violence from seeking redress under any other available law, either civil or criminal, and does not create or alter any existing tort liability.

Source: Laws 2009, LB63, § 46.
Effective date May 28, 2009.

79-2,142 School district; incorporate dating violence education.

Each school district shall incorporate dating violence education that is age-appropriate into the school program. Dating violence education shall include, but not be limited to, defining dating violence, recognizing dating violence warning signs, and identifying characteristics of healthy dating relationships.

Source: Laws 2009, LB63, § 47.
Effective date May 28, 2009.

ARTICLE 3

STATE DEPARTMENT OF EDUCATION

(b) COMMISSIONER OF EDUCATION

Section
79-304. Commissioner of Education; qualifications.

Section
79-305. Commissioner of Education; office; powers; duties.
79-306. Commissioner of Education; State Department of Education; administrative head; duties.

(c) STATE BOARD OF EDUCATION

79-310. State Board of Education; members; election.
79-313. State Board of Education; members; qualifications.
79-317. State Board of Education; meetings; open to public; exceptions; compensation and expenses.
79-318. State Board of Education; powers; duties.
79-319. State Board of Education; additional powers; enumerated.

(b) COMMISSIONER OF EDUCATION

79-304 Commissioner of Education; qualifications.

The Commissioner of Education shall (1)(a) be a person of superior educational attainments, (b) have had many years of experience, (c) have demonstrated personal and professional leadership in the administration of public education, and (d) be eligible to qualify for the highest grade of school administrator certificate currently issued in the state or (2) possess a combination of education, skills, administrative experiences in public education, and other such qualifications as determined by the State Board of Education.

Source: Laws 1953, c. 320, § 11, p. 1059; R.S.1943, (1994), § 79-331; Laws 1996, LB 900, § 132; Laws 2009, LB549, § 12.
Effective date August 30, 2009.

79-305 Commissioner of Education; office; powers; duties.

The Commissioner of Education as the executive officer of the State Board of Education shall: (1) Have an office in the city of Lincoln in which shall be housed the records of the State Board of Education and the State Department of Education, which records shall be subject at all times to examination by the Governor, the Auditor of Public Accounts, and committees of the Legislature; (2) keep the board currently informed and advised on the operation and status of all aspects of the educational program of the state under its jurisdiction; (3) prepare a budget for financing the activities of the board and the department, including the internal operation and maintenance of the department, and upon approval by the board administer the same in accordance with appropriations by the Legislature; (4) voucher the expenses of the department according to the rules and regulations prescribed by the board; (5) be responsible for promoting the efficiency, welfare, and improvement in the school system in the state and for recommending to the board such policies, standards, rules, and regulations as may be necessary to attain these purposes; (6) promote educational improvement by (a) outlining and carrying out plans and conducting essential activities for the preparation of curriculum and other materials, (b) providing necessary supervisory and consultative services, (c) holding conferences of professional educators and other civic leaders, (d) conducting research, experimentation, and evaluation of school programs and activities, and (e) in other ways assisting in the development of effective education in the state; (7) issue teachers' certificates according to the provisions of law and the rules and regulations prescribed by the board; and (8) attend or, in case of necessity, designate a representative to attend all meetings of the board except when the order of business of the board is the selection of a Commissioner of Education. None of

the duties prescribed in this section or in section 79-306 prevent the commissioner from exercising such other duties as in his or her judgment and with the approval of the board are necessary to the proper and legal exercise of his or her obligations.

Source: Laws 1953, c. 320, § 12, p. 1059; Laws 1979, LB 289, § 1; R.S.1943, (1994), § 79-332; Laws 1996, LB 900, § 133; Laws 2009, LB549, § 13.
Effective date August 30, 2009.

Cross References

Constitutional provisions:
Appointment, see Article VII, section 4, Constitution of Nebraska.
Board of Trustees of the Nebraska State Colleges, ex officio member, see Article VII, section 13, Constitution of Nebraska.
State Board of Vocational Education, executive officer, see section 79-740.

79-306 Commissioner of Education; State Department of Education; administrative head; duties.

The Commissioner of Education shall be the administrative head of the State Department of Education and as such shall (1) have the authority to delegate administrative and supervisory functions to the members of the staff of the department, (2) establish and maintain an appropriate system of personnel administration for the department, (3) prescribe such administrative rules and regulations as are necessary for the proper execution of duties and responsibilities placed upon him or her, (4) perform all duties prescribed by the Legislature in accordance with the policies adopted by the State Board of Education, and (5) faithfully execute the policies and directives of the State Board of Education.

Source: Laws 1953, c. 320, § 13, p. 1060; R.S.1943, (1994), § 79-333; Laws 1996, LB 900, § 134; Laws 2009, LB549, § 14.
Effective date August 30, 2009.

(c) STATE BOARD OF EDUCATION

79-310 State Board of Education; members; election.

The State Board of Education shall be composed of eight members who shall be elected as provided in section 32-511. The Commissioner of Education shall not be a member of the State Board of Education.

Source: Laws 1953, c. 320, § 2, p. 1054; Laws 1967, c. 527, § 1, p. 1750; Laws 1991, LB 619, § 1; Laws 1994, LB 76, § 589; R.S.1943, (1994), § 79-322; Laws 1996, LB 900, § 138; Laws 2009, LB549, § 15.
Effective date August 30, 2009.

Cross References

Constitutional provisions:
Creation, Article VII, section 3, Constitution of Nebraska.
Membership, requirements, Article VII, section 3, Constitution of Nebraska.
Filing fees, see section 32-608.
Nomination, nonpolitical, see section 32-609.

79-313 State Board of Education; members; qualifications.

No person shall be eligible to membership on the State Board of Education (1) who is actively engaged in the teaching profession, (2) who is a holder of

any state office or a member of a state board or commission unless the board or commission is limited to an advisory capacity, or (3) unless he or she is a citizen of the United States, a resident of the state for a period of at least six months, and a resident of the district from which he or she is elected for a period of at least six months immediately preceding his or her election.

Source: Laws 1953, c. 320, § 3, p. 1054; Laws 1994, LB 76, § 590; R.S.1943, (1994), § 79-323; Laws 1996, LB 900, § 141; Laws 2001, LB 797, § 8; Laws 2009, LB549, § 16.
Effective date August 30, 2009.

79-317 State Board of Education; meetings; open to public; exceptions; compensation and expenses.

(1) The State Board of Education shall meet regularly and periodically in the office of the State Department of Education at least four times annually and at such other times and places as it may determine necessary for the proper and efficient conduct of its duties. All meetings shall be called in accordance with this section and the Open Meetings Act. Five members of the board shall constitute a quorum.

(2) The public shall be admitted to all meetings of the State Board of Education except to such closed sessions as the board may direct in accordance with the Open Meetings Act. The board shall cause to be kept a record of all public meetings and proceedings of the board. The commissioner, or his or her designated representative, shall be present at all meetings except when the order of business for the board is the selection of a Commissioner of Education.

(3) The members of the State Board of Education shall receive no compensation for their services but shall be reimbursed for actual and essential expenses incurred in attending meetings or incurred in the performance of duties as directed by the board as provided in sections 81-1174 to 81-1177.

Source: Laws 1953, c. 320, § 7, p. 1055; Laws 1971, LB 421, § 2; Laws 1975, LB 325, § 7; Laws 1981, LB 204, § 153; R.S.1943, (1994), § 79-327; Laws 1996, LB 900, § 145; Laws 2004, LB 821, § 24; Laws 2009, LB549, § 17.
Effective date August 30, 2009.

Cross References

Open Meetings Act, see section 84-1407.

79-318 State Board of Education; powers; duties.

The State Board of Education shall:

(1) Appoint and fix the compensation of the Commissioner of Education;

(2) Remove the commissioner from office at any time for conviction of any crime involving moral turpitude or felonious act, for inefficiency, or for willful and continuous disregard of his or her duties as commissioner or of the directives of the board;

(3) Upon recommendation of the commissioner, appoint and fix the compensation of a deputy commissioner and all professional employees of the board;

(4) Organize the State Department of Education into such divisions, branches, or sections as may be necessary or desirable to perform all its proper

functions and to render maximum service to the board and to the state school system;

(5) Provide, through the commissioner and his or her professional staff, enlightened professional leadership, guidance, and supervision of the state school system, including educational service units. In order that the commissioner and his or her staff may carry out their duties, the board shall, through the commissioner: (a) Provide supervisory and consultation services to the schools of the state; (b) issue materials helpful in the development, maintenance, and improvement of educational facilities and programs; (c) establish rules and regulations which govern standards and procedures for the approval and legal operation of all schools in the state and for the accreditation of all schools requesting state accreditation. All public, private, denominational, or parochial schools shall either comply with the accreditation or approval requirements prescribed in this section and section 79-703 or, for those schools which elect not to meet accreditation or approval requirements, the requirements prescribed in subsections (2) through (6) of section 79-1601. Standards and procedures for approval and accreditation shall be based upon the program of studies, guidance services, the number and preparation of teachers in relation to the curriculum and enrollment, instructional materials and equipment, science facilities and equipment, library facilities and materials, and health and safety factors in buildings and grounds. Rules and regulations which govern standards and procedures for private, denominational, and parochial schools which elect, pursuant to the procedures prescribed in subsections (2) through (6) of section 79-1601, not to meet state accreditation or approval requirements shall be as described in such section; (d) institute a statewide system of testing to determine the degree of achievement and accomplishment of all the students within the state's school systems if it determines such testing would be advisable; (e) prescribe a uniform system of records and accounting for keeping adequate educational and financial records, for gathering and reporting necessary educational data, and for evaluating educational progress; (f) cause to be published laws, rules, and regulations governing the schools and the school lands and funds with explanatory notes for the guidance of those charged with the administration of the schools of the state; (g) approve teacher education programs conducted in Nebraska postsecondary educational institutions designed for the purpose of certificating teachers and administrators; (h) approve teacher evaluation policies and procedures developed by school districts and educational service units; and (i) approve general plans and adopt educational policies, standards, rules, and regulations for carrying out the board's responsibilities and those assigned to the State Department of Education by the Legislature;

(6) Adopt and promulgate rules and regulations for the guidance, supervision, accreditation, and coordination of educational service units. Such rules and regulations for accreditation shall include, but not be limited to, (a) a requirement that programs and services offered to school districts by each educational service unit shall be evaluated on a regular basis, but not less than every seven years, to assure that educational service units remain responsive to school district needs and (b) guidelines for the use and management of funds generated from the property tax levy and from other sources of revenue as may be available to the educational service units, to assure that public funds are used to accomplish the purposes and goals assigned to the educational service units by section 79-1204. The State Board of Education shall establish procedures to

encourage the coordination of activities among educational service units and to encourage effective and efficient educational service delivery on a statewide basis;

(7) Submit a biennial report to the Governor and the Clerk of the Legislature covering the actions of the board, the operations of the State Department of Education, and the progress and needs of the schools and recommend such legislation as may be necessary to satisfy these needs;

(8) Prepare and distribute reports designed to acquaint school district officers, teachers, and patrons of the schools with the conditions and needs of the schools;

(9) Provide for consultation with professional educators and lay leaders for the purpose of securing advice deemed necessary in the formulation of policies and in the effectual discharge of its duties;

(10) Make studies, investigations, and reports and assemble information as necessary for the formulation of policies, for making plans, for evaluating the state school program, and for making essential and adequate reports;

(11) Submit to the Governor and the Legislature a budget necessary to finance the state school program under its jurisdiction, including the internal operation and maintenance of the State Department of Education;

(12) Interpret its own policies, standards, rules, and regulations and, upon reasonable request, hear complaints and disputes arising therefrom;

(13) With the advice of the Department of Motor Vehicles, adopt and promulgate rules and regulations containing reasonable standards, not inconsistent with existing statutes, governing: (a) The general design, equipment, color, operation, and maintenance of any vehicle with a manufacturer's rated seating capacity of eleven or more passengers used for the transportation of public, private, denominational, or parochial school students; and (b) the equipment, operation, and maintenance of any vehicle with a capacity of ten or less passengers used for the transportation of public, private, denominational, or parochial school students, when such vehicles are owned, operated, or owned and operated by any public, private, denominational, or parochial school or privately owned or operated under contract with any such school in this state, except for vehicles owned by individuals operating a school which elects pursuant to section 79-1601 not to meet accreditation or approval requirements. Similar rules and regulations shall be adopted and promulgated for operators of such vehicles as provided in section 79-607;

(14) Accept, on behalf of the Nebraska Center for the Education of Children who are Blind or Visually Impaired, devises of real property or donations or bequests of other property, or both, if in its judgment any such devise, donation, or bequest is for the best interest of the center or the students receiving services from the center, or both, and irrigate or otherwise improve any such real estate when in the board's judgment it would be advisable to do so; and

(15) Upon acceptance of any devise, donation, or bequest as provided in this section, administer and carry out such devise, donation, or bequest in accordance with the terms and conditions thereof. If not prohibited by the terms and conditions of any such devise, donation, or bequest, the board may sell, convey, exchange, or lease property so devised, donated, or bequeathed upon such terms and conditions as it deems best and remit all money derived from any

such sale or lease to the State Treasurer for credit to the State Department of Education Trust Fund.

Each member of the Legislature shall receive a copy of the report required by subdivision (7) of this section by making a request for it to the commissioner.

None of the duties prescribed in this section shall prevent the board from exercising such other duties as in its judgment may be necessary for the proper and legal exercise of its obligations.

Source: Laws 1953, c. 320, § 8, p. 1056; Laws 1955, c. 306, § 1, p. 947; Laws 1959, c. 383, § 1, p. 1328; Laws 1967, c. 528, § 2, p. 1753; Laws 1969, c. 707, § 2, p. 2712; Laws 1969, c. 708, § 1, p. 2716; Laws 1971, LB 292, § 5; Laws 1974, LB 863, § 8; Laws 1977, LB 205, § 1; Laws 1979, LB 322, § 37; Laws 1981, LB 316, § 1; Laws 1981, LB 545, § 27; Laws 1984, LB 928, § 2; Laws 1984, LB 994, § 6; Laws 1986, LB 1177, § 36; Laws 1987, LB 688, § 11; Laws 1989, LB 15, § 1; Laws 1989, LB 285, § 141; Laws 1990, LB 980, § 34; Laws 1994, LB 858, § 3; R.S.1943, (1994), § 79-328; Laws 1996, LB 900, § 146; Laws 1999, LB 813, § 6; Laws 2009, LB549, § 18.
Effective date August 30, 2009.

Cross References

Gifts, devises, and bequests, loans to needy students, see section 79-2,106.
Private, denominational, or parochial schools, election not to meet approval or accreditation requirements, see section 79-1601.

79-319 State Board of Education; additional powers; enumerated.

The State Board of Education has the authority to (1) provide for the education of and approve special educational facilities and programs provided in the public schools for children with disabilities, (2) act as the state's authority for the approval of all types of veterans educational programs and have jurisdiction over the administration and supervision of on-the-job and apprenticeship training, on-the-farm training, and flight training programs for veterans which are financially supported in whole or in part by the federal government, (3) supervise and administer any educational or training program established within the state by the federal government, except postsecondary education in approved colleges, (4) coordinate educational activities in the state that pertain to elementary and secondary education and such other educational programs as are placed by statute under the jurisdiction of the board, (5) receive and distribute according to law any money, commodities, goods, or services made available to the board from the state or federal government or from any other source and distribute money in accordance with the terms of any grant received, including the distribution of money from grants by the federal government to schools, preschools, day care centers, day care homes, nonprofit agencies, and political subdivisions of the state or institutions of learning not owned or exclusively controlled by the state or a political subdivision thereof, so long as no public funds of the state, any political subdivision, or any public corporation are added to such federal grants, (6) publish, from time to time, directories of schools and educators, pamphlets, curriculum guides, rules and regulations, handbooks on school constitution and other matters of interest to educators, and similar publications. Such publications may be distributed without charge to schools and school officials within this state or may be sold at a price not less than the actual cost of printing. The proceeds of

such sale shall be remitted to the State Treasurer for credit to the State Department of Education Cash Fund which may be used by the State Department of Education for the purpose of printing and distributing further such publications on a nonprofit basis. The board shall furnish eight copies of such publications to the Nebraska Publications Clearinghouse, and (7) when necessary for the proper administration of the functions of the department and with the approval of the Governor and the Department of Administrative Services, rent or lease space outside the State Capitol.

Source: Laws 1953, c. 320, § 9, p. 1058; Laws 1959, c. 384, § 1, p. 1332; Laws 1961, c. 395, § 1, p. 1202; Laws 1963, c. 469, § 5, p. 1504; Laws 1972, LB 1284, § 20; Laws 1974, LB 863, § 9; Laws 1975, LB 359, § 2; Laws 1976, LB 733, § 1; Laws 1985, LB 417, § 1; Laws 1986, LB 997, § 7; R.S.1943, (1994), § 79-329; Laws 1996, LB 900, § 147; Laws 2009, LB549, § 19.
Effective date August 30, 2009.

ARTICLE 5

SCHOOL BOARDS

(b) SCHOOL BOARD DUTIES

Section
79-528. Reports; filing requirements; contents.

(c) SCHOOL BOARD ELECTIONS AND MEMBERSHIP

79-544. School board members; contract to teach prohibited.

(e) SCHOOL BOARD OFFICERS

79-569. Class I, II, III, IV, or VI school district; president; powers and duties.
79-575. Secretary; disbursements; how made.
79-592. Class V school district; treasurer; bond or insurance; duties.

(f) PROVIDING EDUCATION OUTSIDE THE DISTRICT

79-598. Pupils; instruction in another district; contracts authorized; contents; cost per pupil; determination; transportation; attendance reports; noncompliance penalties; dissolution of district.

(b) SCHOOL BOARD DUTIES

79-528 Reports; filing requirements; contents.

(1)(a) On or before July 20 in all school districts, the superintendent shall file with the State Department of Education a report showing the number of children from five through eighteen years of age belonging to the school district according to the census taken as provided in sections 79-524 and 79-578. On or before July 20, school districts that are members of learning communities shall provide the learning community coordinating council with a copy of the report filed with the department. On or before August 1, each learning community coordinating council shall file with the department a report showing the number of children from five through eighteen years of age belonging to the member school districts according to the school district reports filed with the department.

(b) Each Class I school district which is part of a Class VI school district offering instruction (i) in grades kindergarten through five shall report children from five through ten years of age, (ii) in grades kindergarten through six shall report children from five through eleven years of age, and (iii) in grades

kindergarten through eight shall report children from five through thirteen years of age.

(c) Each Class VI school district offering instruction (i) in grades six through twelve shall report children who are eleven through eighteen years of age, (ii) in grades seven through twelve shall report children who are twelve through eighteen years of age, and (iii) in grades nine through twelve children who are fourteen through eighteen years of age.

(d) Each Class I district which has affiliated in whole or in part shall report children from five through thirteen years of age.

(e) Each Class II, III, IV, or V district shall report children who are fourteen through eighteen years of age residing in Class I districts or portions thereof which have affiliated with such district.

(f) The board of any district neglecting to take and report the enumeration shall be liable to the school district for all school money which such district may lose by such neglect.

(2) On or before June 30 the superintendent of each school district shall file with the Commissioner of Education a report described as an end-of-the-school-year annual statistical summary showing (a) the number of children attending school during the year under five years of age, (b) the length of time the school has been taught during the year by a qualified teacher, (c) the length of time taught by each substitute teacher, and (d) such other information as the Commissioner of Education directs. On or before June 30, school districts that are members of learning communities shall also provide the learning community coordinating council with a copy of the report filed with the commissioner. On or before July 15, each learning community coordinating council shall file with the commissioner an end-of-the-school-year annual statistical summary for the learning community based on the member school districts according to the school district reports filed with the commissioner.

(3)(a) On or before November 1 the superintendent of each school district shall submit to the Commissioner of Education a report described as the annual financial report showing (i) the amount of money received from all sources during the year and the amount of money expended by the school district during the year, (ii) the amount of bonded indebtedness, (iii) such other information as shall be necessary to fulfill the requirements of the Tax Equity and Educational Opportunities Support Act and section 79-1114, and (iv) such other information as the Commissioner of Education directs.

(b) On or before November 1, school districts that are members of learning communities shall also provide the learning community coordinating council with a copy of the report submitted to the commissioner. On or before November 15, each learning community coordinating council shall submit to the commissioner, to be filed in his or her office, a report described as the annual financial report showing (i) the aggregate amount of money received from all sources during the year for all member school districts and the aggregate amount of money expended by member school districts during the year, (ii) the aggregate amount of bonded indebtedness for all member school districts, (iii) such other aggregate information as shall be necessary to fulfill the requirements of the Tax Equity and Educational Opportunities Support Act and section 79-1114 for all member school districts, and (iv) such other aggregate information as the Commissioner of Education directs for all member school districts.

(4)(a) On or before October 15 of each year, the superintendent of each school district shall file with the commissioner the fall school district membership report, which report shall include the number of children from birth through twenty years of age enrolled in the district on the last Friday in September of a given school year. The report shall enumerate (i) students by grade level, (ii) school district levies and total assessed valuation for the current fiscal year, and (iii) such other information as the Commissioner of Education directs.

(b) On or before October 15 of each year, school districts that are members of learning communities shall also provide the learning community coordinating council with a copy of the report delivered to the department. On or before October 31 of each year, each learning community coordinating council shall deliver to the department the fall learning community membership report, which report shall include the aggregate number of children from birth through twenty years of age enrolled in the member school districts on the last Friday in September of a given school year for all member school districts. The report shall enumerate (i) the aggregate students by grade level for all member school districts, (ii) learning community levies and total assessed valuation for the current fiscal year, and (iii) such other information as the Commissioner of Education directs.

(c) When any school district or learning community fails to submit its fall membership report by November 1, the commissioner shall, after notice to the district and an opportunity to be heard, direct that any state aid granted pursuant to the Tax Equity and Educational Opportunities Support Act be withheld until such time as the report is received by the department. In addition, the commissioner shall direct the county treasurer to withhold all school money belonging to the school district or learning community until such time as the commissioner notifies the county treasurer of receipt of such report. The county treasurer shall withhold such money. For school districts that are members of learning communities, a determination of school money belonging to the district shall be based on the proportionate share of state aid and property tax receipts allocated to the school district by the learning community coordinating council, and the treasurer of the learning community coordinating council shall withhold any such school money in the possession of the learning community from the school district. If a school district that is a member of a learning community fails to provide a copy of the report to the learning community coordinating council on or before October 15, the learning community coordinating council shall complete the fall learning community membership report with information from the reports received from other member school districts.

Source: Laws 1881, c. 78, subdivision IV, § 16, p. 350; Laws 1885, c. 79, § 1, p. 323; Laws 1889, c. 78, § 12, p. 547; R.S.1913, § 6779; C.S.1922, § 6320; C.S.1929, § 79-417; R.S.1943, § 79-419; Laws 1949, c. 256, § 90, p. 723; Laws 1959, c. 391, § 1, p. 1346; Laws 1969, c. 706, § 4, p. 2710; Laws 1977, LB 487, § 1; Laws 1978, LB 874, § 1; Laws 1979, LB 187, § 230; Laws 1985, LB 662, § 32; Referendum 1986, No. 400; Laws 1989, LB 487, § 3; Laws 1990, LB 1090, § 6; Laws 1990, LB 1059, § 36; Laws 1991, LB 511, § 35; Laws 1992, LB 245, § 40; Laws 1992, LB 1001, § 16; Laws 1994, LB 858, § 6; Laws 1994, LB 1310, § 3; R.S.1943, (1994), § 79-451; Laws 1996, LB 900, § 281; Laws 1997, LB 269,

§ 59; Laws 1997, LB 806, § 27; Laws 1998, Spec. Sess., LB 1, § 13; Laws 1999, LB 272, § 73; Laws 1999, LB 813, § 11; Laws 2001, LB 797, § 13; Laws 2003, LB 67, § 6; Laws 2003, LB 394, § 6; Laws 2006, LB 1024, § 52; Laws 2007, LB641, § 9; Laws 2009, LB549, § 20.
Effective date August 30, 2009.

Cross References

Tax Equity and Educational Opportunities Support Act, see section 79-1001.

(c) SCHOOL BOARD ELECTIONS AND MEMBERSHIP

79-544 School board members; contract to teach prohibited.

No member of a school board shall be engaged in a contract to teach pursuant to sections 79-817 to 79-821 with the school district which he or she serves as a board member.

Source: Laws 1881, c. 78, subdivision III, § 10, p. 345; Laws 1883, c. 72, § 5, p. 291; R.S.1913, § 6761; C.S.1922, § 6302; C.S.1929, § 79-310; R.S.1943, § 79-310; Laws 1949, c. 256, § 105, p. 727; Laws 1971, LB 214, § 1; R.S.1943, (1994), § 79-466; Laws 1996, LB 900, § 297; Laws 1999, LB 272, § 75; Laws 2001, LB 242, § 24; Laws 2009, LB163, § 1.
Effective date August 30, 2009.

(e) SCHOOL BOARD OFFICERS

79-569 Class I, II, III, IV, or VI school district; president; powers and duties.

The president of the school board of a Class I, II, III, IV, or VI school district shall: (1) Preside at all meetings of the district; (2) countersign all orders upon the treasury for money to be disbursed by the district and all warrants of the secretary on the county treasurer for money raised for district purposes or apportioned to the district by the county treasurer; (3) administer the oath to the secretary and treasurer of the district when such an oath is required by law in the transaction of the business of the district; and (4) perform such other duties as may be required by law of the president of the board. He or she is entitled to vote on any issue that may come before any meeting. If the president of the school board of a Class I school district is absent from any district meeting, the legal voters present may elect a suitable person to preside at the meeting.

Source: Laws 1881, c. 78, subdivision IV, § 1, p. 345; Laws 1901, c. 63, § 5, p. 439; Laws 1909, c. 120, § 1, p. 460; R.S.1913, § 6763; C.S.1922, § 6304; C.S.1929, § 79-401; R.S.1943, § 79-401; Laws 1949, c. 256, § 91, p. 723; R.S.1943, (1994), § 79-452; Laws 1996, LB 900, § 322; Laws 1997, LB 345, § 25; Laws 1999, LB 272, § 76; Laws 2009, LB549, § 21.
Effective date August 30, 2009.

Cross References

For form of oath, see sections 11-101 and 11-101.01.

79-575 Secretary; disbursements; how made.

The secretary of a school district shall draw and sign all orders upon the treasurer for all money to be disbursed by the district and all warrants upon the county treasurer for money raised for district purposes or apportioned to the district by the county treasurer and shall present the same to the president to be countersigned. No warrant, check, or other instrument drawn upon bank depository funds of the district shall be issued until so countersigned. No warrant, check, or other instrument drawn upon bank depository funds of the district shall be countersigned by the president until the amount for which it is drawn is written upon its face. Facsimile signatures of board members may be used, and a person or persons delegated by the board may sign and validate all warrants, checks, and other instruments drawn upon bank depository funds of the district.

Source: Laws 1881, c. 78, subdivision IV, § 16, p. 350; Laws 1883, c. 72, § 8, p. 292; R.S.1913, § 6778; C.S.1922, § 6319; C.S.1929, § 79-416; R.S.1943, § 79-418; Laws 1949, c. 256, § 89, p. 722; Laws 1955, c. 315, § 6, p. 976; Laws 1980, LB 734, § 1; R.S. 1943, (1994), § 79-450; Laws 1996, LB 900, § 328; Laws 1999, LB 272, § 77; Laws 2009, LB392, § 9.
Effective date May 27, 2009.

79-592 Class V school district; treasurer; bond or insurance; duties.

The treasurer of a Class V school district shall receive all taxes of the school district from the county treasurer. The treasurer of the school district shall attend all meetings of the board of education of the Class V district when required to do so, shall prepare and submit in writing a monthly report of the state of the district's finances, and shall pay school money either upon a warrant signed by the president, or in the president's absence by the vice president, and countersigned by the secretary or upon a check or other instrument drawn upon bank depository funds of the school district. The treasurer shall also perform such other duties as designated by the board of education. Before entering into the discharge of his or her duties and during the entire time he or she so serves, the treasurer shall give bond or evidence of equivalent insurance coverage payable to the board in such amount as may be required by the board, but in no event less than two hundred thousand dollars, conditioned for the faithful discharge of his or her duties as treasurer of the school district, for the safekeeping and proper disbursement of all funds and money of the school district received by the treasurer. Such bond shall be signed by one or more surety companies of recognized responsibility, to be approved by the board. The cost of the bond or insurance shall be paid by the school district. Such bond or insurance coverage may be enlarged at any time the board may deem an enlargement or additional bond or insurance coverage to be necessary.

Source: Laws 1891, c. 45, § 12, p. 321; Laws 1903, c. 96, § 1, p. 553; R.S.1913, § 7020; C.S.1922, § 6651; C.S.1929, § 79-2714; R.S. 1943, § 79-2715; Laws 1947, c. 297, § 1, p. 912; Laws 1949, c. 256, § 260, p. 778; Laws 1996, LB 604, § 9; R.S.1943, (1994), § 79-1004.04; Laws 1996, LB 900, § 345; Laws 2005, LB 380, § 5; Laws 2009, LB392, § 10.
Effective date May 27, 2009.

(f) PROVIDING EDUCATION OUTSIDE THE DISTRICT

79-598 Pupils; instruction in another district; contracts authorized; contents; cost per pupil; determination; transportation; attendance reports; noncompliance penalties; dissolution of district.

(1) The school board of any public school district in this state, when authorized by a majority of the votes cast at any annual or special meeting, shall (a) contract with the board of any neighboring public school district or districts for the instruction of all or any part of the pupils residing in the first named district in the school or schools maintained by the neighboring public school district or districts for a period of time not to exceed two years and (b) make provision for the transportation of such pupils to the school or schools of the neighboring public school district or districts.

(2) The school board of any public school district may also, when petitioned to do so by at least two-thirds of the parents residing in the district having children of school age who will attend school under the contract plan, (a) contract with the board of any neighboring public school district or districts for the instruction of all or any part of the pupils residing in the first named district in the school or schools maintained by the neighboring public school district or districts for a period of time not to exceed two years and (b) make provision for the transportation of such pupils to the school or schools of the neighboring public school district or districts.

(3) The contract price for instruction referred to in subsections (1) and (2) of this section shall be the cost per pupil for the immediately preceding school year or the current year, whichever appears more practical as determined by the board of the district which accepts the pupils for instruction. The cost per pupil shall be determined by dividing the sum of the operational cost and debt service expense of the accepting district, except retirement of debt principal, plus three percent of the insurable or present value of the school plant and equipment of the accepting district, by the average daily membership of pupils in the accepting district. Payment of the contract price shall be made in equal installments at the beginning of the first and second semesters.

(4) All the contracts referred to in subsections (1) and (2) of this section shall be in writing, and copies of all such contracts shall be filed in the office of the superintendent of the primary high school district on or before August 15 of each year. School districts thus providing instruction for their children in neighboring districts shall be considered as maintaining a school as required by law. The teacher of the school providing the instruction shall keep a separate record of the attendance of all pupils from the first named district and make a separate report to the secretary of that district. The board of every sending district contracting under this section shall enter into contracts with school districts of the choice of the parents of the children to be educated under the contract plan. Any school district failing to comply with this section shall not be paid any funds from the state apportionment of school funds while such violation continues.

(5) The State Committee for the Reorganization of School Districts may dissolve any district (a) failing to comply with this section, (b) in which the votes cast at an annual or special election on the question of contracting with a neighboring district are evenly divided, or (c) in which the governing body of the district is evenly divided in its vote on the question of contracting pursuant to subsection (2) of this section. The state committee shall dissolve and attach to

a neighboring district or districts any school district which, for two consecutive years, contracts for the instruction of its pupils, except that when such dissolution will create extreme hardships on the pupils or the district affected, the State Board of Education may, on application by the school board of the district, waive the requirements of this subsection. The dissolution of any school district pursuant to this section shall be effected in the manner prescribed in section 79-498.

Source: Laws 1897, c. 64, § 1, p. 311; R.S.1913, § 6944; C.S.1922, § 6526; C.S.1929, § 79-2103; R.S.1943, § 79-2112; Laws 1945, c. 212, § 1, p. 625; Laws 1947, c. 287, § 1, p. 896; Laws 1949, c. 256, § 124, p. 733; Laws 1951, c. 280, § 1, p. 944; Laws 1953, c. 291, § 5, p. 990; Laws 1953, c. 298, § 2, p. 1006; Laws 1955, c. 313, § 1, p. 966; Laws 1955, c. 314, § 1, p. 968; Laws 1955, c. 315, § 8, p. 977; Laws 1959, c. 393, § 1, p. 1349; Laws 1959, c. 386, § 2, p. 1337; Laws 1961, c. 401, § 1, p. 1215; Laws 1965, c. 521, § 1, p. 1647; Laws 1967, c. 535, § 1, p. 1770; Laws 1967, c. 536, § 1, p. 1773; Laws 1969, c. 709, § 3, p. 2724; Laws 1971, LB 292, § 10; Laws 1989, LB 30, § 4; Laws 1989, LB 487, § 4; R.S.1943, (1994), § 79-486; Laws 1996, LB 900, § 351; Laws 1999, LB 272, § 82; Laws 2003, LB 67, § 9; Laws 2009, LB549, § 22.
Effective date August 30, 2009.

Cross References

Contract for instruction relative to certain mergers and dissolutions, see section 79-470.
Depopulated districts, provisions for contracting, see section 79-499.
Expense of opposing dissolution order under this section, see section 79-471.

ARTICLE 6
SCHOOL TRANSPORTATION

Section
79-606. Sale of school bus; alteration required; violation; penalty.
79-608. Students; transportation; buses; operator; requirements; violation; penalty.
79-611. Students; transportation; transportation allowance; when authorized; limitations; board; authorize service.

79-606 Sale of school bus; alteration required; violation; penalty.

When any vehicle with a manufacturer's rated seating capacity of eleven or more passengers used for transportation of students is sold and used for any other purpose than for transportation of students, such vehicle shall be painted a distinct color other than that prescribed by the State Board of Education and the stop arms and system of alternately flashing warning signal lights on such vehicle shall be removed. It shall be the purchaser's responsibility to see that the modifications required by this section are made. Any person violating this section shall be guilty of a Class V misdemeanor and, upon conviction thereof, be fined not less than twenty-five dollars nor more than one hundred dollars.

Source: Laws 1963, c. 459, § 1, p. 1487; Laws 1971, LB 292, § 12; Laws 1974, LB 863, § 10; Laws 1981, LB 316, § 2; Laws 1988, LB 1142, § 5; R.S.1943, (1994), § 79-488.05; Laws 1996, LB 900, § 367; Laws 2009, LB549, § 23.
Effective date August 30, 2009.

79-608 Students; transportation; buses; operator; requirements; violation; penalty.

(1) Any person, before operating a school bus, including any school bus which transports students by direct contract with the students or their parents and not owned by or under contract with the school district or nonpublic school, shall submit himself or herself to (a) an examination, to be conducted by a driver's license examiner of the Department of Motor Vehicles, to determine his or her qualifications to operate such bus and (b) an examination by a licensed physician to determine whether or not he or she meets the physical and mental standards established pursuant to section 79-607 and shall furnish to the school board or board of education or the governing authority of a nonpublic school and to the Director of Motor Vehicles a written report of each such examination on standard forms prescribed by the State Department of Education, signed by the person conducting the same, showing that he or she is qualified to operate a school bus and that he or she meets the physical and mental standards. If the Director of Motor Vehicles determines that the person is so qualified and meets such standards, the director shall issue to the person a special school bus operator's permit, which shall expire each year on the date of birth of the holder, in such form as the director prescribes. No contract shall be entered into until such permit has been received and exhibited to the school board or the governing authority of a nonpublic school. The holder of such permit shall have it on his or her person at all times while operating a school bus.

(2) It shall be unlawful for any person operating a school bus to be or remain on duty for a longer period than sixteen consecutive hours. When any person operating a bus has been continuously on duty for sixteen hours, he or she shall be relieved and not be permitted or required to again go on duty without having at least ten consecutive hours' rest off duty, and no such operator, who has been on duty sixteen hours in the aggregate in any twenty-four-hour period, shall be required or permitted to continue or again go on duty without having had at least eight consecutive hours off duty.

(3) Any person violating this section shall be guilty of a Class V misdemeanor. His or her contract with the school district shall be canceled as provided in section 79-607.

Source: Laws 1963, c. 460, § 1, p. 1488; Laws 1965, c. 523, § 3, p. 1653; Laws 1971, LB 292, § 13; Laws 1973, LB 358, § 2; Laws 1977, LB 39, § 251; Laws 1989, LB 285, § 142; Laws 1990, LB 980, § 35; R.S.1943, (1994), § 79-488.06; Laws 1996, LB 900, § 369; Laws 2009, LB549, § 24.
Effective date August 30, 2009.

79-611 Students; transportation; transportation allowance; when authorized; limitations; board; authorize service.

(1) The school board of any school district shall provide free transportation, partially provide free transportation, or pay an allowance for transportation in lieu of free transportation as follows:

(a) When a student attends an elementary school in his or her own district and lives more than four miles from the public schoolhouse in such district as measured by the shortest route that must actually and necessarily be traveled by motor vehicle to reach the student's residence;

(b) When a student is required to attend an elementary school outside of his or her own district and lives more than four miles from such elementary school as measured by the shortest route that must actually and necessarily be traveled by motor vehicle to reach the student's residence;

(c) When a student attends a secondary school in his or her own Class II or Class III school district and lives more than four miles from the public schoolhouse as measured by the shortest route that must actually and necessarily be traveled by motor vehicle to reach the student's residence. This subdivision does not apply when one or more Class I school districts merge with a Class VI school district to form a new Class II or III school district on or after January 1, 1997; and

(d) When a student, other than a student in grades ten through twelve in a Class V district, attends an elementary or junior high school in his or her own Class V district and lives more than four miles from the public schoolhouse in such district as measured by the shortest route that must actually and necessarily be traveled by motor vehicle to reach the student's residence.

(2)(a) The school board of any school district that is a member of a learning community shall provide free transportation for a student who resides in such learning community and attends school in such school district if (i) the student is transferring pursuant to the open enrollment provisions of section 79-2110, qualifies for free or reduced-price lunches, and lives more than one mile from the school to which he or she transfers, (ii) the student is transferring pursuant to such open enrollment provisions, is a student who contributes to the socioeconomic diversity of enrollment at the school building he or she attends, and lives more than one mile from the school to which he or she transfers, (iii) the student is attending a focus school or program and lives more than one mile from the school building housing the focus school or program, or (iv) the student is attending a magnet school or program and lives more than one mile from the magnet school or the school housing the magnet program.

(b) For purposes of this subsection, student who contributes to the socioeconomic diversity of enrollment at the school building he or she attends has the definition found in section 79-2110. This subsection does not prohibit a school district that is a member of a learning community from providing transportation to any intradistrict student.

(3) The transportation allowance which may be paid to the parent, custodial parent, or guardian of students qualifying for free transportation pursuant to subsection (1) or (2) of this section shall equal two hundred eighty-five percent of the mileage rate provided in section 81-1176, multiplied by each mile actually and necessarily traveled, on each day of attendance, beyond which the one-way distance from the residence of the student to the schoolhouse exceeds three miles.

(4) Whenever students from more than one family travel to school in the same vehicle, the transportation allowance prescribed in subsection (3) of this section shall be payable as follows:

(a) To the parent, custodial parent, or guardian providing transportation for students from other families, one hundred percent of the amount prescribed in subsection (3) of this section for the transportation of students of such parent's, custodial parent's, or guardian's own family and an additional five percent for students of each other family not to exceed a maximum of one hundred twenty-

five percent of the amount determined pursuant to subsection (3) of this section; and

(b) To the parent, custodial parent, or guardian not providing transportation for students of other families, two hundred eighty-five percent of the mileage rate provided in section 81-1176 multiplied by each mile actually and necessarily traveled, on each day of attendance, from the residence of the student to the pick-up point at which students transfer to the vehicle of a parent, custodial parent, or guardian described in subdivision (a) of this subsection.

(5) When a student who qualifies under the mileage requirements of subsection (1) of this section lives more than three miles from the location where the student must be picked up and dropped off in order to access school-provided free transportation, as measured by the shortest route that must actually and necessarily be traveled by motor vehicle between his or her residence and such location, such school-provided transportation shall be deemed partially provided free transportation. School districts partially providing free transportation shall pay an allowance to the student's parent or guardian equal to two hundred eighty-five percent of the mileage rate provided in section 81-1176 multiplied by each mile actually and necessarily traveled, on each day of attendance, beyond which the one-way distance from the residence of the student to the location where the student must be picked up and dropped off exceeds three miles.

(6) The board may authorize school-provided transportation to any student who does not qualify under the mileage requirements of subsection (1) of this section and may charge a fee to the parent or guardian of the student for such service. An affiliated high school district may provide free transportation or pay the allowance described in this section for high school students residing in an affiliated Class I district. No transportation payments shall be made to a family for mileage not actually traveled by such family. The number of days the student has attended school shall be reported monthly by the teacher to the board of such public school district.

(7) No more than one allowance shall be made to a family irrespective of the number of students in a family being transported to school. If a family resides in a Class I district which is part of a Class VI district and has students enrolled in any of the grades offered by the Class I district and in any of the non-high-school grades offered by the Class VI district, such family shall receive not more than one allowance for the distance actually traveled when both districts are on the same direct travel route with one district being located a greater distance from the residence than the other. In such cases, the travel allowance shall be prorated among the school districts involved.

(8) No student shall be exempt from school attendance on account of distance from the public schoolhouse.

Source: Laws 1927, c. 84, § 1, p. 251; Laws 1929, c. 92, § 1, p. 348; C.S.1929, § 79-1902; Laws 1931, c. 149, § 1, p. 405; Laws 1941, c. 163, § 1, p. 650; C.S.Supp.,1941, § 79-1902; R.S.1943, § 79-1907; Laws 1949, c. 256, § 128, p. 735; Laws 1951, c. 276, § 6, p. 930; Laws 1955, c. 315, § 9, p. 979; Laws 1963, c. 483, § 1, p. 1553; Laws 1969, c. 717, § 1, p. 2743; Laws 1969, c. 718, § 1, p. 2744; Laws 1969, c. 719, § 1, p. 2746; Laws 1976, LB 852, § 1; Laws 1977, LB 117, § 1; Laws 1977, LB 33, § 10; Laws 1979, LB 425, § 1; Laws 1980, LB 867, § 2; Laws 1981, LB 204,

§ 156; Laws 1981, LB 316, § 3; Laws 1986, LB 419, § 1; Laws 1987, LB 200, § 1; Laws 1990, LB 259, § 22; Laws 1990, LB 1059, § 38; Laws 1993, LB 348, § 21; Laws 1994, LB 1311, § 1; R.S.1943, (1994), § 79-490; Laws 1996, LB 900, § 372; Laws 1997, LB 710, § 4; Laws 1997, LB 806, § 28; Laws 1999, LB 272, § 84; Laws 2003, LB 394, § 7; Laws 2005, LB 126, § 42; Laws 2006, LB 1024, § 56; Referendum 2006, No. 422; Laws 2007, LB641, § 10; Laws 2008, LB1154, § 8; Laws 2009, LB549, § 25. Effective date August 30, 2009.

Cross References

For definitions relating to affiliation of school districts, see section 79-4,101.
Public Elementary and Secondary Student Fee Authorization Act, see section 79-2,125.

ARTICLE 7

ACCREDITATION, CURRICULUM, AND INSTRUCTION

(j) CAREER EDUCATION PARTNERSHIP ACT

(m) NEBRASKA COMMUNITY COLLEGE DEGREE

(n) CENTER FOR STUDENT LEADERSHIP AND EXTENDED LEARNING ACT

(j) CAREER EDUCATION PARTNERSHIP ACT

79-763 Repealed. Laws 2009, LB 476, § 6.

79-764 Repealed. Laws 2009, LB 476, § 6.

79-765 Repealed. Laws 2009, LB 476, § 6.

79-766 Repealed. Laws 2009, LB 476, § 6.

79-767 Repealed. Laws 2009, LB 476, § 6.

79-768 Repealed. Laws 2009, LB 476, § 6.

(m) NEBRASKA COMMUNITY COLLEGE DEGREE

79-771 Nebraska community college degrees; how treated.

For purposes of financial aid relating to postsecondary education and admission to postsecondary educational institutions, a student shall be deemed a high school graduate if he or she has obtained an associate of arts degree or an associate of science degree from a community college in Nebraska.

Source: Laws 2009, LB102, § 1.
Effective date August 30, 2009.

(n) CENTER FOR STUDENT LEADERSHIP AND EXTENDED LEARNING ACT

79-772 Act, how cited.

Sections 79-772 to 79-775 shall be known and may be cited as the Center for Student Leadership and Extended Learning Act.

Source: Laws 2009, LB476, § 1.
Operative date July 1, 2009.

79-773 Legislative findings.

(1) The Legislature finds that:

(a) Since 1928, Nebraska students have benefited from participation in career education student organizations such as Nebraska FFA, Family Career and Community Leaders of America (FCCLA), Future Business Leaders of America (FBLA), Skills USA, Nebraska DECA, and Health Occupations Students of America (HOSA);

(b) Research conducted in 2007 by the National Research Center for Career and Technical Education has documented a positive association between career education student organizations participation and academic motivation, academic engagement, grades, career self-efficacy, college aspirations, and employability skills;

(c) Long-term sustainability of the state associations of career education student organizations has a positive impact on Nebraska students and is in the best interests of the economic well-being of the State of Nebraska;

(d) Students in Nebraska schools should have opportunities to acquire academic, technical, and employability knowledge and skills needed to meet the demands of a global economy;

(e) Students benefit from the opportunities provided by career education student organizations to develop and demonstrate leadership skills that prepare them for civic, economic, and entrepreneurial leadership roles;

(f) Students benefit from engaging in extended-learning experiences outside their normal classrooms that allow them to apply their knowledge and skill in real-world situations;

(g) There is a need to establish and expand strategies and programs that enable young people to be college-ready and career-ready, build assets, and remain as productive citizens in their communities; and

(h) There is a need to establish a statewide structure that supports existing and emerging curriculum and program offerings with student leadership development opportunities and experiences.

(2) The Legislature recognizes that Nebraska must provide opportunities to educate young people with leadership and employability skills to (a) meet the needs of business and industry and remain economically viable, (b) educate and nurture future entrepreneurs for successful business ventures to diversify and strengthen our economic base, (c) foster rewarding personal development experiences that involve students in their communities and encourage them to return to their communities after completing postsecondary education, and (d)

invest in and support the leadership development of our future state and community civic leaders.

Source: Laws 2009, LB476, § 2.
Operative date July 1, 2009.

79-774 Terms, defined.

For purposes of the Center for Student Leadership and Extended Learning Act:

(1) Career and technical education means educational programs that support the development of knowledge and skill in the following areas: Agriculture, food, and natural resources; architecture and construction; arts, audiovisual, technology, and communication; business management and administration; education and training; finance; government and public administration; health science; hospitality and tourism; human services; information technology; law, public safety, and security; marketing; manufacturing; science, technology, engineering, and mathematics; and transportation, distribution, and logistics;

(2) Career education student organization means an organization for individuals enrolled in a career and technical education program that engages career and technical education activities as an integral part of the instructional program; and

(3) Extended learning means activities and programs that expand opportunities for students to participate in educational activities outside the normal classroom.

Source: Laws 2009, LB476, § 3.
Operative date July 1, 2009.

79-775 Purpose of act; Center for Student Leadership and Extended Learning; duties.

The purpose of the Center for Student Leadership and Extended Learning Act is to provide state support for establishing and maintaining within the State Department of Education the Center for Student Leadership and Extended Learning. The center shall provide ongoing financial and administrative support for state leadership and administration of Nebraska career education student organizations, create and coordinate opportunities for students to participate in educational activities outside the normal classroom, and partner with state and local organizations to share research and identify best practices that can be disseminated to schools and community organizations.

Source: Laws 2009, LB476, § 4.
Operative date July 1, 2009.

ARTICLE 8

TEACHERS AND ADMINISTRATORS

(a) CERTIFICATES

(p) EXCELLENCE IN TEACHING ACT

Section
79-8,133. Attracting Excellence to Teaching Program; created; terms, defined.
79-8,134. Attracting Excellence to Teaching Program; purposes.
79-8,135. Attracting Excellence to Teaching Program; administration; eligible students.
79-8,136. Transferred to section 79-8,137.05.
79-8,137. Attracting Excellence to Teaching Program; eligible student; contract requirements; loan payments; suspension; loan forgiveness; amount.
79-8,137.01. Enhancing Excellence in Teaching Program; created; terms, defined.
79-8,137.02. Enhancing Excellence in Teaching Program; purposes.
79-8,137.03. Enhancing Excellence in Teaching Program; administration; eligible student; loans.
79-8,137.04. Enhancing Excellence in Teaching Program; contract requirements; loan payments; suspension; loan forgiveness; amount.
79-8,137.05. Excellence in Teaching Cash Fund; created; use; investment.
79-8,138. Repayment tracking.
79-8,139. Reports.
79-8,140. Rules and regulations.

(a) CERTIFICATES

79-808 Teachers and administrators; certificates and permits; requirements; board; duties; advisory committees.

(1) The board shall establish, adopt, and promulgate appropriate rules, regulations, and procedures governing the issuance, renewal, conversion, suspension, and revocation of certificates and permits to teach, provide special services, and administer based upon (a) earned college credit in humanities, social and natural sciences, mathematics, or career and technical education, (b) earned college credit, or its equivalent in professional education, for particular teaching, special services, or administrative assignments, (c) criminal history record information if the applicant has not been a continuous Nebraska resident for five years immediately preceding application for the first issuance of a certificate, (d) human relations training, (e) successful teaching, administration, or provision of special services, and (f) moral, mental, and physical fitness for teaching, all in accordance with sound educational practices. Such rules, regulations, and procedures shall also provide for endorsement requirements to indicate areas of specialization on such certificates and permits.

(2) The board may issue a temporary certificate, valid for a period not to exceed two years, to any applicant for certification who has not completed the human relations training requirement.

(3) Members of any advisory committee established by the board to assist the board in teacher education and certification matters shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177. Each school district which has an employee who serves as a member of such committee and which is required to hire a person to replace such member during the member's attendance at meetings or activities of the committee or any subcommittee thereof shall be reimbursed from the Certification Fund for the expense it incurs from hiring a replacement. School districts may excuse employees who serve on such advisory committees from certain duties which conflict with any advisory committee duties.

Source: Laws 1963, c. 491, § 3, p. 1569; Laws 1981, LB 427, § 1; Laws 1984, LB 994, § 9; Laws 1985, LB 633, § 7; Laws 1986, LB 997, § 14; Laws 1987, LB 529, § 6; Laws 1989, LB 250, § 2; Laws 1990, LB 1090, § 20; Laws 1991, LB 511, § 57; Laws 1992, LB

245, § 62; Laws 1995, LB 123, § 2; R.S.Supp.,1995, § 79-1247.05; Laws 1996, LB 900, § 438; Laws 2001, LB 314, § 1; Laws 2003, LB 685, § 8; Laws 2009, LB547, § 2.
Operative date April 23, 2009.

(p) EXCELLENCE IN TEACHING ACT

79-8,132 Act, how cited.

Sections 79-8,132 to 79-8,140 shall be known and may be cited as the Excellence in Teaching Act and shall include the Attracting Excellence to Teaching Program and the Enhancing Excellence in Teaching Program.

Source: Laws 2000, LB 1399, § 15; Laws 2009, LB547, § 3.
Operative date April 23, 2009.

79-8,133 Attracting Excellence to Teaching Program; created; terms, defined.

The Attracting Excellence to Teaching Program is created. For purposes of the Attracting Excellence to Teaching Program:

(1) Department means the State Department of Education;

(2) Eligible institution means a not-for-profit college or university which (a) is located in Nebraska, (b) is accredited by the North Central Association of Colleges and Schools, (c) has a teacher education program, and (d) if a privately funded college or university, has not opted out of the program pursuant to rules and regulations;

(3) Eligible student means an individual who (a) is a full-time student, (b) is enrolled in an eligible institution in an undergraduate or a graduate teacher education program working toward his or her initial certificate to teach in Nebraska, (c) if enrolled at a state-funded eligible institution, is a resident student as described in section 85-502 or, if enrolled in a privately funded eligible institution, would be deemed a resident student if enrolled in a state-funded eligible institution, and (d) for applicants applying for the first time on or after April 23, 2009, is a student majoring in a shortage area;

(4) Full-time student means, in the aggregate, the equivalent of a student who in a twelve-month period is enrolled in twenty-four semester credit hours for undergraduate students or eighteen semester credit hours for graduate students of classroom, laboratory, clinical, practicum, or independent study course work;

(5) Majoring in a shortage area means pursuing a degree which will allow an individual to be properly endorsed to teach in a shortage area;

(6) Shortage area means a secular field of teaching for which there is a shortage, as determined by the department, of properly endorsed teachers at the time the borrower first receives funds pursuant to the program; and

(7) Teacher education program means a program of study approved by the State Board of Education pursuant to subdivision (5)(g) of section 79-318.

Source: Laws 2000, LB 1399, § 16; Laws 2003, LB 685, § 20; Laws 2009, LB547, § 4.
Operative date April 23, 2009.

79-8,134 Attracting Excellence to Teaching Program; purposes.

The purposes of the Attracting Excellence to Teaching Program are to:

(1) Attract outstanding students to major in shortage areas at the teacher education programs of Nebraska's postsecondary educational institutions;

(2) Retain resident students and graduates as teachers in the accredited or approved public and private schools of Nebraska; and

(3) Establish a loan contract that requires a borrower to obtain employment as a teacher in this state after graduation.

Source: Laws 2000, LB 1399, § 17; Laws 2009, LB547, § 5.
Operative date April 23, 2009.

79-8,135 Attracting Excellence to Teaching Program; administration; eligible students.

(1) The department shall administer the Attracting Excellence to Teaching Program either directly or by contracting with public or private entities.

(2) To be eligible for the program, an eligible student shall:

(a) Graduate in the top quarter of his or her high school class or have a minimum cumulative grade-point average of 3.0 on a four-point scale in an eligible institution;

(b) Agree to complete a teacher education program at an eligible institution and, for applicants applying for the first time on or after April 23, 2009, to complete the major on which the applicant's eligibility is based; and

(c) Commit to teach in an accredited or approved public or private school in Nebraska upon (i) successful completion of the teacher education program for which the applicant is applying to the Attracting Excellence to Teaching Program and (ii) becoming certified pursuant to sections 79-806 to 79-815.

(3) Eligible students may apply on an annual basis for loans in an amount of not more than three thousand dollars per year. Loans awarded to individual students shall not exceed a cumulative period exceeding five consecutive years. Loans shall only be awarded through an eligible institution. Loans shall be funded pursuant to section 79-8,137.05.

Source: Laws 2000, LB 1399, § 18; Laws 2003, LB 685, § 21; Laws 2009, LB547, § 6.
Operative date April 23, 2009.

79-8,136 Transferred to section 79-8,137.05.

79-8,137 Attracting Excellence to Teaching Program; eligible student; contract requirements; loan payments; suspension; loan forgiveness; amount.

(1)(a) Prior to receiving any money from a loan pursuant to the Attracting Excellence to Teaching Program, an eligible student shall enter into a contract with the department. Such contract shall be exempt from the requirements of sections 73-501 to 73-509.

(b) For eligible students who applied for the first time prior to April 23, 2009, the contract shall require that if (i) the borrower is not employed as a teacher in Nebraska for a time period equal to the number of years required for loan forgiveness pursuant to subsection (2) of this section and is not enrolled as a full-time student in a graduate program within six months after obtaining an undergraduate degree for which a loan from the program was obtained or (ii)

the borrower does not complete the requirements for graduation within five consecutive years after receiving the initial loan under the program, then the loan must be repaid, with interest at the rate fixed pursuant to section 45-103 accruing as of the date the borrower signed the contract, and an appropriate penalty as determined by the department may be assessed. If a borrower fails to remain enrolled at an eligible institution or otherwise fails to meet the requirements of an eligible student, repayment of the loan shall commence within six months after such change in eligibility. The State Board of Education may by rules and regulations provide for exceptions to the conditions of repayment pursuant to this subdivision based upon mitigating circumstances.

(c) For eligible students who apply for the first time on or after April 23, 2009, the contract shall require that if (i) the borrower is not employed as a full-time teacher teaching in an approved or accredited school in Nebraska and teaching at least a portion of the time in the shortage area for which the loan was received for a time period equal to the number of years required for loan forgiveness pursuant to subsection (3) of this section and is not enrolled as a full-time student in a graduate program within six months after obtaining an undergraduate degree for which a loan from the program was obtained or (ii) the borrower does not complete the requirements for graduation within five consecutive years after receiving the initial loan under the program, then the loan shall be repaid with interest at the rate fixed pursuant to section 45-103 accruing as of the date the borrower signed the contract and actual collection costs as determined by the department. If a borrower fails to remain enrolled at an eligible institution or otherwise fails to continue to be an eligible student, repayment of the loan shall commence within six months after such change in eligibility. The State Board of Education may by rule and regulation provide for exceptions to the conditions of repayment pursuant to this subdivision based upon mitigating circumstances.

(2) If the borrower applied for the first time prior to April 23, 2009, and (a) successfully completes the teacher education program and becomes certified pursuant to sections 79-806 to 79-815, (b) becomes employed as a teacher in this state within six months of becoming certified, and (c) otherwise meets the requirements of the contract, payments shall be suspended for the number of years that the borrower is required to remain employed as a teacher in this state under the contract. For each year that the borrower teaches in Nebraska pursuant to the contract, payments shall be forgiven in an amount equal to the amount borrowed for one year, except that if the borrower teaches in a school district that is in a local system classified as very sparse as defined in section 79-1003 or teaches in a school district in which at least forty percent of the students are poverty students as defined in section 79-1003, payments shall be forgiven each year in an amount equal to the amount borrowed for two years.

(3) If the borrower applies for the first time on or after April 23, 2009, and (a) successfully completes the teacher education program and major for which the borrower is receiving a forgivable loan pursuant to the program and becomes certified pursuant to sections 79-806 to 79-815 with an endorsement in the shortage area for which the loan was received, (b) becomes employed as a full-time teacher teaching at least a portion of the time in the shortage area for which the loan was received in an approved or accredited school in this state within six months of becoming certified, and (c) otherwise meets the requirements of the contract, payments shall be suspended for the number of years that the borrower is required to remain employed as a teacher in this state

under the contract. Beginning after the first two years of teaching full-time in Nebraska following graduation for the degree for which the loan was received, for each year that the borrower teaches full-time in Nebraska pursuant to the contract, the loan shall be forgiven in an amount equal to three thousand dollars, except that if the borrower teaches full-time in a school district that is in a local system classified as very sparse as defined in section 79-1003, teaches in a school building in which at least forty percent of the formula students are poverty students as defined in section 79-1003, or teaches in an accredited or approved private school in Nebraska in which at least forty percent of the enrolled students qualified for free lunches as determined by the most recent data available from the department, payments shall be forgiven each year in an amount equal to six thousand dollars.

Source: Laws 2000, LB 1399, § 20; Laws 2003, LB 685, § 22; Laws 2008, LB988, § 7; Laws 2009, LB547, § 7.
Operative date April 23, 2009.

79-8,137.01 Enhancing Excellence in Teaching Program; created; terms, defined.

The Enhancing Excellence in Teaching Program is created. For purposes of the Enhancing Excellence in Teaching Program:

(1) Department means the State Department of Education;

(2) Eligible institution means a not-for-profit college or university which (a) is located in Nebraska, (b) is accredited by the North Central Association of Colleges and Schools, (c) has a teacher education program, and (d) if a privately funded college or university, has not opted out of the program pursuant to rules and regulations;

(3) Eligible student means an individual who (a) is a certificated teacher employed to teach in an approved or accredited school in Nebraska, (b) is enrolled in an eligible institution in a graduate teacher education program, (c) if enrolled at a state-funded eligible institution, is a resident student as described in section 85-502 or, if enrolled in a privately funded eligible institution, would be deemed a resident student if enrolled in a state-funded eligible institution, and (d) is majoring in a shortage area, curriculum and instruction, a subject area in which the individual already holds a secular teaching endorsement, or a subject area that will result in an additional secular teaching endorsement which the superintendent of the school district or head administrator of the private, denominational, or parochial school employing the individual believes will be beneficial to the students of such school district or school as evidenced by a statement signed by the superintendent or head administrator;

(4) Graduate teacher education program means a program of study approved by the State Board of Education pursuant to subdivision (5)(g) of section 79-318 which results in obtaining a graduate degree;

(5) Majoring in a shortage area or subject area means pursuing a degree which will allow an individual to be properly endorsed to teach in such shortage area or subject area; and

(6) Shortage area means a secular field of teaching for which there is a shortage, as determined by the department, of properly endorsed teachers at the time the borrower first receives funds pursuant to the program.

Source: Laws 2009, LB547, § 8.
Operative date April 23, 2009.

79-8,137.02 Enhancing Excellence in Teaching Program; purposes.

The purposes of the Enhancing Excellence in Teaching Program are to:

(1) Retain teachers in the accredited or approved public and private schools of Nebraska;

(2) Improve the skills of existing teachers in Nebraska through the graduate education programs of Nebraska's postsecondary educational institutions; and

(3) Establish a loan contract that requires a borrower to continue employment as a teacher in this state after graduation from a graduate teacher education program.

Source: Laws 2009, LB547, § 9.
Operative date April 23, 2009.

79-8,137.03 Enhancing Excellence in Teaching Program; administration; eligible student; loans.

(1) The department shall administer the Enhancing Excellence in Teaching Program either directly or by contracting with public or private entities.

(2) To be eligible for the program, an eligible student shall:

(a) Agree to complete a graduate teacher education program at an eligible institution and to complete the major on which the applicant's eligibility is based; and

(b) Commit to teach in an accredited or approved public or private school in Nebraska upon successful completion of the graduate teacher education program for which the applicant is applying to the Enhancing Excellence in Teaching Program and to maintaining certification pursuant to sections 79-806 to 79-815.

(3) Eligible students may apply on an annual basis for loans in an amount of not more than one hundred seventy-five dollars per credit hour. Loans awarded to individual students shall not exceed a cumulative period exceeding five consecutive years. Loans shall only be awarded through the department. Loans shall be funded pursuant to section 79-8,137.05.

Source: Laws 2009, LB547, § 10.
Operative date April 23, 2009.

79-8,137.04 Enhancing Excellence in Teaching Program; contract requirements; loan payments; suspension; loan forgiveness; amount.

(1) Prior to receiving any money from a loan pursuant to the Enhancing Excellence in Teaching Program, an eligible student shall enter into a contract with the department. Such contract shall be exempt from the requirements of sections 73-501 to 73-509. The contract shall require that if (a) the borrower is not employed as a full-time teacher teaching in an approved or accredited school in Nebraska for a time period equal to the number of years required for loan forgiveness pursuant to subsection (2) of this section or (b) the borrower does not complete the requirements for graduation within five consecutive years after receiving the initial loan under the program, then the loan shall be repaid, with interest at the rate fixed pursuant to section 45-103 accruing as of the date the borrower signed the contract and actual collection costs as determined by the department. If a borrower fails to remain enrolled at an eligible institution or otherwise fails to meet the requirements of an eligible

student, repayment of the loan shall commence within six months after such change in eligibility. The State Board of Education may by rules and regulations provide for exceptions to the conditions of repayment pursuant to this subsection based upon mitigating circumstances.

(2) If the borrower (a) successfully completes the teacher education program and major for which the borrower is receiving a forgivable loan pursuant to the program and maintains certification pursuant to sections 79-806 to 79-815, (b) maintains employment as a teacher in an approved or accredited school in this state, and (c) otherwise meets the requirements of the contract, payments shall be suspended for the number of years that the borrower is required to remain employed as a teacher in this state under the contract. Beginning after the first two years of teaching full-time in Nebraska following graduation for the degree for which the loan was received, for each year that the borrower teaches full-time in Nebraska pursuant to the contract, the loan shall be forgiven in an amount equal to three thousand dollars, except that if the borrower teaches full-time in a school district that is in a local system classified as very sparse as defined in section 79-1003, teaches in a school building in which at least forty percent of the students are poverty students as defined in section 79-1003, or teaches in an accredited or approved private school in Nebraska in which at least forty percent of the enrolled students qualified for free lunches as determined by the most recent data available from the department, payments shall be forgiven each year in an amount equal to six thousand dollars.

Source: Laws 2009, LB547, § 11.
Operative date April 23, 2009.

79-8,137.05 Excellence in Teaching Cash Fund; created; use; investment.

The Excellence in Teaching Cash Fund is created. The fund shall consist of appropriations by the Legislature, transfers pursuant to section 9-812, and loan repayments, penalties, and interest payments received in the course of administering the Attracting Excellence to Teaching Program and the Enhancing Excellence in Teaching Program. The department shall allocate on an annual basis up to four hundred thousand dollars in the aggregate of the funds to be distributed for the Attracting Excellence to Teaching Program to all eligible institutions according to the distribution formula as determined by rule and regulation. The eligible institutions shall act as agents of the department in the distribution of the funds for the Attracting Excellence to Teaching Program to eligible students. The remaining available funds shall be distributed by the department to eligible students for the Enhancing Excellence in Teaching Program. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 2000, LB 1399, § 19; Laws 2001, Spec. Sess., LB 3, § 6; R.S.1943, (2008), § 79-8,136; Laws 2009, LB547, § 12.
Operative date July 1, 2009.

Cross References

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

79-8,138 Repayment tracking.

The department has the administrative responsibility to track borrowers and to develop repayment tracking and collection mechanisms for the Attracting Excellence to Teaching Program and the Enhancing Excellence in Teaching Program. The department may contract for such services. When a loan has been forgiven pursuant to section 79-8,137 or section 79-8,137.04, the amount forgiven may be taxable income to the borrower and the department shall provide notification of the amount forgiven to the borrower, the Department of Revenue, and the United States Internal Revenue Service if required by the Internal Revenue Code.

Source: Laws 2000, LB 1399, § 21; Laws 2009, LB547, § 13.
Operative date April 23, 2009.

79-8,139 Reports.

(1) Each eligible institution shall file an annual report for the Attracting Excellence to Teaching Program and the Enhancing Excellence in Teaching Program with the department containing such information as required by rule and regulation. On or before December 31, 2010, and on or before December 31 of each even-numbered year thereafter, the department shall submit a report to the Governor, the Clerk of the Legislature, and the Education Committee of the Legislature on the status of the programs, the status of the borrowers, and the impact of the programs on the number of teachers in shortage areas in Nebraska and on the number of teachers receiving graduate degrees in teaching endorsement areas in Nebraska. Each report shall include information on an institution-by-institution basis, the status of borrowers, and a financial statement with a description of the activity of the Excellence in Teaching Cash Fund.

(2) Any report pursuant to this section which includes information about borrowers shall exclude confidential information or any other information which specifically identifies a borrower.

Source: Laws 2000, LB 1399, § 22; Laws 2009, LB547, § 14.
Operative date April 23, 2009.

79-8,140 Rules and regulations.

The State Board of Education may adopt and promulgate rules and regulations to determine teacher shortage areas and to carry out the Excellence in Teaching Act.

Source: Laws 2000, LB 1399, § 23; Laws 2009, LB547, § 15.
Operative date April 23, 2009.

ARTICLE 9
SCHOOL EMPLOYEES RETIREMENT SYSTEMS

(a) EMPLOYEES OF OTHER THAN CLASS V DISTRICT

Section
79-954. Retirement; disability beneficiary; restoration to active service; effect; retention of allowance; when.
79-958. Employee; employer; required deposits and contributions.
79-966. School Retirement Fund; state deposits; amount; determination.

(b) EMPLOYEES RETIREMENT SYSTEM IN CLASS V DISTRICTS

79-9,113. Employees retirement system; federal Social Security Act; state retirement plan; how affected; required contributions; payment; membership service annuity; computations.

(a) EMPLOYEES OF OTHER THAN CLASS V DISTRICT

79-954 Retirement; disability beneficiary; restoration to active service; effect; retention of allowance; when.

(1) Except as provided in subsection (2) of this section, if a disability beneficiary under the age of sixty-five years is restored to active service as a school employee or if the examining physician certifies that the person is no longer disabled for service as a school employee, the school or disability retirement allowance shall cease. If the beneficiary again becomes a school employee, he or she shall become a member of the retirement system. Any prior service certificate, on the basis of which his or her creditable service was computed at the time of his or her retirement for disability, shall be restored to full force and effect upon his or her again becoming a member of such retirement system.

(2) If a disability beneficiary under the age of sixty-five years obtains employment as a school employee and the examining physician certifies that the beneficiary has a permanent disability, the beneficiary shall retain his or her disability retirement allowance if the beneficiary works fewer than fifteen hours per week.

Source: Laws 1945, c. 219, § 27, p. 647; R.S.Supp.,1947, § 79-2927; Laws 1949, c. 256, § 460, p. 849; R.S.1943, (1994), § 79-1526; Laws 1996, LB 900, § 589; Laws 2009, LB449, § 1.
Effective date August 30, 2009.

79-958 Employee; employer; required deposits and contributions.

(1) Beginning on September 1, 2006, and ending August 31, 2007, for the purpose of providing the funds to pay for formula annuities, every employee shall be required to deposit in the School Retirement Fund seven and eighty-three hundredths percent of compensation. Beginning on September 1, 2007, and ending August 31, 2009, for the purpose of providing the funds to pay for formula annuities, every employee shall be required to deposit in the School Retirement Fund seven and twenty-eight hundredths percent of compensation. Beginning on September 1, 2009, and ending August 31, 2014, for the purpose of providing the funds to pay for formula annuities, every employee shall be required to deposit in the School Retirement Fund eight and twenty-eight hundredths percent of compensation. Beginning on September 1, 2014, for the purpose of providing the funds to pay for formula annuities, every employee shall be required to deposit in the School Retirement Fund seven and twenty-eight hundredths percent of compensation. Such deposits shall be transmitted at the same time and in the same manner as required employer contributions.

(2) For the purpose of providing the funds to pay for formula annuities, every employer shall be required to deposit in the School Retirement Fund one hundred one percent of the required contributions of the school employees of each employer. Such deposits shall be transmitted to the retirement board at the same time and in the same manner as such required employee contributions.

(3) The employer shall pick up the member contributions required by this section for all compensation paid on or after January 1, 1986, and the contributions so picked up shall be treated as employer contributions in

determining federal tax treatment under the Internal Revenue Code as defined in section 49-801.01, except that the employer shall continue to withhold federal income taxes based upon these contributions until the Internal Revenue Service or the federal courts rule that, pursuant to section 414(h) of the code, these contributions shall not be included as gross income of the member until such time as they are distributed or made available. The employer shall pay these member contributions from the same source of funds which is used in paying earnings to the member. The employer shall pick up these contributions by a compensation deduction through a reduction in the cash compensation of the member. Member contributions picked up shall be treated for all purposes of the School Employees Retirement Act in the same manner and to the same extent as member contributions made prior to the date picked up.

(4) The employer shall pick up the member contributions made through irrevocable payroll deduction authorizations pursuant to sections 79-921, 79-933.03 to 79-933.06, and 79-933.08, and the contributions so picked up shall be treated as employer contributions in the same manner as contributions picked up under subsection (3) of this section.

Source: Laws 1945, c. 219, § 32, p. 649; R.S.Supp.,1947, § 79-2932; Laws 1949, c. 256, § 465, p. 851; Laws 1951, c. 291, § 6, p. 968; Laws 1959, c. 414, § 2, p. 1388; Laws 1967, c. 546, § 9, p. 1806; Laws 1971, LB 987, § 24; Laws 1984, LB 457, § 3; Laws 1985, LB 353, § 3; Laws 1986, LB 325, § 11; Laws 1988, LB 160, § 4; Laws 1988, LB 1170, § 6; Laws 1991, LB 549, § 39; Laws 1994, LB 833, § 33; Laws 1995, LB 574, § 80; Laws 1996, LB 700, § 10; R.S.Supp.,1995, § 79-1531; Laws 1996, LB 900, § 593; Laws 1997, LB 623, § 27; Laws 1998, LB 1191, § 57; Laws 2001, LB 408, § 17; Laws 2002, LB 407, § 35; Laws 2005, LB 503, § 10; Laws 2007, LB596, § 2; Laws 2009, LB187, § 1.
Operative date July 1, 2009.

79-966 School Retirement Fund; state deposits; amount; determination.

(1) On the basis of all data in the possession of the retirement board, including such mortality and other tables as are recommended by the actuary engaged by the retirement board and adopted by the retirement board, the retirement board shall annually, on or before July 1, determine the state deposit to be made by the state in the School Retirement Fund for that fiscal year. The amount of such state deposit shall be determined pursuant to section 79-966.01. The retirement board shall thereupon certify the amount of such state deposit, and on the warrant of the Director of Administrative Services, the State Treasurer shall, as of July 1 of such year, transfer from funds appropriated by the state for that purpose to the School Retirement Fund the amount of such state deposit.

(2) In addition to the state deposits required by subsections (1) and (3) of this section, the state shall deposit in the School Retirement Fund an amount equal to seven-tenths of one percent of the compensation of all members of the retirement system for each fiscal year on or after July 1, 1984, until July 1, 2009. For each fiscal year beginning July 1, 2009, until July 1, 2014, in addition to the state deposits required by subsections (1) and (3) of this section, the state shall deposit in the School Retirement Fund an amount equal to one percent of the compensation of all members of the retirement system. For each fiscal year

beginning July 1, 2014, in addition to the state deposits required by subsections (1) and (3) of this section, the state shall deposit in the School Retirement Fund an amount equal to seven-tenths of one percent of the compensation of all members of the retirement system.

(3) In addition to the state deposits required by subsections (1) and (2) of this section, beginning on July 1, 2005, and each fiscal year thereafter, the state shall deposit in the Service Annuity Fund such amounts as may be necessary to pay the normal cost and amortize the unfunded actuarial accrued liability of the service annuity benefit established pursuant to sections 79-933 and 79-952 as accrued through the end of the previous fiscal year of the school employees who are members of the retirement system established pursuant to the Class V School Employees Retirement Act.

Source: Laws 1945, c. 219, § 41, p. 651; R.S.Supp.,1947, § 79-2941; Laws 1949, c. 256, § 474, p. 853; Laws 1965, c. 530, § 4, p. 1668; Laws 1969, c. 735, § 12, p. 2782; Laws 1971, LB 987, § 25; Laws 1981, LB 248, § 3; Laws 1984, LB 457, § 5; Laws 1988, LB 1170, § 10; R.S.1943, (1994), § 79-1540; Laws 1996, LB 900, § 601; Laws 2002, LB 407, § 39; Laws 2004, LB 1097, § 29; Laws 2009, LB187, § 2.
Operative date July 1, 2009.

Cross References

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

(b) EMPLOYEES RETIREMENT SYSTEM IN CLASS V DISTRICTS

79-9,113 Employees retirement system; federal Social Security Act; state retirement plan; how affected; required contributions; payment; membership service annuity; computations.

(1)(a) If, at any future time, a majority of the eligible members of the retirement system votes to be included under an agreement providing old age and survivors insurance under the Social Security Act of the United States, the contributions to be made by the member and the school district for membership service, from and after the effective date of the agreement with respect to services performed subsequent to December 31, 1954, shall each be reduced from five to three percent but not less than three percent of the member's salary per annum, and the credits for membership service under this system, as provided in section 79-999, shall thereafter be reduced from one and one-half percent to nine-tenths of one percent and not less than nine-tenths of one percent of salary or wage earned by the member during each fiscal year, and from one and sixty-five hundredths percent to one percent and not less than one percent of salary or wage earned by the member during each fiscal year and from two percent to one and two-tenths percent of salary or wage earned by the member during each fiscal year, and from two and four-tenths percent to one and forty-four hundredths percent of salary or wage earned by the member during each fiscal year, except that after September 1, 1963, and prior to September 1, 1969, all employees of the school district shall contribute an amount equal to the membership contribution which shall be two and three-fourths percent of salary covered by old age and survivors insurance, and five percent above that amount. Commencing September 1, 1969, all employees of the school district shall contribute an amount equal to the membership contri-

bution which shall be two and three-fourths percent of the first seven thousand eight hundred dollars of salary or wages earned each fiscal year and five percent of salary or wages earned above that amount in the same fiscal year. Commencing September 1, 1976, all employees of the school district shall contribute an amount equal to the membership contribution which shall be two and nine-tenths percent of the first seven thousand eight hundred dollars of salary or wages earned each fiscal year and five and twenty-five hundredths percent of salary or wages earned above that amount in the same fiscal year. Commencing on September 1, 1982, all employees of the school district shall contribute an amount equal to the membership contribution which shall be four and nine-tenths percent of the compensation earned in each fiscal year. Commencing September 1, 1989, all employees of the school district shall contribute an amount equal to the membership contribution which shall be five and eight-tenths percent of the compensation earned in each fiscal year. Commencing September 1, 1995, all employees of the school district shall contribute an amount equal to the membership contribution which shall be six and three-tenths percent of the compensation earned in each fiscal year. Commencing September 1, 2007, all employees of the school district shall contribute an amount equal to the membership contribution which shall be seven and three-tenths percent of the compensation paid in each fiscal year. Commencing September 1, 2009, all employees of the school district shall contribute an amount equal to the membership contribution which shall be eight and three-tenths percent of the compensation paid in each fiscal year.

(b) The contributions by the school district in any fiscal year beginning on or after September 1, 1999, shall be the greater of (i) one hundred percent of the contributions by the employees for such fiscal year or (ii) such amount as may be necessary to maintain the solvency of the system, as determined annually by the board upon recommendation of the actuary and the trustees.

(c) The contributions by the school district in any fiscal year beginning on or after September 1, 2007, shall be the greater of (i) one hundred and one percent of the contributions by the employees for such fiscal year or (ii) such amount as may be necessary to maintain the solvency of the system, as determined annually by the board upon recommendation of the actuary and the trustees.

(d) The employee's contribution shall be made in the form of a monthly deduction from compensation as provided in subsection (2) of this section. Every employee who is a member of the system shall be deemed to consent and agree to such deductions and shall receipt in full for compensation, and payment to such employee of compensation less such deduction shall constitute a full and complete discharge of all claims and demands whatsoever for services rendered by such employee during the period covered by such payment except as to benefits provided under the Class V School Employees Retirement Act.

(e) After September 1, 1963, and prior to September 1, 1969, all employees shall be credited with a membership service annuity which shall be nine-tenths of one percent of salary or wage covered by old age and survivors insurance and one and one-half percent of salary or wages above that amount, except that those employees who retire on or after August 31, 1969, shall be credited with a membership service annuity which shall be one percent of salary or wages covered by old age and survivors insurance and one and sixty-five hundredths percent of salary or wages above that amount for service performed after

September 1, 1963, and prior to September 1, 1969. Commencing September 1, 1969, all employees shall be credited with a membership service annuity which shall be one percent of the first seven thousand eight hundred dollars of salary or wages earned by the employee during each fiscal year and one and sixty-five hundredths percent of salary or wages earned above that amount in the same fiscal year, except that all employees retiring on or after August 31, 1976, shall be credited with a membership service annuity which shall be one and forty-four hundredths percent of the first seven thousand eight hundred dollars of salary or wages earned by the employee during such fiscal year and two and four-tenths percent of salary or wages earned above that amount in the same fiscal year and the retirement annuities of employees who have not retired prior to September 1, 1963, and who elected under the provisions of section 79-988 as such section existed immediately prior to February 20, 1982, not to become members of the system shall not be less than they would have been had they remained under any preexisting system to date of retirement.

(f) Members of this system having the service qualifications of members of the School Retirement System of the State of Nebraska, as provided by section 79-926, shall receive the state service annuity provided by sections 79-933 to 79-935 and 79-951.

(2) The school district shall pick up the employee contributions required by this section for all compensation paid on or after January 1, 1985, and the contributions so picked up shall be treated as employer contributions in determining federal tax treatment under the Internal Revenue Code, except that the school district shall continue to withhold federal income taxes based upon these contributions until the Internal Revenue Service or the federal courts rule that, pursuant to section 414(h) of the Internal Revenue Code, these contributions shall not be included as gross income of the employee until such time as they are distributed or made available. The school district shall pay these employee contributions from the same source of funds which is used in paying earnings to the employee. The school district shall pick up these contributions by a salary deduction either through a reduction in the cash salary of the employee or a combination of a reduction in salary and offset against a future salary increase. Beginning September 1, 1995, the school district shall also pick up any contributions required by sections 79-990, 79-991, and 79-992 which are made under an irrevocable payroll deduction authorization between the member and the school district, and the contributions so picked up shall be treated as employer contributions in determining federal tax treatment under the Internal Revenue Code, except that the school district shall continue to withhold federal and state income taxes based upon these contributions until the Internal Revenue Service rules that, pursuant to section 414(h) of the Internal Revenue Code, these contributions shall not be included as gross income of the employee until such time as they are distributed from the system. Employee contributions picked up shall be treated for all purposes of the Class V School Employees Retirement Act in the same manner and to the extent as employee contributions made prior to the date picked up.

Source: Laws 1951, c. 274, § 25, p. 923; Laws 1953, c. 308, § 4, p. 1029; Laws 1955, c. 321, § 3, p. 993; Laws 1963, c. 490, § 5, p. 1567; Laws 1969, c. 724, § 2, p. 2755; Laws 1972, LB 1116, § 3; Laws 1976, LB 994, § 3; Laws 1982, LB 131, § 12; Laws 1983, LB 488, § 1; Laws 1984, LB 218, § 3; Laws 1989, LB 237, § 7; Laws 1995, LB 505, § 8; Laws 1995, LB 574, § 77; R.S.Supp.,1995,

§ 79-1056; Laws 1996, LB 900, § 648; Laws 1997, LB 623, § 33; Laws 1998, LB 497, § 26; Laws 1998, LB 1191, § 63; Laws 2000, LB 155, § 5; Laws 2007, LB596, § 3; Laws 2009, LB187, § 3. Operative date July 1, 2009.

Cross References

For provisions of federal Social Security Act, see Chapter 68, article 6.

ARTICLE 10

SCHOOL TAXATION, FINANCE, AND FACILITIES

(a) TAX EQUITY AND EDUCATIONAL OPPORTUNITIES SUPPORT ACT

Section

(b) SCHOOL FUNDS

(c) SCHOOL TAXATION

(d) SCHOOL BUDGETS AND ACCOUNTING

(e) SITE AND FACILITIES ACQUISITION, MAINTENANCE, AND DISPOSITION

(a) TAX EQUITY AND EDUCATIONAL OPPORTUNITIES SUPPORT ACT

79-1001 Act, how cited.

Sections 79-1001 to 79-1033 shall be known and may be cited as the Tax Equity and Educational Opportunities Support Act.

Source: Laws 1990, LB 1059, § 1; Laws 1995, LB 542, § 1; Laws 1995, LB 840, § 3; R.S.Supp.,1995, § 79-3801; Laws 1996, LB 900, § 652; Laws 1996, LB 1050, § 10; Laws 1997, LB 806, § 29; Laws 1998, LB 1134, § 1; Laws 1998, LB 1219, § 13; Laws 1999, LB 149, § 1; Laws 2001, LB 833, § 3; Laws 2002, LB 898, § 2; Laws 2004, LB 1091, § 8; Laws 2006, LB 1024, § 71; Laws 2007, LB641, § 12; Laws 2008, LB988, § 8; Laws 2009, LB545, § 3. Effective date May 20, 2009.

79-1003 Terms, defined.

For purposes of the Tax Equity and Educational Opportunities Support Act:

(1) Adjusted general fund operating expenditures means (a) for school fiscal years before school fiscal year 2007-08, general fund operating expenditures as calculated pursuant to subdivision (21) of this section minus the transportation allowance and minus the special receipts allowance, (b) for school fiscal year 2007-08, general fund operating expenditures as calculated pursuant to subdivision (21) of this section minus the sum of the transportation, special receipts, and distance education and telecommunications allowances, (c) for school fiscal year 2008-09, the difference of the product of the general fund operating expenditures as calculated pursuant to subdivision (21) of this section multiplied by the cost growth factor calculated pursuant to section 79-1007.10 minus the transportation allowance, special receipts allowance, poverty allowance, limited English proficiency allowance, distance education and telecommunications allowance, elementary site allowance, elementary class size allowance, summer school allowance, and focus school and program allowance, (d) for school fiscal years 2009-10 through 2012-13, the difference of the product of the general fund operating expenditures as calculated pursuant to subdivision (21) of this section multiplied by the cost growth factor calculated pursu-

ant to section 79-1007.10 minus the transportation allowance, special receipts allowance, poverty allowance, limited English proficiency allowance, distance education and telecommunications allowance, elementary site allowance, elementary class size allowance, summer school allowance, instructional time allowance, and focus school and program allowance, and (e) for school fiscal year 2013-14 and each school fiscal year thereafter, the difference of the product of the general fund operating expenditures as calculated pursuant to subdivision (21) of this section multiplied by the cost growth factor calculated pursuant to section 79-1007.10 minus the transportation allowance, special receipts allowance, poverty allowance, limited English proficiency allowance, distance education and telecommunications allowance, elementary site allowance, summer school allowance, instructional time allowance, and focus school and program allowance;

(2) Adjusted valuation means the assessed valuation of taxable property of each local system in the state, adjusted pursuant to the adjustment factors described in section 79-1016. Adjusted valuation means the adjusted valuation for the property tax year ending during the school fiscal year immediately preceding the school fiscal year in which the aid based upon that value is to be paid. For purposes of determining the local effort rate yield pursuant to section 79-1015.01, adjusted valuation does not include the value of any property which a court, by a final judgment from which no appeal is taken, has declared to be nontaxable or exempt from taxation;

(3) Allocated income tax funds means the amount of assistance paid to a local system pursuant to section 79-1005.01 or 79-1005.02 as adjusted by the minimum levy adjustment pursuant to section 79-1008.02;

(4) Average daily attendance of a student who resides on Indian land means average daily attendance of a student who resides on Indian land from the most recent data available on November 1 preceding the school fiscal year in which aid is to be paid;

(5) Average daily membership means the average daily membership for grades kindergarten through twelve attributable to the local system, as provided in each district's annual statistical summary, and includes the proportionate share of students enrolled in a public school instructional program on less than a full-time basis;

(6) Base fiscal year means the first school fiscal year following the school fiscal year in which the reorganization or unification occurred;

(7) Board means the school board of each school district;

(8) Categorical funds means funds limited to a specific purpose by federal or state law, including, but not limited to, Title I funds, Title VI funds, federal vocational education funds, federal school lunch funds, Indian education funds, Head Start funds, and funds from the Education Innovation Fund;

(9) Consolidate means to voluntarily reduce the number of school districts providing education to a grade group and does not include dissolution pursuant to section 79-498;

(10) Department means the State Department of Education;

(11) District means any Class I, II, III, IV, V, or VI school district;

(12) Ensuing school fiscal year means the school fiscal year following the current school fiscal year;

(13) Equalization aid means the amount of assistance calculated to be paid to a local system pursuant to sections 79-1007.11 to 79-1007.23, 79-1008.01 to 79-1022, and 79-1022.02;

(14) Fall membership means the total membership in kindergarten through grade twelve attributable to the local system as reported on the fall school district membership reports for each district pursuant to section 79-528;

(15) Fiscal year means the state fiscal year which is the period from July 1 to the following June 30;

(16) Formula students means:

(a) For school fiscal years prior to school fiscal year 2008-09, (i) for state aid certified pursuant to section 79-1022, the sum of fall membership from the school fiscal year immediately preceding the school fiscal year in which the aid is to be paid, multiplied by the average ratio of average daily membership to fall membership for the second school fiscal year immediately preceding the school fiscal year in which aid is to be paid and the prior two school fiscal years, plus qualified early childhood education fall membership plus tuitioned students from the school fiscal year immediately preceding the school fiscal year in which the aid is to be paid and (ii) for final calculation of state aid pursuant to section 79-1065, the sum of average daily membership plus qualified early childhood education average daily membership plus tuitioned students from the school fiscal year immediately preceding the school fiscal year in which the aid was paid; and

(b) For school fiscal year 2008-09 and each school fiscal year thereafter, (i) for state aid certified pursuant to section 79-1022, the sum of the product of fall membership from the school fiscal year immediately preceding the school fiscal year in which the aid is to be paid multiplied by the average ratio of average daily membership to fall membership for the second school fiscal year immediately preceding the school fiscal year in which the aid is to be paid and the prior two school fiscal years plus sixty percent of the qualified early childhood education fall membership plus tuitioned students from the school fiscal year immediately preceding the school fiscal year in which aid is to be paid minus the product of the number of students enrolled in kindergarten that is not full-day kindergarten from the fall membership multiplied by 0.5 and (ii) for final calculation of state aid pursuant to section 79-1065, the sum of average daily membership plus sixty percent of the qualified early childhood education average daily membership plus tuitioned students minus the product of the number of students enrolled in kindergarten that is not full-day kindergarten from the average daily membership multiplied by 0.5 from the school fiscal year immediately preceding the school fiscal year in which aid was paid;

(17) Free lunch and free milk student means a student who qualified for free lunches or free milk from the most recent data available on November 1 of the school fiscal year immediately preceding the school fiscal year in which aid is to be paid;

(18) Full-day kindergarten means kindergarten offered by a district for at least one thousand thirty-two instructional hours;

(19) General fund budget of expenditures means the total budget of disbursements and transfers for general fund purposes as certified in the budget statement adopted pursuant to the Nebraska Budget Act, except that for purposes of the limitation imposed in section 79-1023 and the calculation pursuant to subdivision (2) of section 79-1027.01, the general fund budget of

expenditures does not include any special grant funds, exclusive of local matching funds, received by a district;

(20) General fund expenditures means all expenditures from the general fund;

(21) General fund operating expenditures means:

(a) For state aid calculated for school fiscal years prior to school fiscal year 2008-09, the total general fund expenditures minus categorical funds, tuition paid, transportation fees paid to other districts, adult education, summer school, community services, redemption of the principal portion of general fund debt service, retirement incentive plans, staff development assistance, and transfers from other funds into the general fund for the second school fiscal year immediately preceding the school fiscal year in which aid is to be paid as reported on the annual financial report prior to December 1 of the school fiscal year immediately preceding the school fiscal year in which aid is to be paid;

(b) For state aid calculated for school fiscal year 2008-09, as reported for the second school fiscal year immediately preceding the school fiscal year in which aid is to be paid on the annual financial report submitted prior to December 1 of the school fiscal year immediately preceding the school fiscal year in which aid is to be paid, the total general fund expenditures minus (i) the amount of all receipts to the general fund, to the extent that such receipts are not included in local system formula resources, from early childhood education tuition, summer school tuition, educational entities as defined in section 79-1201.01 for providing distance education courses through the Educational Service Unit Coordinating Council to such educational entities, private foundations, individuals, associations, charitable organizations, the textbook loan program authorized by section 79-734, and federal impact aid, (ii) the amount of expenditures for categorical funds, tuition paid, transportation fees paid to other districts, adult education, community services, redemption of the principal portion of general fund debt service, retirement incentive plans authorized by section 79-855, and staff development assistance authorized by section 79-856, and (iii) the amount of any transfers from the general fund to any bond fund and transfers from other funds into the general fund;

(c) For state aid calculated for school fiscal year 2009-10, as reported on the annual financial report for the second school fiscal year immediately preceding the school fiscal year in which aid is to be paid, the total general fund expenditures minus (i) the amount of all receipts to the general fund, to the extent that such receipts are not included in local system formula resources, from early childhood education tuition, summer school tuition, educational entities as defined in section 79-1201.01 for providing distance education courses through the Educational Service Unit Coordinating Council to such educational entities, private foundations, individuals, associations, charitable organizations, the textbook loan program authorized by section 79-734, and federal impact aid, (ii) the amount of expenditures for categorical funds, tuition paid, transportation fees paid to other districts, adult education, community services, redemption of the principal portion of general fund debt service, retirement incentive plans authorized by section 79-855, and staff development assistance authorized by section 79-856, (iii) the amount of any transfers from the general fund to any bond fund and transfers from other funds into the general fund, and (iv) any legal expenses in excess of fifteen-hundredths of one

percent of the formula need for the school fiscal year in which the expenses occurred; and

(d) For state aid calculated for school fiscal year 2010-11 and each school fiscal year thereafter, as reported on the annual financial report for the second school fiscal year immediately preceding the school fiscal year in which aid is to be paid, the total general fund expenditures minus (i) the amount of all receipts to the general fund, to the extent that such receipts are not included in local system formula resources, from early childhood education tuition, summer school tuition, educational entities as defined in section 79-1201.01 for providing distance education courses through the Educational Service Unit Coordinating Council to such educational entities, private foundations, individuals, associations, charitable organizations, the textbook loan program authorized by section 79-734, federal impact aid, and levy override elections pursuant to section 77-3444, (ii) the amount of expenditures for categorical funds, tuition paid, transportation fees paid to other districts, adult education, community services, redemption of the principal portion of general fund debt service, retirement incentive plans authorized by section 79-855, and staff development assistance authorized by section 79-856, (iii) the amount of any transfers from the general fund to any bond fund and transfers from other funds into the general fund, (iv) any legal expenses in excess of fifteen-hundredths of one percent of the formula need for the school fiscal year in which the expenses occurred, (v) expenditures to pay for sums agreed to be paid by a school district to certificated employees in exchange for a voluntary termination occurring prior to July 1, 2009, and (vi)(A) expenditures in school fiscal years 2009-10 through 2013-14 to pay for employer contributions pursuant to subsection (2) of section 79-958 to the School Retirement System of the State of Nebraska to the extent that such expenditures exceed the employer contributions under such subsection that would have been made at a contribution rate of seven and thirty-five hundredths percent or (B) expenditures in school fiscal years 2009-10 through 2013-14 to pay for school district contributions pursuant to subdivision (1)(c)(i) of section 79-9,113 to the Class V School Employees Retirement System to the extent that such expenditures exceed the school district contributions under such subdivision that would have been made at a contribution rate of seven and thirty-seven hundredths percent.

For purposes of this subdivision (21) of this section, receipts from levy override elections shall equal ninety-nine percent of the difference of the total general fund levy minus a levy of one dollar and five cents per one hundred dollars of taxable valuation multiplied by the assessed valuation for school districts that have voted pursuant to section 77-3444 to override the maximum levy provided pursuant to section 77-3442;

(22) High school district means a school district providing instruction in at least grades nine through twelve;

(23) Income tax liability means the amount of the reported income tax liability for resident individuals pursuant to the Nebraska Revenue Act of 1967 less all nonrefundable credits earned and refunds made;

(24) Income tax receipts means the amount of income tax collected pursuant to the Nebraska Revenue Act of 1967 less all nonrefundable credits earned and refunds made;

(25) Limited English proficiency students means (a) for school fiscal years prior to school fiscal year 2009-10, the number of students with limited English

proficiency in a district from the most recent data available on November 1 of the school fiscal year preceding the school fiscal year in which aid is to be paid and (b) for school fiscal year 2009-10 and each school fiscal year thereafter, the number of students with limited English proficiency in a district from the most recent data available on November 1 of the school fiscal year preceding the school fiscal year in which aid is to be paid plus the difference of such students with limited English proficiency minus the average number of limited English proficiency students for such district, prior to such addition, for the three immediately preceding school fiscal years if such difference is greater than zero;

(26) Local system means a learning community for purposes of calculation of state aid for the second full school fiscal year after becoming a learning community and each school fiscal year thereafter, a unified system, a Class VI district and the associated Class I districts, or a Class II, III, IV, or V district and any affiliated Class I districts or portions of Class I districts. The membership, expenditures, and resources of Class I districts that are affiliated with multiple high school districts will be attributed to local systems based on the percent of the Class I valuation that is affiliated with each high school district;

(27) Low-income child means (a) for school fiscal years prior to 2008-09, a child under nineteen years of age living in a household having an annual adjusted gross income of fifteen thousand dollars or less for the second calendar year preceding the beginning of the school fiscal year for which aid is being calculated and (b) for school fiscal year 2008-09 and each school fiscal year thereafter, a child under nineteen years of age living in a household having an annual adjusted gross income for the second calendar year preceding the beginning of the school fiscal year for which aid is being calculated equal to or less than the maximum household income that would allow a student from a family of four people to be a free lunch and free milk student during the school fiscal year immediately preceding the school fiscal year for which aid is being calculated;

(28) Low-income students means the number of low-income children within the district multiplied by the ratio of the formula students in the district divided by the total children under nineteen years of age residing in the district as derived from income tax information;

(29) Most recently available complete data year means the most recent single school fiscal year for which the annual financial report, fall school district membership report, annual statistical summary, Nebraska income tax liability by school district for the calendar year in which the majority of the school fiscal year falls, and adjusted valuation data are available;

(30) Poverty students means (a) for school fiscal years prior to school fiscal year 2009-10, the number of low-income students or the number of students who are free lunch and free milk students in a district, whichever is greater, and (b) for school fiscal year 2009-10 and each school fiscal year thereafter, the number of low-income students or the number of students who are free lunch and free milk students in a district plus the difference of the number of low-income students or the number of students who are free lunch and free milk students in a district, whichever is greater, minus the average number of poverty students for such district, prior to such addition, for the three immediately preceding school fiscal years if such difference is greater than zero;

(31) Qualified early childhood education average daily membership means the product of the average daily membership for school fiscal year 2006-07 and each school fiscal year thereafter of students who will be eligible to attend kindergarten the following school year and are enrolled in an early childhood education program approved by the department pursuant to section 79-1103 for such school district for such school year multiplied by the ratio of the actual instructional hours of the program divided by one thousand thirty-two if: (a) The program is receiving a grant pursuant to such section for the third year; (b) the program has already received grants pursuant to such section for three years; or (c) the program has been approved pursuant to subsection (5) of section 79-1103 for such school year and the two preceding school years, including any such students in portions of any of such programs receiving an expansion grant;

(32) Qualified early childhood education fall membership means the product of membership on the last Friday in September 2006 and each year thereafter of students who will be eligible to attend kindergarten the following school year and are enrolled in an early childhood education program approved by the department pursuant to section 79-1103 for such school district for such school year multiplied by the ratio of the planned instructional hours of the program divided by one thousand thirty-two if: (a) The program is receiving a grant pursuant to such section for the third year; (b) the program has already received grants pursuant to such section for three years; or (c) the program has been approved pursuant to subsection (5) of section 79-1103 for such school year and the two preceding school years, including any such students in portions of any of such programs receiving an expansion grant;

(33) Regular route transportation means the transportation of students on regularly scheduled daily routes to and from the attendance center;

(34) Reorganized district means any district involved in a consolidation and currently educating students following consolidation;

(35) School year or school fiscal year means the fiscal year of a school district as defined in section 79-1091;

(36) Sparse local system means a local system that is not a very sparse local system but which meets the following criteria:

(a)(i) Less than two students per square mile in the county in which each high school is located, based on the school district census, (ii) less than one formula student per square mile in the local system, and (iii) more than ten miles between each high school attendance center and the next closest high school attendance center on paved roads;

(b)(i) Less than one and one-half formula students per square mile in the local system and (ii) more than fifteen miles between each high school attendance center and the next closest high school attendance center on paved roads;

(c)(i) Less than one and one-half formula students per square mile in the local system and (ii) more than two hundred seventy-five square miles in the local system; or

(d)(i) Less than two formula students per square mile in the local system and (ii) the local system includes an area equal to ninety-five percent or more of the square miles in the largest county in which a high school attendance center is located in the local system;

(37) Special education means specially designed kindergarten through grade twelve instruction pursuant to section 79-1125, and includes special education transportation;

(38) Special grant funds means the budgeted receipts for grants, including, but not limited to, Title I funds, Title VI funds, funds from the Education Innovation Fund, reimbursements for wards of the court, short-term borrowings including, but not limited to, registered warrants and tax anticipation notes, interfund loans, insurance settlements, and reimbursements to county government for previous overpayment. The state board shall approve a listing of grants that qualify as special grant funds;

(39) State aid means the amount of assistance paid to a district pursuant to the Tax Equity and Educational Opportunities Support Act;

(40) State board means the State Board of Education;

(41) State support means all funds provided to districts by the State of Nebraska for the general fund support of elementary and secondary education;

(42) Statewide average basic funding per formula student means the statewide total basic funding for all districts divided by the statewide total formula students for all districts;

(43) Statewide average general fund operating expenditures per formula student means the statewide total general fund operating expenditures for all districts divided by the statewide total formula students for all districts;

(44) Teacher has the definition found in section 79-101;

(45) Temporary aid adjustment factor means (a) for school fiscal years before school fiscal year 2007-08, one and one-fourth percent of the sum of the local system's transportation allowance, the local system's special receipts allowance, and the product of the local system's adjusted formula students multiplied by the average formula cost per student in the local system's cost grouping and (b) for school fiscal year 2007-08, one and one-fourth percent of the sum of the local system's transportation allowance, special receipts allowance, and distance education and telecommunications allowance and the product of the local system's adjusted formula students multiplied by the average formula cost per student in the local system's cost grouping;

(46) Tuitioned students means students in kindergarten through grade twelve of the district whose tuition is paid by the district to some other district or education agency; and

(47) Very sparse local system means a local system that has:

(a)(i) Less than one-half student per square mile in each county in which each high school attendance center is located based on the school district census, (ii) less than one formula student per square mile in the local system, and (iii) more than fifteen miles between the high school attendance center and the next closest high school attendance center on paved roads; or

(b)(i) More than four hundred fifty square miles in the local system, (ii) less than one-half student per square mile in the local system, and (iii) more than fifteen miles between each high school attendance center and the next closest high school attendance center on paved roads.

Source: Laws 1990, LB 1059, § 3; Laws 1991, LB 511, § 71; Laws 1992, LB 245, § 76; Laws 1994, LB 1290, § 3; Laws 1995, LB 840, § 4; R.S.Supp.,1995, § 79-3803; Laws 1996, LB 900, § 654; Laws

1996, LB 1050, § 12; Laws 1997, LB 347, § 29; Laws 1997, LB 710, § 5; Laws 1997, LB 713, § 1; Laws 1997, LB 806, § 31; Laws 1998, LB 306, § 42; Laws 1998, LB 1134, § 2; Laws 1998, LB 1219, § 15; Laws 1998, LB 1229, § 3; Laws 1998, Spec. Sess., LB 1, § 15; Laws 1999, LB 149, § 3; Laws 1999, LB 813, § 19; Laws 2001, LB 313, § 1; Laws 2001, LB 797, § 18; Laws 2001, LB 833, § 4; Laws 2002, LB 898, § 3; Laws 2005, LB 126, § 45; Laws 2005, LB 577, § 1; Laws 2006, LB 1024, § 73; Laws 2006, LB 1208, § 4; Referendum 2006, No. 422; Laws 2007, LB641, § 13; Laws 2008, LB988, § 9; Laws 2009, LB545, § 4; Laws 2009, LB549, § 26.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB545, section 4, with LB549, section 26, to reflect all amendments.

Note: Changes made by LB545 became effective May 20, 2009. Changes made by LB549 became effective August 30, 2009.

Cross References

Nebraska Budget Act, see section 13-501.
Nebraska Revenue Act of 1967, see section 77-2701.

79-1007.06 Poverty allowance; calculation.

(1) For school fiscal year 2008-09 and each school fiscal year thereafter, the department shall determine the poverty allowance for each school district that meets the requirements of this section and has not been disqualified pursuant to section 79-1007.07. Each school district shall designate a maximum poverty allowance on a form prescribed by the department on or before October 15 of the school fiscal year immediately preceding the school fiscal year for which aid is being calculated. The school district may decline to participate in the poverty allowance by providing the department with a maximum poverty allowance of zero dollars on such form on or before October 15 of the school fiscal year immediately preceding the school fiscal year for which aid is being calculated. Each school district designating a maximum poverty allowance greater than zero dollars shall submit a poverty plan pursuant to section 79-1013.

(2) The poverty allowance for each school district that has not been disqualified pursuant to section 79-1007.07 shall equal the lesser of:

(a) The maximum amount designated pursuant to subsection (1) of this section by the school district in the local system, if such school district designated a maximum amount, for the school fiscal year for which aid is being calculated; or

(b) The sum of:

(i) The statewide average general fund operating expenditures per formula student multiplied by 0.0375 then multiplied by the poverty students comprising more than five percent and not more than ten percent of the formula students in the school district; plus

(ii) The statewide average general fund operating expenditures per formula student multiplied by 0.0750 then multiplied by the poverty students comprising more than ten percent and not more than fifteen percent of the formula students in the school district; plus

(iii) The statewide average general fund operating expenditures per formula student multiplied by 0.1125 then multiplied by the poverty students comprising more than fifteen percent and not more than twenty percent of the formula students in the school district; plus

(iv) The statewide average general fund operating expenditures per formula student multiplied by 0.1500 then multiplied by the poverty students comprising more than twenty percent and not more than twenty-five percent of the formula students in the school district; plus

(v) The statewide average general fund operating expenditures per formula student multiplied by 0.1875 then multiplied by the poverty students comprising more than twenty-five percent and not more than thirty percent of the formula students in the school district; plus

(vi) The statewide average general fund operating expenditures per formula student multiplied by 0.2250 then multiplied by the poverty students comprising more than thirty percent of the formula students in the school district.

Source: Laws 2006, LB 1024, § 79; Laws 2007, LB641, § 19; Laws 2008, LB988, § 28; Laws 2009, LB549, § 27.
Effective date August 30, 2009.

79-1007.07 Financial reports relating to poverty allowance; department; duties; report; appeal of department decisions.

(1)(a) For school fiscal year 2007-08, the annual financial report required pursuant to section 79-528 shall include:

(i) The amount of federal funds received based on poverty as defined by the federal program providing the funds; and

(ii) The expenditures and sources of funding for each program related to poverty with a narrative description of the program and the method used to allocate money to the program and within the program.

(b) The department shall set up accounting codes for the receipts and expenditures required to be reported on the annual financial report pursuant to this subsection. The department shall also determine for each school district an amount that shall be deemed the poverty allowance for purposes of this section. Such amount shall equal the adjustments to the weighted formula students pursuant to subdivision (1)(c)(iii) of section 79-1007.01 multiplied by the average formula cost per student in the school district's cost grouping.

(2)(a) For school fiscal year 2008-09 and each school fiscal year thereafter, the annual financial report required pursuant to section 79-528 shall include:

(i) The amount of the poverty allowance used in the certification of state aid pursuant to section 79-1022 for such school fiscal year;

(ii) The amount of federal funds received based on poverty as defined by the federal program providing the funds;

(iii) The expenditures and sources of funding for each program related to poverty with a narrative description of the program, the method used to allocate money to the program and within the program, and the program's relationship to the poverty plan submitted pursuant to section 79-1013 for such school fiscal year;

(iv) The expenditures and sources of funding for support costs directly attributable to implementing the district's poverty plan; and

(v) An explanation of how any required elements of the poverty plan for such school fiscal year were met.

(b) The department shall set up accounting codes for the receipts and expenditures required to be reported on the annual financial report pursuant to this subsection.

(3) For school fiscal year 2009-10 and each school fiscal year thereafter, the department shall determine the poverty allowance expenditures using the reported expenditures on the annual financial report for the most recently available complete data year that would include in the poverty allowance expenditures only those expenditures that were used to specifically address issues related to the education of students living in poverty or to the implementation of the poverty plan, that do not replace expenditures that would have occurred if the students involved in the program did not live in poverty, that are not included in other allowances, and that are paid for with noncategorical funds generated by state or local taxes or funds distributed through the Tax Equity and Educational Opportunities Support Act pursuant to the federal American Recovery and Reinvestment Act of 2009. The department shall establish a procedure to allow school districts to receive preapproval for categories of expenditures that could be included in poverty allowance expenditures.

(4) For school fiscal year 2009-10 and each school fiscal year thereafter, if the poverty allowance expenditures do not equal 117.65 percent or more of the poverty allowance for the most recently available complete data year, the department shall calculate a poverty allowance correction. The poverty allowance correction shall equal the poverty allowance minus eighty-five percent of the poverty allowance expenditures. If the poverty allowance expenditures do not equal fifty percent or more of the allowance for such school fiscal year, the school district shall also be disqualified from receiving a poverty allowance for the school fiscal year for which aid is being calculated.

(5) For school fiscal year 2010-11 and each school fiscal year thereafter, if the department determines that the school district did not meet the required elements of the poverty plan for the most recently available complete data year, the department shall calculate a poverty allowance correction equal to fifty percent of the poverty allowance for such school fiscal year and the school district shall also be disqualified from receiving a poverty allowance for the school fiscal year for which aid is being calculated. Any poverty allowance correction calculated pursuant to this subsection shall be added to any poverty allowance correction calculated pursuant to subsection (4) of this section to arrive at the total poverty allowance correction.

(6) The department may request additional information from any school district to assist with calculations and determinations pursuant to this section. If the school district does not provide information upon the request of the department pursuant to this section, the school district shall be disqualified from receiving a poverty allowance for the school fiscal year for which aid is being calculated.

(7) The department shall annually provide the Legislature with a report containing a general description of the expenditures and funding sources for programs related to poverty statewide and specific descriptions of the expenditures and funding sources for programs related to poverty for each school district.

(8) The state board shall establish a procedure for appeal of decisions of the department to the state board for a final determination.

Source: Laws 2006, LB 1024, § 80; Laws 2007, LB641, § 20; Laws 2008, LB988, § 29; Laws 2009, LB545, § 5.
Effective date May 20, 2009.

79-1007.08 Limited English proficiency allowance; calculation.

(1) For school fiscal year 2008-09 and each school fiscal year thereafter, the department shall determine the limited English proficiency allowance for each school district that meets the requirements of this section and has not been disqualified pursuant to section 79-1007.09. Each school district shall designate a maximum limited English proficiency allowance on or before October 15 of the school fiscal year immediately preceding the school fiscal year for which aid is being calculated. The school district may decline to participate in the limited English proficiency allowance by providing the department with a maximum limited English proficiency allowance of zero dollars on such form on or before October 15 of the school fiscal year immediately preceding the school fiscal year for which aid is being calculated. Each school district designating a maximum limited English proficiency allowance greater than zero dollars shall submit a limited English proficiency plan pursuant to section 79-1014.

(2) The limited English proficiency allowance for each school district that has not been disqualified pursuant to section 79-1007.09 shall equal the lesser of:

(a) The amount designated pursuant to subsection (1) of this section by the school district, if such school district designated a maximum amount, for the school fiscal year for which aid is being calculated; or

(b) The statewide average general fund operating expenditures per formula student multiplied by 0.25 then multiplied by:

(i) The number of students in the school district who are limited English proficient as defined under 20 U.S.C. 7801, as such section existed on January 1, 2006, if such number is greater than or equal to twelve;

(ii) Twelve, if the number of students in the school district who are limited English proficient as defined under 20 U.S.C. 7801, as such section existed on January 1, 2006, is greater than or equal to one and less than twelve; or

(iii) Zero, if the number of students in the school district who are limited English proficient as defined under 20 U.S.C. 7801, as such section existed on January 1, 2006, is less than one.

Source: Laws 2006, LB 1024, § 81; Laws 2007, LB641, § 21; Laws 2008, LB988, § 30; Laws 2009, LB549, § 28.
Effective date August 30, 2009.

79-1007.09 Financial reports relating to limited English proficiency; department; duties; report; appeal of department decisions.

(1)(a) For school fiscal year 2007-08, the annual financial report required pursuant to section 79-528 shall include:

(i) The amount of federal funds received based on students who are limited English proficient as defined by the federal program providing the funds; and

(ii) The expenditures and sources of funding for each program related to limited English proficiency with a narrative description of the program and the method used to allocate money to the program and within the program.

(b) The department shall set up accounting codes for the receipts and expenditures required to be reported on the annual financial report pursuant to this subsection. The department shall also determine for each school district an amount that shall be deemed the limited English proficiency allowance for purposes of this section. Such amount shall equal the adjustments to the weighted formula students pursuant to subdivision (1)(c)(ii) of section 79-1007.01 multiplied by the average formula cost per student in the school district's cost grouping.

(2)(a) For school fiscal year 2008-09 and each school fiscal year thereafter, the annual financial report required pursuant to section 79-528 shall include:

(i) The amount of the limited English proficiency allowance used in the certification of state aid pursuant to section 79-1022 for such school fiscal year;

(ii) The amount of federal funds received based on students who are limited English proficient as defined by the federal program providing the funds;

(iii) The expenditures and sources of funding for each program related to limited English proficiency with a narrative description of the program, the method used to allocate money to the program and within the program, and the program's relationship to the limited English proficiency plan submitted pursuant to section 79-1014 for such school fiscal year;

(iv) The expenditures and sources of funding for support costs directly attributable to implementing the district's limited English proficiency plan; and

(v) An explanation of how any required elements of the limited English proficiency plan for such school fiscal year were met.

(b) The department shall set up accounting codes for the receipts and expenditures required to be reported on the annual financial report pursuant to this subsection.

(3) For school fiscal year 2009-10 and each school fiscal year thereafter, the department shall determine the limited English proficiency allowance expenditures using the reported expenditures on the annual financial report for the most recently available complete data year that would only include in the limited English proficiency allowance expenditures those expenditures that were used to specifically address issues related to the education of students with limited English proficiency or to the implementation of the limited English proficiency plan, that do not replace expenditures that would have occurred if the students involved in the program did not have limited English proficiency, that are not included in other allowances, and that are paid for with noncategorical funds generated by state or local taxes or funds distributed through the Tax Equity and Educational Opportunities Support Act pursuant to the federal American Recovery and Reinvestment Act of 2009. The department shall establish a procedure to allow school districts to receive preapproval for categories of expenditures that could be included in limited English proficiency allowance expenditures.

(4) For school fiscal year 2009-10 and each school fiscal year thereafter, if the limited English proficiency allowance expenditures do not equal 117.65 percent or more of the limited English proficiency allowance for the most recently available complete data year, the department shall calculate a limited English

proficiency allowance correction. The limited English proficiency allowance correction shall equal the limited English proficiency allowance minus eighty-five percent of the limited English proficiency allowance expenditures. If the limited English proficiency allowance expenditures do not equal fifty percent or more of the allowance for such school fiscal year, the school district shall also be disqualified from receiving a limited English proficiency allowance for the school fiscal year for which aid is being calculated.

(5) For school fiscal year 2010-11 and each school fiscal year thereafter, if the department determines that the school district did not meet the required elements of the limited English proficiency plan for the most recently available complete data year, the department shall calculate a limited English proficiency allowance correction equal to fifty percent of the limited English proficiency allowance for such school fiscal year and the school district shall also be disqualified from receiving a limited English proficiency allowance for the school fiscal year for which aid is being calculated. Any limited English proficiency allowance correction calculated pursuant to this subsection shall be added to any limited English proficiency allowance correction calculated pursuant to subsection (4) of this section to arrive at the total limited English proficiency allowance correction.

(6) The department may request additional information from any school district to assist with calculations and determinations pursuant to this section. If the school district does not provide information upon the request of the department pursuant to this section, the school district shall be disqualified from receiving a limited English proficiency allowance for the school fiscal year for which aid is being calculated.

(7) The department shall annually provide the Legislature with a report containing a general description of the expenditures and funding sources for programs related to limited English proficiency statewide and specific descriptions of the expenditures and funding sources for programs related to limited English proficiency for each school district.

(8) The state board shall establish a procedure for appeal of decisions of the department to the state board for a final determination.

Source: Laws 2006, LB 1024, § 82; Laws 2007, LB641, § 22; Laws 2008, LB988, § 31; Laws 2009, LB545, § 6.
Effective date May 20, 2009.

79-1007.10 Cost growth factor; computation.

(1) For state aid calculated for all school fiscal years except school fiscal years 2009-10 through 2013-14, the cost growth factor shall equal the sum of: (a) One; plus (b) the basic allowable growth rate pursuant to section 79-1025 for the school fiscal year in which the aid is to be distributed; plus (c) the basic allowable growth rate pursuant to section 79-1025 for the school fiscal year immediately preceding the school fiscal year in which the aid is to be distributed; plus (d) one percent.

(2)(a) For state aid calculated for school fiscal year 2009-10, the cost growth factor shall equal the sum of: (i) One; plus (ii) the basic allowable growth rate pursuant to section 79-1025 for the school fiscal year in which the aid is to be distributed; plus (iii) the basic allowable growth rate pursuant to section 79-1025 for the school fiscal year immediately preceding the school fiscal year in which the aid is to be distributed; plus (iv) one and five-tenths percent.

(b) For state aid calculated for school fiscal year 2010-11, the cost growth factor shall equal the sum of: (i) One; plus (ii) the basic allowable growth rate pursuant to section 79-1025 for the school fiscal year in which the aid is to be distributed; plus (iii) the basic allowable growth rate pursuant to section 79-1025 for the school fiscal year immediately preceding the school fiscal year in which the aid is to be distributed; plus (iv) two percent.

(c) For state aid calculated for school fiscal years 2011-12 through 2013-14, the cost growth factor shall equal the sum of: (i) One; plus (ii) the basic allowable growth rate pursuant to section 79-1025 for the school fiscal year in which the aid is to be distributed; plus (iii) the basic allowable growth rate pursuant to section 79-1025 for the school fiscal year immediately preceding the school fiscal year in which the aid is to be distributed; plus (iv) one and five-tenths percent.

Source: Laws 2006, LB 1024, § 83; Laws 2007, LB21, § 2; Laws 2008, LB988, § 32; Laws 2009, LB545, § 7.
Effective date May 20, 2009.

79-1007.11 School district formula need; calculation.

(1) Except as otherwise provided in this section, for school fiscal year 2008-09, each school district's formula need shall equal the difference of the sum of the school district's basic funding, poverty allowance, limited English proficiency allowance, elementary class size allowance, focus school and program allowance, summer school allowance, special receipts allowance, transportation allowance, elementary site allowance, distance education and telecommunications allowance, averaging adjustment, and teacher education adjustment, minus the sum of the limited English proficiency allowance correction, poverty allowance correction, and local choice adjustment.

(2) Except as otherwise provided in this section, for school fiscal years 2009-10 and 2010-11, each school district's formula need shall equal the difference of the sum of the school district's basic funding, poverty allowance, limited English proficiency allowance, elementary class size allowance, focus school and program allowance, summer school allowance, special receipts allowance, transportation allowance, elementary site allowance, instructional time allowance, distance education and telecommunications allowance, averaging adjustment, teacher education adjustment, new learning community transportation adjustment, student growth adjustment, and new school adjustment, minus the sum of the limited English proficiency allowance correction, poverty allowance correction, and local choice adjustment.

(3) Except as otherwise provided in this section, for school fiscal years 2011-12 and 2012-13, each school district's formula need shall equal the difference of the sum of the school district's basic funding, poverty allowance, limited English proficiency allowance, elementary class size allowance, focus school and program allowance, summer school allowance, special receipts allowance, transportation allowance, elementary site allowance, instructional time allowance, distance education and telecommunications allowance, averaging adjustment, teacher education adjustment, new learning community transportation adjustment, student growth adjustment, any positive student growth adjustment correction, and new school adjustment, minus the sum of the limited English proficiency allowance correction, poverty allowance correction,

any negative student growth adjustment correction, and local choice adjustment.

(4) Except as otherwise provided in this section, for school fiscal year 2013-14 and each school fiscal year thereafter, each school district's formula need shall equal the difference of the sum of the school district's basic funding, poverty allowance, limited English proficiency allowance, focus school and program allowance, summer school allowance, special receipts allowance, transportation allowance, elementary site allowance, instructional time allowance, distance education and telecommunications allowance, averaging adjustment, teacher education adjustment, new learning community transportation adjustment, student growth adjustment, any positive student growth adjustment correction, and new school adjustment, minus the sum of the limited English proficiency allowance correction, poverty allowance correction, any negative student growth adjustment correction, and local choice adjustment.

(5) If the formula need calculated for a school district pursuant to subsections (1) through (4) of this section is less than one hundred percent of the formula need for such district for the school fiscal year immediately preceding the school fiscal year for which aid is being calculated, the formula need for such district shall equal one hundred percent of the formula need for such district for the school fiscal year immediately preceding the school fiscal year for which aid is being calculated.

(6) Except as provided in subsection (8) of this section, if the formula need calculated for a school district pursuant to subsections (1) through (4) of this section is more than one hundred twelve percent of the formula need for such district for the school fiscal year immediately preceding the school fiscal year for which aid is being calculated, the formula need for such district shall equal one hundred twelve percent of the formula need for such district for the school fiscal year immediately preceding the school fiscal year for which aid is being calculated, except that the formula need shall not be reduced pursuant to this subsection for any district (a) receiving a student growth adjustment for the school fiscal year for which aid is being calculated or (b) for school fiscal year 2008-09, for which the formula students for the certification of aid pursuant to section 79-1022 for school fiscal year 2008-09 minus the formula students for the certification of aid pursuant to section 79-1022 for school fiscal year 2007-08 equals at least the greater of twenty-five students or one percent of the formula students for the certification of aid pursuant to section 79-1022 for school fiscal year 2007-08.

(7) For purposes of subsections (5) and (6) of this section, the formula need for the school fiscal year immediately preceding the school fiscal year for which aid is being calculated shall be the formula need used in the final calculation of aid pursuant to section 79-1065 and for districts that were affected by a reorganization with an effective date in the calendar year preceding the calendar year in which aid is certified for the school fiscal year for which aid is being calculated, the formula need for the school fiscal year immediately preceding the school fiscal year for which aid is being calculated shall be attributed to the affected school districts based on information provided to the department by the school districts or proportionally based on the adjusted valuation transferred if sufficient information has not been provided to the department.

(8) For state aid calculated for the first full school fiscal year of a new learning community, if the formula need calculated for a member school district pursuant to subsections (1) through (5) of this section is less than the sum of the school district's state aid certified for the school fiscal year immediately preceding the first full school fiscal year of the learning community plus the school district's other actual receipts included in local system formula resources pursuant to section 79-1018.01 for such school fiscal year plus the product of the school district's general fund levy for such school fiscal year up to one dollar and five cents multiplied by the school district's assessed valuation for such school fiscal year, the formula need for such school district for the school fiscal year for which aid is being calculated shall equal such sum.

Source: Laws 2008, LB988, § 13; Laws 2008, LB1153, § 7; Laws 2009, LB545, § 8.
Effective date May 20, 2009.

79-1007.16 Basic funding; calculation.

For school fiscal year 2008-09 and each school fiscal year thereafter, the department shall calculate basic funding for each district as follows:

(1) A comparison group shall be established for each district consisting of the districts for which basic funding is being calculated, the five larger districts that are closest in size to the district for which basic funding is being calculated as measured by formula students, and the five smaller districts that are closest in size to the district for which basic funding is being calculated as measured by formula students. If there are not five districts that are larger than the district for which basic funding is being calculated or if there are not five districts that are smaller than the district for which basic funding is being calculated, the comparison group shall consist of only as many districts as fit the criteria. If more than one district has exactly the same number of formula students as the largest or smallest district in the comparison group, all of the districts with exactly the same number of formula students as the largest or smallest districts in the comparison group shall be included in the comparison group. If one or more districts have exactly the same number of formula students as the district for which basic funding is being calculated, all such districts shall be included in the comparison group in addition to the five larger districts and the five smaller districts. The comparison group shall remain the same for the final calculation of aid pursuant to section 79-1065;

(2) For districts with nine hundred or more formula students, basic funding shall equal the formula students multiplied by the average of the adjusted general fund operating expenditures per formula student for each district in the comparison group, excluding both the district with the highest adjusted general fund operating expenditures per formula student and the district with the lowest adjusted general fund operating expenditures per formula student of the districts in the comparison group; and

(3) For districts with fewer than nine hundred formula students, basic funding shall equal the product of the average of the adjusted general fund operating expenditures for each district in the comparison group, excluding both the district with the highest adjusted general fund operating expenditures

and the district with the lowest adjusted general fund operating expenditures of the districts in the comparison group.

Source: Laws 2008, LB988, § 18; Laws 2009, LB549, § 29.
Effective date August 30, 2009.

79-1007.18 Averaging adjustment; calculation.

(1) For school fiscal year 2008-09 and each school fiscal year thereafter, the department shall calculate an averaging adjustment for districts if the basic funding per formula student is less than the averaging adjustment threshold and the general fund levy for the school fiscal year immediately preceding the school fiscal year for which aid is being calculated was at least ninety-six cents per one hundred dollars of taxable valuation for aid calculated for school fiscal year 2008-09 and at least one dollar per one hundred dollars of taxable valuation for aid calculated for school fiscal year 2009-10 and each school fiscal year thereafter. For school districts that are members of a learning community, the general fund levy for purposes of this section includes both the common general fund levy and the school district general fund levy authorized pursuant to subdivisions (2)(b) and (2)(c) of section 77-3442. The averaging adjustment for aid calculated for school fiscal year 2008-09 shall equal seventy-five percent of the product of the district's formula students multiplied by the percentage specified in subsection (4) of this section for such district of the difference between the averaging adjustment threshold minus such district's basic funding per formula student. The averaging adjustment for aid calculated for school fiscal year 2009-10 and each school fiscal year thereafter shall equal the district's formula students multiplied by the percentage specified in this section for such district of the difference between the averaging adjustment threshold minus such district's basic funding per formula student.

(2)(a) For school fiscal year 2008-09, the averaging adjustment threshold shall equal the statewide average basic funding per formula student.

(b) For school fiscal year 2009-10 and each school fiscal year thereafter, the averaging adjustment threshold shall equal the lesser of (i) the averaging adjustment threshold for the school fiscal year immediately preceding the school fiscal year for which aid is being calculated increased by the sum of the basic allowable growth rate plus five-tenths of one percent or (ii) the statewide average basic funding per formula student for the school fiscal year for which aid is being calculated.

(3) The percentage to be used in the calculation of an averaging adjustment shall be based on the general fund levy for the school fiscal year immediately preceding the school fiscal year for which aid is being calculated.

(4) The percentages to be used in the calculation of averaging adjustments for school fiscal year 2008-09 shall be as follows:

(a) If such levy was at least ninety-six cents per one hundred dollars of taxable valuation but less than ninety-seven cents per one hundred dollars of taxable valuation, the percentage shall be ten percent;

(b) If such levy was at least ninety-seven cents per one hundred dollars of taxable valuation but less than ninety-eight cents per one hundred dollars of taxable valuation, the percentage shall be twenty percent;

(c) If such levy was at least ninety-eight cents per one hundred dollars of taxable valuation but less than ninety-nine cents per one hundred dollars of taxable valuation, the percentage shall be thirty percent;

(d) If such levy was at least ninety-nine cents per one hundred dollars of taxable valuation but less than one dollar per one hundred dollars of taxable valuation, the percentage shall be forty percent;

(e) If such levy was at least one dollar per one hundred dollars of taxable valuation but less than one dollar and one cent per one hundred dollars of taxable valuation, the percentage shall be fifty percent;

(f) If such levy was at least one dollar and one cent per one hundred dollars of taxable valuation but less than one dollar and two cents per one hundred dollars of taxable valuation, the percentage shall be sixty percent;

(g) If such levy was at least one dollar and two cents per one hundred dollars of taxable valuation but less than one dollar and three cents per one hundred dollars of taxable valuation, the percentage shall be seventy percent;

(h) If such levy was at least one dollar and three cents per one hundred dollars of taxable valuation but less than one dollar and four cents per one hundred dollars of taxable valuation, the percentage shall be eighty percent; and

(i) If such levy was at least one dollar and four cents per one hundred dollars of taxable valuation, the percentage shall be ninety percent.

(5) The percentages to be used in the calculation of averaging adjustments for school fiscal year 2009-10 and each school fiscal year thereafter shall be as follows:

(a) If such levy was at least one dollar per one hundred dollars of taxable valuation but less than one dollar and one cent per one hundred dollars of taxable valuation, the percentage shall be fifty percent;

(b) If such levy was at least one dollar and one cent per one hundred dollars of taxable valuation but less than one dollar and two cents per one hundred dollars of taxable valuation, the percentage shall be sixty percent;

(c) If such levy was at least one dollar and two cents per one hundred dollars of taxable valuation but less than one dollar and three cents per one hundred dollars of taxable valuation, the percentage shall be seventy percent;

(d) If such levy was at least one dollar and three cents per one hundred dollars of taxable valuation but less than one dollar and four cents per one hundred dollars of taxable valuation, the percentage shall be eighty percent; and

(e) If such levy was at least one dollar and four cents per one hundred dollars of taxable valuation, the percentage shall be ninety percent.

Source: Laws 2008, LB988, § 20; Laws 2009, LB545, § 9.
Effective date May 20, 2009.

79-1007.20 Student growth adjustment; school district; application; department; powers.

(1) For school fiscal year 2009-10 and each school fiscal year thereafter, school districts may apply to the department for a student growth adjustment, on a form prescribed by the department, on or before October 15 of the school fiscal year immediately preceding the school fiscal year for which aid is being

calculated. Such form shall require an estimate of the average daily membership for the school fiscal year for which aid is being calculated, the estimated student growth calculated by subtracting the fall membership of the current school fiscal year from the estimated average daily membership for the school fiscal year for which aid is being calculated, and evidence supporting the estimates. On or before the immediately following December 1, the department shall approve the estimated student growth, approve a modified student growth, or deny the application based on the requirements of this section, the evidence submitted on the application, and any other information provided by the department. The state board shall establish procedures for appeal of decisions of the department to the state board for final determination.

(2) The student growth adjustment for each approved district shall equal the sum of the product of the school district's basic funding per formula student multiplied by the difference of the approved student growth minus the greater of twenty-five students or one percent of the fall membership for the school fiscal year immediately preceding the school fiscal year for which aid is being calculated plus the product of fifty percent of the school district's basic funding per formula student multiplied by the greater of twenty-five students or one percent of the fall membership for the school fiscal year immediately preceding the school fiscal year for which aid is being calculated.

(3) For school fiscal year 2011-12 and each school fiscal year thereafter, the department shall calculate a student growth adjustment correction for each district that received a student growth adjustment for aid distributed in the most recently available complete data year. Such student growth correction shall equal the product of the difference of the average daily membership for such school fiscal year minus the sum of the formula students and the approved student growth used to calculate the student growth adjustment for such school fiscal year multiplied by the school district's basic funding per formula student used in the final calculation of aid pursuant to section 79-1065 for such school fiscal year, except that the absolute value of a negative correction shall not exceed the original adjustment.

Source: Laws 2008, LB988, § 22; Laws 2009, LB549, § 30.
Effective date August 30, 2009.

79-1007.21 Two-year new school adjustment; school district; application; department; powers.

(1) For school fiscal year 2009-10 and each school fiscal year thereafter, school districts may apply to the department for a two-year new school adjustment, on a form prescribed by the department, on or before October 15 of the school fiscal year immediately preceding the school fiscal year for which the first-year new school adjustment would be included in the calculation of state aid. Such form shall require evidence of recent and expected student growth, evidence that a new building or the expansion or remodeling of an existing building is being completed to provide additional student capacity to accommodate such growth and not to replace an existing building, evidence that the school fiscal year for which the district would receive the first-year adjustment will be the first full school fiscal year for which students will utilize such additional capacity, and evidence of the estimated additional student capacity to be provided by the project. On or before the immediately following December 1, the department shall approve the estimated additional capacity for

use in the adjustment, approve a modified estimated additional capacity for use in the adjustment, or deny the application based on the requirements of this section, the evidence submitted on the application, and any other information provided by the department. Each approval shall include an approved estimated additional student capacity for the new building. The state board shall establish procedures for appeal of decisions of the department to the state board for final determination.

(2) The first-year new school adjustment for each approved district shall equal the school district's basic funding per formula student multiplied by twenty percent of the approved estimated additional student capacity. The second-year new school adjustment for each approved district shall equal the school district's basic funding per formula student multiplied by ten percent of the approved estimated additional student capacity.

Source: Laws 2008, LB988, § 23; Laws 2009, LB549, § 31.
Effective date August 30, 2009.

79-1007.22 New learning community transportation adjustment; application; department; powers.

(1) For state aid calculated for each of the second and third full school fiscal years of a new learning community, each member school district may apply to the department for a new learning community transportation adjustment, on a form prescribed by the department, on or before October 15 of the school fiscal year immediately preceding the school fiscal year for which the new learning community transportation adjustment would be included in the calculation of state aid. Such form shall require evidence supporting estimates of increased transportation costs for the district due to the provisions of subsection (2) of section 79-611. On or before the immediately following December 1, the department shall approve the estimate of increased transportation costs for use in the adjustment, approve a modified estimate of increased transportation costs for use in the adjustment, or deny the application based on the requirements of this section, the evidence submitted on the application, and any other information provided by the department. The state board shall establish procedures for appeal of decisions of the department to the state board for final determination.

(2) The new learning community transportation adjustment shall equal the approved estimate of increased transportation costs due to the provisions of subsection (2) of section 79-611. School districts shall submit evidence of the actual increase in transportation costs due to the provisions of subsection (2) of section 79-611, and the department shall recalculate the adjustment using such actual costs pursuant to section 79-1065.

Source: Laws 2008, LB988, § 24; Laws 2009, LB62, § 4; Laws 2009, LB549, § 32.

Note: Changes made by LB62 became effective February 13, 2009. Changes made by LB549 became effective August 30, 2009.

79-1007.23 Instructional time allowance; calculation.

For state aid calculated for school fiscal year 2009-10 and each school fiscal year thereafter:

(1) The department shall calculate an instructional time allowance for each district equal to the product of the formula students of such district multiplied by the instructional time factor for such district multiplied by eighty-five

percent of the statewide average general fund operating expenditures per formula student;

(2) The instructional time factor shall equal the difference of the ratio of the district's average hours of instruction for each full-time student during the regular school year for the most recently available complete data year divided by: (a) For state aid calculated for school fiscal year 2009-10, the comparison group average hours of instruction for each full-time student during the regular school year for the most recently available complete data year minus one; or (b) for state aid calculated for school fiscal year 2010-11 and each school fiscal year thereafter, the statewide average hours of instruction for each full-time student during the regular school year for the most recently available complete data year minus one, except that if the result is less than zero, the instructional time factor shall equal zero; and

(3) The comparison group average hours of instruction for each full-time student shall be an average of the averages for all school districts in the comparison group. The average hours of instruction shall be defined by the department and shall not include extracurricular activities outside of the regular school day or time designated for students to eat lunch. The statewide average hours of instruction for each full-time student shall be an average of the averages for all school districts.

Source: Laws 2008, LB988, § 25; Laws 2009, LB545, § 10.
Effective date May 20, 2009.

79-1007.24 Aid stabilization; calculation.

(1) For school fiscal year 2008-09, aid stabilization shall be calculated for each local system and disbursed in an amount equal to the difference of the state aid paid to such local system for school fiscal year 2007-08 pursuant to section 79-1022 minus two and one-half percent of the need calculated for the school fiscal year for which aid is being calculated and minus the sum of the calculated equalization aid, allocated income tax funds, and net option funding for such school fiscal year, except that aid stabilization shall not be less than zero.

(2) For school fiscal year 2009-10, aid stabilization shall be calculated for each local system and disbursed in an amount equal to the difference of the state aid paid to such local system for school fiscal year 2007-08 pursuant to section 79-1022 minus five percent of the need calculated for the school fiscal year for which aid is being calculated and minus the sum of the calculated equalization aid, allocated income tax funds, and net option funding for such school fiscal year, except that aid stabilization shall not be less than zero. If the amount actually paid to a local system during school fiscal year 2007-08 was different than the amount certified pursuant to section 79-1022 due to a reorganization affecting such local system, the amount that was actually paid to such local system during such school fiscal year shall be deemed the amount paid pursuant to section 79-1022.

Source: Laws 2008, LB988, § 26; Laws 2009, LB545, § 11.
Effective date May 20, 2009.

79-1011 Incentives for consolidation; qualification; requirements; payment.

(1) To encourage consolidation of Class II and III school districts with less than three hundred ninety students, incentives shall be paid to reorganized

Class II, III, IV, or V districts resulting from consolidations which meet the requirements of this section. This section shall only apply to consolidations with an effective date after May 31, 2009, and before June 1, 2011.

(2) To qualify for incentive payments under this section, the consolidation must be approved for incentive payments by the State Committee for the Reorganization of School Districts. Consolidating school districts shall file an application with the state committee on or before June 15, 2009, or within thirty days following the issuance of the boundary change order pursuant to subsection (1) of section 79-479, whichever is later. The state committee shall approve or disapprove incentive payments within thirty days after receipt of the application.

(3) For incentive payments to be approved by the state committee, a reorganization study, including efficiency, demographic, curriculum, facility, financial, and community components, must be completed prior to the reorganization. If a study containing such elements has been completed and the study indicates that the reorganization will most likely result in more efficiency in the delivery of educational services or greater educational opportunities, the state committee may approve incentive payments.

(4) Incentive payments shall be based on the number of students moving from Class II or III school districts with less than three hundred ninety students into a reorganized Class II, III, IV, or V school district with at least three hundred ninety students based on the average daily membership in each affected district in the school fiscal year immediately preceding the first school fiscal year the boundary change will be in effect and the average daily membership the consolidated district would have had following the boundary change if it had occurred in the school fiscal year immediately preceding the first school fiscal year the boundary change will be in effect. The incentive amount for each district involved in the reorganization having an average daily membership of less than three hundred ninety students shall equal one hundred twenty-five thousand dollars plus the product of five hundred dollars per student multiplied by the difference of three hundred ninety students minus the average daily membership in such district.

(5) Except as otherwise provided in this subsection, base fiscal year incentive payments shall equal fifty percent of the amount calculated pursuant to subsection (4) of this section. Base fiscal year incentive payments shall be calculated as of August 2 immediately preceding the base fiscal year and shall be paid directly to the reorganized district from the School District Reorganization Fund pursuant to subsection (6) of this section. The payments shall be made in ten as nearly as possible equal payments on the last business day of each month, beginning in September and ending the following June, for the base fiscal year. If the total amount of base fiscal year incentive payments for that school fiscal year exceeds the amount in the School District Reorganization Fund, the base fiscal year incentive payments shall be reduced proportionately so that the total amount of base fiscal year incentive payments equals the amount of funds so appropriated. The base fiscal year incentive payments shall not be included in local system formula resources as calculated under section 79-1018.01.

(6) The amount calculated pursuant to subsection (4) of this section minus the amount of base fiscal year incentive payments pursuant to subsection (5) of this section shall be paid out of any remaining funds in the School District

Reorganization Fund after base fiscal year incentive payments. If the total amount of second-year incentive payments exceeds the remaining funds, the second-year incentive payments shall be reduced proportionately so that the total amount of second-year incentive payments equals the amount in the fund. Second-year incentive payments shall not be included in local system formula resources as calculated pursuant to section 79-1018.01.

Source: Laws 2004, LB 1091, § 9; Laws 2009, LB545, § 12.
Effective date May 20, 2009.

79-1012 School District Reorganization Fund; created; use; investment.

The School District Reorganization Fund is created. The fund shall be administered by the department. The fund shall consist of money transferred from the Education Innovation Fund and shall be used to provide payments to reorganized school districts pursuant to section 79-1011. Any money remaining in the School District Reorganization Fund on July 1, 2013, shall be transferred to the Education Innovation Fund on such date. Any money in the School District Reorganization 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 2004, LB 1091, § 10; Laws 2007, LB603, § 4; Laws 2009, LB545, § 13.
Effective date May 20, 2009.

Cross References

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

79-1014 Limited English proficiency plan; submission required; when; review; approval; elements required; appeal.

(1) On or before October 10 of each year, each school district designating a maximum limited English proficiency allowance greater than zero dollars shall submit a limited English proficiency plan for the next school fiscal year to the department and to the learning community coordinating council of any learning community of which the school district is a member. On or before the immediately following December 1, (a) the department shall approve or disapprove such plans for school districts that are not members of a learning community, based on the inclusion of the elements required pursuant to this section and (b) the learning community coordinating council, and, as to the applicable portions thereof, each achievement subcouncil, shall approve or disapprove such plan for school districts that are members of such learning community, based on the inclusion of such elements. On or before the immediately following December 5, each learning community coordinating council shall certify to the department the approval or disapproval of the limited English proficiency plan for each member school district.

(2) In order to be approved pursuant to this section, a limited English proficiency plan must include an explanation of how the school district will address the following issues for such school fiscal year:

(a) Identification of students with limited English proficiency;

(b) Instructional approaches;

(c) Assessment of such students' progress toward mastering the English language; and

(d) An evaluation to determine the effectiveness of the elements of the limited English proficiency plan.

(3) The state board shall establish a procedure for appeal of decisions of the department and of learning community coordinating councils to the state board for a final determination.

Source: Laws 2007, LB641, § 24; Laws 2008, LB988, § 37; Laws 2009, LB549, § 33.
Effective date August 30, 2009.

79-1015 Repealed. Laws 2009, LB 545, § 26.

79-1016 Adjusted valuation; how established; objections; filing; appeal; notice; correction due to clerical error; injunction prohibited.

(1) On or before August 25, the county assessor shall certify to the Property Tax Administrator the total taxable value by school district in the county for the current assessment year on forms prescribed by the Tax Commissioner. The county assessor may amend the filing for changes made to the taxable valuation of the school district in the county if corrections or errors on the original certification are discovered. Amendments shall be certified to the Property Tax Administrator on or before September 30.

(2) On or before October 10, the Property Tax Administrator shall compute and certify to the State Department of Education the adjusted valuation for the current assessment year for each class of property in each school district and each local system. The adjusted valuation of property for each school district and each local system, for purposes of determining state aid pursuant to the Tax Equity and Educational Opportunities Support Act, shall reflect as nearly as possible state aid value as defined in subsection (3) of this section. The Property Tax Administrator shall notify each school district and each local system of its adjusted valuation for the current assessment year by class of property on or before October 10. Establishment of the adjusted valuation shall be based on the taxable value certified by the county assessor for each school district in the county adjusted by the determination of the level of value for each school district from an analysis of the comprehensive assessment ratio study or other studies developed by the Property Tax Administrator, in compliance with professionally accepted mass appraisal techniques, as required by section 77-1327. The Tax Commissioner shall adopt and promulgate rules and regulations setting forth standards for the determination of level of value for state aid purposes.

(3) For purposes of this section, state aid value means:

(a) For real property other than agricultural and horticultural land, ninety-six percent of actual value;

(b) For agricultural and horticultural land, seventy-two percent of actual value as provided in sections 77-1359 to 77-1363. For agricultural and horticultural land that receives special valuation pursuant to section 77-1344, seventy-two percent of special valuation as defined in section 77-1343; and

(c) For personal property, the net book value as defined in section 77-120.

(4) On or before November 10, any local system may file with the Tax Commissioner written objections to the adjusted valuations prepared by the Property Tax Administrator, stating the reasons why such adjusted valuations are not the valuations required by subsection (3) of this section. The Tax Commissioner shall fix a time for a hearing. Either party shall be permitted to introduce any evidence in reference thereto. On or before January 1, the Tax Commissioner shall enter a written order modifying or declining to modify, in whole or in part, the adjusted valuations and shall certify the order to the State Department of Education. Modification by the Tax Commissioner shall be based upon the evidence introduced at hearing and shall not be limited to the modification requested in the written objections or at hearing. A copy of the written order shall be mailed to the local system within seven days after the date of the order. The written order of the Tax Commissioner may be appealed within thirty days after the date of the order to the Tax Equalization and Review Commission in accordance with section 77-5013.

(5) On or before November 10, any local system or county official may file with the Tax Commissioner a written request for a nonappealable correction of the adjusted valuation due to clerical error as defined in section 77-128 or, for agricultural and horticultural land, assessed value changes by reason of land qualified or disqualified for special use valuation pursuant to sections 77-1343 to 77-1347.01. On or before the following January 1, the Tax Commissioner shall approve or deny the request and, if approved, certify the corrected adjusted valuations resulting from such action to the State Department of Education.

(6) On or before May 31 of the year following the certification of adjusted valuation pursuant to subsection (2) of this section, any local system or county official may file with the Tax Commissioner a written request for a nonappealable correction of the adjusted valuation due to changes to the tax list that change the assessed value of taxable property. Upon the filing of the written request, the Tax Commissioner shall require the county assessor to recertify the taxable valuation by school district in the county on forms prescribed by the Tax Commissioner. The recertified valuation shall be the valuation that was certified on the tax list, pursuant to section 77-1613, increased or decreased by changes to the tax list that change the assessed value of taxable property in the school district in the county in the prior assessment year. On or before the following July 31, the Tax Commissioner shall approve or deny the request and, if approved, certify the corrected adjusted valuations resulting from such action to the State Department of Education.

(7) No injunction shall be granted restraining the distribution of state aid based upon the adjusted valuations pursuant to this section.

(8) A school district whose state aid is to be calculated pursuant to subsection (5) of this section and whose state aid payment is postponed as a result of failure to calculate state aid pursuant to such subsection may apply to the state board for lump-sum payment of such postponed state aid. Such application may be for any amount up to one hundred percent of the postponed state aid. The state board may grant the entire amount applied for or any portion of such amount. The state board shall notify the Director of Administrative Services of the amount of funds to be paid in a lump sum and the reduced amount of the monthly payments. The Director of Administrative Services shall, at the time of the next state aid payment made pursuant to section 79-1022, draw a warrant

for the lump-sum amount from appropriated funds and forward such warrant to the district.

Source: Laws 1990, LB 1059, § 9; Laws 1991, LB 829, § 32; Laws 1991, LB 511, § 76; Laws 1992, LB 245, § 81; Laws 1992, LB 719A, § 198; Laws 1994, LB 1290, § 7; Laws 1995, LB 490, § 185; R.S.Supp.,1995, § 79-3809; Laws 1996, LB 900, § 662; Laws 1996, LB 934, § 5; Laws 1996, LB 1050, § 24; Laws 1997, LB 270, § 103; Laws 1997, LB 271, § 53; Laws 1997, LB 342, § 4; Laws 1997, LB 595, § 6; Laws 1997, LB 713, § 3; Laws 1997, LB 806, § 46; Laws 1998, Spec. Sess., LB 1, § 24; Laws 1999, LB 194, § 34; Laws 1999, LB 813, § 22; Laws 2000, LB 968, § 80; Laws 2001, LB 170, § 28; Laws 2002, LB 994, § 30; Laws 2004, LB 973, § 66; Laws 2005, LB 126, § 46; Laws 2005, LB 263, § 16; Laws 2006, LB 808, § 46; Laws 2006, LB 968, § 16; Referendum 2006, No. 422; Laws 2007, LB334, § 101; Laws 2008, LB988, § 39; Laws 2009, LB166, § 21.
Effective date February 27, 2009.

Cross References

Tax Equalization and Review Commission Act, see section 77-5001.

79-1017.01 Local system formula resources; amounts included.

Local system formula resources includes retirement aid determined under section 79-1028.03, allocated income tax funds determined for each such district pursuant to the provisions of section 79-1005.01 or 79-1005.02, and adjustments pursuant to section 79-1008.02.

Source: Laws 1997, LB 806, § 48; Laws 2002, LB 898, § 11; Laws 2009, LB545, § 14.
Effective date May 20, 2009.

79-1022 Distribution of income tax receipts and state aid; effect on budget.

(1) On or before June 1, 2009, on or before March 1, 2010, and on or before February 1 of each year thereafter, the department shall determine the amounts to be distributed to each local system and each district pursuant to the Tax Equity and Educational Opportunities Support Act and shall certify the amounts to the Director of Administrative Services, the Auditor of Public Accounts, each learning community, and each district. The amount to be distributed to each district that is not a member of a learning community from the amount certified for a local system shall be proportional based on: (a) For school fiscal years prior to school fiscal year 2008-09, the weighted formula students attributed to each district in the local system; and (b) for school fiscal year 2008-09 and each school fiscal year thereafter, the formula students attributed to each district in the local system. The amount to be distributed to each district that is a member of a learning community from the amount certified for the local system shall be proportional based on the formula needs calculated for each district in the local system. On or before June 1, 2009, on or before March 1, 2010, and on or before February 1 of each year thereafter, the department shall report the necessary funding level to the Governor, the Appropriations Committee of the Legislature, and the Education Committee of the Legislature. Certified state aid amounts, including adjustments pursuant to section 79-1065.02, shall be shown as budgeted non-property-tax receipts and

deducted prior to calculating the property tax request in the district's general fund budget statement as provided to the Auditor of Public Accounts pursuant to section 79-1024.

(2) Except as provided in subsection (8) of section 79-1016 and sections 79-1033 and 79-1065.02, the amounts certified pursuant to subsection (1) of this section shall be distributed in ten as nearly as possible equal payments on the last business day of each month beginning in September of each ensuing school fiscal year and ending in June of the following year, except that when a school district is to receive a monthly payment of less than one thousand dollars, such payment shall be one lump-sum payment on the last business day of December during the ensuing school fiscal year.

Source: Laws 1990, LB 1059, § 13; Laws 1991, LB 511, § 79; Laws 1992, LB 245, § 84; Laws 1994, LB 1290, § 8; Laws 1994, LB 1310, § 16; Laws 1995, LB 840, § 9; R.S.Supp.,1995, § 79-3813; Laws 1996, LB 900, § 668; Laws 1996, LB 1050, § 30; Laws 1997, LB 710, § 13; Laws 1997, LB 713, § 5; Laws 1997, LB 806, § 51; Laws 1998, Spec. Sess., LB 1, § 28; Laws 1999, LB 149, § 10; Laws 1999, LB 194, § 35; Laws 1999, LB 813, § 23; Laws 2002, LB 898, § 12; Laws 2002, Second Spec. Sess., LB 4, § 1; Laws 2003, LB 67, § 12; Laws 2003, LB 540, § 5; Laws 2004, LB 973, § 67; Laws 2005, LB 126, § 47; Laws 2005, LB 198, § 3; Laws 2006, LB 1024, § 86; Referendum 2006, No. 422; Laws 2007, LB21, § 3; Laws 2007, LB641, § 28; Laws 2008, LB988, § 41; Laws 2009, LB61, § 1; Laws 2009, LB545, § 15; Laws 2009, LB548, § 1.

Note: Changes made by LB61 became effective January 30, 2009. Changes made by LB548 became effective March 27, 2009. Changes made by LB545 became effective May 20, 2009.

79-1023 School district; adjusted general fund budget of expenditures; department; certification.

(1) On or before June 1, 2009, on or before March 1, 2010, and on or before February 1 of each year thereafter, the department shall determine and certify to each school district the maximum general fund budget of expenditures minus the special education budget of expenditures for the immediately following school fiscal year.

(2) Except as provided in section 79-1028.01, no school district shall have a general fund budget of expenditures minus special grant funds and the special education budget of expenditures more than the greater of (a) the product of the difference of the general fund budget of expenditures minus special grant funds and the special education budget of expenditures for the immediately preceding school fiscal year multiplied by the sum of one plus the local system's applicable allowable growth rate or (b)(i) except as otherwise provided in subdivision (b)(ii) of this subsection, the difference of one hundred twenty percent of formula need for such school fiscal year minus the product of the sum of one plus the basic allowable growth rate for such school fiscal year multiplied by the special education budget of expenditures as filed on the school district budget statement on or before September 20 for the immediately preceding school fiscal year or (ii) for school fiscal years 2009-10 and 2010-11, the difference of one hundred sixteen and fifteen-hundredths percent of formula need for such school fiscal year minus the product of the sum of one plus the basic allowable growth rate for such school fiscal year multiplied by the special

education budget of expenditures as filed on the school district budget statement on or before September 20 for the immediately preceding school fiscal year.

Source: Laws 1990, LB 1059, § 14; Laws 1991, LB 829, § 33; Laws 1992, LB 1063, § 202; Laws 1992, Second Spec. Sess., LB 1, § 173; Laws 1995, LB 613, § 3; Laws 1996, LB 299, § 27; R.S.Supp.,1995, § 79-3814; Laws 1996, LB 900, § 669; Laws 1998, LB 989, § 8; Laws 2003, LB 67, § 13; Laws 2008, LB988, § 43; Laws 2009, LB61, § 2; Laws 2009, LB545, § 16; Laws 2009, LB548, § 2.

Note: Changes made by LB61 became effective January 30, 2009. Changes made by LB548 became effective March 27, 2009. Changes made by LB545 became effective May 20, 2009.

Cross References

Retirement expenditures, not exempt from limitations, see section 79-977.

79-1024 Budget statement; submitted to department; Auditor of Public Accounts; duties; failure to submit; effect.

(1) The department may require each district to submit to the department a duplicate copy of such portions of the district's budget statement as the Commissioner of Education directs. The department may verify any data used to meet the requirements of the Tax Equity and Educational Opportunities Support Act. The Auditor of Public Accounts shall review each district's budget statement for statutory compliance, make necessary changes in the budget documents for districts to effectuate the budget limitations imposed pursuant to sections 79-1023 to 79-1030, and notify the Commissioner of Education of any district failing to submit to the auditor the budget documents required pursuant to this subsection by the date established in subsection (1) of section 13-508 or failing to make any corrections of errors in the documents pursuant to section 13-504 or 13-511.

(2) If a school district fails to submit to the department or the auditor the budget documents required pursuant to subsection (1) of this section by the date established in subsection (1) of section 13-508 or fails to make any corrections of errors in the documents pursuant to section 13-504 or 13-511, the commissioner, upon notification from the auditor or upon his or her own knowledge that the required budget documents and any required corrections of errors from any school district have not been properly filed in accordance with the Nebraska Budget Act and after notice to the district and an opportunity to be heard, shall direct that any state aid granted pursuant to the Tax Equity and Educational Opportunities Support Act be withheld until such time as the required budget documents or corrections of errors are received by the auditor and the department. In addition, the commissioner shall direct the county treasurer to withhold all school money belonging to the school district until such time as the commissioner notifies the county treasurer of receipt of the required budget documents or corrections of errors. The county treasurer shall withhold such money. For school districts that are members of learning communities, a determination of school money belonging to the district shall be based on the proportionate share of property tax receipts allocated to the school district by the learning community coordinating council, and the county treasurer shall withhold any such school money in the possession of the county treasurer from the school district. If the school district does not comply with this section prior to the end of the state's biennium following the biennium

which included the fiscal year for which state aid was calculated, the state aid funds shall revert to the General Fund. The amount of any reverted funds shall be included in data provided to the Governor in accordance with section 79-1031. The board of any district failing to submit to the department or the auditor the budget documents required pursuant to this section by the date established in subsection (1) of section 13-508 or failing to make any corrections of errors in the documents pursuant to section 13-504 or 13-511 shall be liable to the school district for all school money which such district may lose by such failing.

Source: Laws 1990, LB 1059, § 15; Laws 1991, LB 511, § 80; Laws 1992, LB 245, § 85; Laws 1992, LB 1001, § 43; R.S.1943, (1994), § 79-3815; Laws 1996, LB 900, § 670; Laws 1997, LB 269, § 61; Laws 1997, LB 710, § 14; Laws 1998, Spec. Sess., LB 1, § 29; Laws 1999, LB 272, § 93; Laws 1999, LB 813, § 24; Laws 2001, LB 797, § 26; Laws 2003, LB 67, § 14; Laws 2006, LB 1024, § 87; Laws 2008, LB988, § 44; Laws 2009, LB392, § 11.
Effective date May 27, 2009.

Cross References

Nebraska Budget Act, see section 13-501.

79-1026.01 School fiscal year 2008-09 and subsequent fiscal years; applicable allowable growth rate; determination; target budget level.

For school fiscal year 2008-09 and each school fiscal year thereafter, on or before June 1, 2009, on or before March 1, 2010, and on or before February 1 of each year thereafter, the department shall determine and certify to each Class II, III, IV, or V district an applicable allowable growth rate carried out at least four decimal places as follows:

(1) The department shall establish a target budget level range of general fund operating expenditure levels for each school fiscal year for each school district which shall begin at twenty percent less than the school district's formula need and end at the school district's formula need. The beginning point of the range shall be assigned a number equal to the maximum allowable growth rate established in section 79-1025, and the end point of the range shall be assigned a number equal to the basic allowable growth rate as prescribed in such section such that the lower end of the range shall be assigned the maximum allowable growth rate and the higher end of the range shall be assigned the basic allowable growth rate; and

(2) For each school fiscal year, each school district's general fund operating expenditures shall be compared to its target budget level along the range described in subdivision (1) of this section to arrive at an applicable allowable growth rate as follows: If each school district's general fund operating expenditures fall below the lower end of the range, such applicable allowable growth rate shall be the maximum growth rate identified in section 79-1025. If each school district's general fund operating expenditures are greater than the higher end of the range, the school district's allowable growth rate shall be the basic allowable growth rate identified in such section. If each school district's general fund operating expenditures fall between the lower end and the higher end of the range, the department shall use a linear interpolation calculation

between the end points of the range to arrive at the applicable allowable growth rate for the school district.

Source: Laws 2006, LB 1024, § 89; Laws 2009, LB61, § 3; Laws 2009, LB545, § 17; Laws 2009, LB548, § 3.

Note: Changes made by LB61 became effective January 30, 2009. Changes made by LB548 became effective March 27, 2009. Changes made by LB545 became effective May 20, 2009.

79-1027 Budget; restrictions.

No district shall adopt a budget, which includes total requirements of depreciation funds, necessary employee benefit fund cash reserves, and necessary general fund cash reserves, exceeding the applicable allowable reserve percentages of total general fund budget of expenditures as specified in the schedule set forth in this section.

Average daily membership of district	Allowable reserve percentage
0 - 471	45
471.01 - 3,044	35
3,044.01 - 10,000	25
10,000.01 and over	20

On or before June 1, 2009, on or before March 1, 2010, and on or before February 1 each year thereafter, the department shall determine and certify each district's applicable allowable reserve percentage.

Each district with combined necessary general fund cash reserves, total requirements of depreciation funds, and necessary employee benefit fund cash reserves less than the applicable allowable reserve percentage specified in this section may, notwithstanding the district's applicable allowable growth rate, increase its necessary general fund cash reserves such that the total necessary general fund cash reserves, total requirements of depreciation funds, and necessary employee benefit fund cash reserves do not exceed such applicable allowable reserve percentage.

Source: Laws 1990, LB 1059, § 18; Laws 1991, LB 511, § 83; Laws 1992, LB 245, § 88; Laws 1992, LB 1063, § 204; Laws 1992, Second Spec. Sess., LB 1, § 175; R.S.1943, (1994), § 79-3818; Laws 1996, LB 900, § 673; Laws 1998, Spec. Sess., LB 1, § 31; Laws 1999, LB 149, § 12; Laws 1999, LB 813, § 26; Laws 2001, LB 797, § 28; Laws 2002, LB 460, § 2; Laws 2003, LB 67, § 16; Laws 2005, LB 126, § 49; Referendum 2006, No. 422; Laws 2007, LB21, § 5; Laws 2009, LB61, § 4; Laws 2009, LB545, § 18; Laws 2009, LB548, § 4.

Note: Changes made by LB61 became effective January 30, 2009. Changes made by LB548 became effective March 27, 2009. Changes made by LB545 became effective May 20, 2009.

79-1028.01 School year 2008-09 and subsequent school years; district may exceed certain limits; situations enumerated; state board; duties.

(1) For school fiscal year 2008-09 and each school fiscal year thereafter, a school district may exceed its maximum general fund budget of expenditures minus the special education budget of expenditures by a specific dollar amount for:

(a) Expenditures for repairs to infrastructure damaged by a natural disaster which is declared a disaster emergency pursuant to the Emergency Management Act;

(b) Expenditures for judgments, except judgments or orders from the Commission of Industrial Relations, obtained against a school district which require or obligate a school district to pay such judgment, to the extent such judgment is not paid by liability insurance coverage of a school district;

(c) Expenditures pursuant to the Retirement Incentive Plan authorized in section 79-855 or the Staff Development Assistance authorized in section 79-856;

(d) Expenditures of incentive payments or base fiscal year incentive payments to be received in such school fiscal year pursuant to section 79-1011;

(e) Expenditures of amounts received from educational entities as defined in section 79-1201.01 for providing distance education courses through the Educational Service Unit Coordinating Council to such educational entities;

(f) Either (i) the first and second school fiscal years the district will be participating in Network Nebraska for the full school fiscal year or (ii) school fiscal year 2008-09, if the school district participated in Network Nebraska for all of school fiscal year 2007-08, for the difference of the estimated expenditures for such school fiscal year for telecommunications services, access to data transmission networks that transmit data to and from the school district, and the transmission of data on such networks as such expenditures are defined by the department for purposes of the distance education and telecommunications allowance minus the dollar amount of such expenditures for the second school fiscal year preceding the first full school fiscal year the district participates in Network Nebraska;

(g) Expenditures to pay another school district for the transfer of land from such other school district;

(h) Expenditures in school fiscal years 2009-10 through 2013-14 to pay for employer contributions pursuant to subsection (2) of section 79-958 to the School Retirement System of the State of Nebraska to the extent that such expenditures exceed the employer contributions under such subsection that would have been made at a contribution rate of seven and thirty-five hundredths percent; and

(i) Expenditures in school fiscal years 2009-10 through 2013-14 to pay for school district contributions pursuant to subdivision (1)(c)(i) of section 79-9,113 to the Class V School Employees Retirement System to the extent that such expenditures exceed the school district contributions under such subdivision that would have been made at a contribution rate of seven and thirty-seven hundredths percent.

(2) For school fiscal year 2009-10 and each school fiscal year thereafter, a school district may exceed its maximum general fund budget of expenditures minus the special education budget of expenditures by a specific dollar amount for (a) expenditures for sums agreed to be paid by a school district to certificated employees in exchange for a voluntary termination occurring prior to July 1, 2009, and (b) expenditures for new elementary attendance sites in the first year of operation or the first year of operation after being closed for at least one school year if such elementary attendance site will most likely qualify

for the elementary site allowance in the immediately following school fiscal year as determined by the state board.

(3) The state board shall approve, deny, or modify the amount allowed for any exception to the maximum general fund budget of expenditures minus the special education budget of expenditures pursuant to this section.

Source: Laws 2008, LB988, § 46; Laws 2008, LB1154, § 10; Laws 2009, LB545, § 19.
Effective date May 20, 2009.

Cross References

Emergency Management Act, see section 81-829.36.

79-1028.02 School fiscal years 2009-10 and 2010-11; American Recovery and Reinvestment Act percentage; school district allocation; computation; school district; duties.

For each of school fiscal years 2009-10 and 2010-11, the American Recovery and Reinvestment Act percentage shall equal the amount of funding from the federal American Recovery and Reinvestment Act of 2009 to be distributed through the Tax Equity and Educational Opportunities Support Act for such school fiscal year divided by the total equalization aid to be distributed pursuant to the Tax Equity and Educational Opportunities Support Act for such school fiscal year. For each school district, the American Recovery and Reinvestment Act allocation shall equal the equalization aid to be distributed to the school district for such school fiscal year multiplied by the American Recovery and Reinvestment Act percentage for such school fiscal year. Such allocation shall only be distributed upon filing of an application signed by the superintendent and school board president of a school district and filed with the department by the superintendent of such school district, which application meets the requirements of the federal American Recovery and Reinvestment Act of 2009 and is approved by the Governor or his or her designee. A school district shall account for, report, and spend such allocation as required by the federal American Recovery and Reinvestment Act of 2009. Such allocation shall not be considered a special grant fund and shall be considered state aid for all purposes except as otherwise provided in this section and the federal American Recovery and Reinvestment Act of 2009.

Source: Laws 2009, LB545, § 20.
Effective date May 20, 2009.

79-1028.03 Retirement aid; calculation.

For school fiscal years 2009-10 through 2013-14, an amount calculated by the department shall be paid to each school district as retirement aid equal to the product of fifteen million dollars multiplied by the school district's salary percentage. The school district's salary percentage shall equal the total salary reported by the school district on the annual financial report for the most recently available complete data year divided by the total salary reported by all school districts in the state on the annual financial report for the most recently available complete data year.

Source: Laws 2009, LB545, § 21.
Effective date May 20, 2009.

79-1031.01 Appropriations Committee; duties.

The Appropriations Committee of the Legislature shall annually include the amount necessary to fund the state aid that will be certified to school districts on or before June 1, 2009, on or before March 1, 2010, and on or before February 1 for each school year thereafter in its recommendations to the Legislature to carry out the requirements of the Tax Equity and Educational Opportunities Support Act.

Source: Laws 1997, LB 710, § 17; Laws 1997, LB 806, § 54; Laws 1998, Spec. Sess., LB 1, § 34; Laws 1999, LB 149, § 15; Laws 2002, LB 898, § 14; Laws 2005, LB 126, § 51; Referendum 2006, No. 422; Laws 2007, LB21, § 6; Laws 2008, LB988, § 48; Laws 2009, LB61, § 5; Laws 2009, LB545, § 22; Laws 2009, LB548, § 5.

Note: Changes made by LB61 became effective January 30, 2009. Changes made by LB548 became effective March 27, 2009. Changes made by LB545 became effective May 20, 2009.

79-1033 State aid; payments; reports; use; requirements; failure to submit reports; effect; early payments.

(1) Except as otherwise provided in the Tax Equity and Educational Opportunities Support Act, state aid payable pursuant to the act for each school fiscal year shall be based upon data found in applicable reports for the most recently available complete data year. The annual financial reports and the annual statistical summary of all school districts shall be submitted to the Commissioner of Education pursuant to the dates prescribed in section 79-528. If a school district fails to timely submit its reports, the commissioner, after notice to the district and an opportunity to be heard, shall direct that any state aid granted pursuant to the act be withheld until such time as the reports are received by the department. In addition, the commissioner shall direct the county treasurer to withhold all school money belonging to the school district until such time as the commissioner notifies the county treasurer of receipt of such reports. The county treasurer shall withhold such money. For school districts that are members of learning communities, a determination of school money belonging to the district shall be based on the proportionate share of state aid and property tax receipts allocated to the school district by the learning community coordinating council, and the county treasurer shall withhold any such school money in the possession of the county treasurer from the school district. If the school district does not comply with this section prior to the end of the state's biennium following the biennium which included the school fiscal year for which state aid was calculated, the state aid funds shall revert to the General Fund. The amount of any reverted funds shall be included in data provided to the Governor in accordance with section 79-1031.

(2) A district which receives, or has received in the most recently available complete data year or in either of the two school fiscal years preceding the most recently available complete data year, federal funds in excess of twenty-five percent of its general fund budget of expenditures may apply for early payment of state aid paid pursuant to the act when such federal funds are not received in a timely manner. Such application may be made at any time by a district suffering such financial hardship and may be for any amount up to fifty percent of the remaining amount to which the district is entitled during the current school fiscal year. The state board may grant the entire amount applied for or any portion of such amount if the state board finds that a financial hardship exists in the district. The state board shall notify the Director of

Administrative Services of the amount of funds to be paid in lump sum and the reduced amount of the monthly payments. The Director of Administrative Services shall, at the time of the next state aid payment made pursuant to section 79-1022, draw a warrant for the lump-sum amount from appropriated funds and forward such warrant to the district. For purposes of this subsection, financial hardship means a situation in which income to a district is exceeded by liabilities to such a degree that if early payment is not received it will be necessary for the district to discontinue vital services or functions.

Source: Laws 1990, LB 1059, § 24; Laws 1991, LB 511, § 88; Laws 1992, LB 245, § 93; Laws 1992, LB 1001, § 44; Laws 1993, LB 348, § 73; Laws 1994, LB 1290, § 9; R.S.1943, (1994), § 79-3824; Laws 1996, LB 900, § 679; Laws 1997, LB 710, § 18; Laws 1998, Spec. Sess., LB 1, § 36; Laws 1999, LB 272, § 94; Laws 2006, LB 1024, § 92; Laws 2009, LB392, § 12.
Effective date May 27, 2009.

(b) SCHOOL FUNDS

79-1041 County treasurer; distribute school funds; when.

Each county treasurer of a county with territory in a learning community shall distribute any funds collected by such county treasurer from the common general fund levy and the common building fund levy of such learning community to each member school district pursuant to sections 79-1073 and 79-1073.01 at least once each month.

Each county treasurer shall, upon request of a majority of the members of the school board or board of education in any school district, at least once each month distribute to the district any funds collected by such county treasurer for school purposes.

Source: Laws 1976, LB 803, § 1; R.S.1943, (1994), § 79-1307.01; Laws 1996, LB 900, § 687; Laws 2009, LB392, § 13.
Effective date May 27, 2009.

79-1065.01 Financial support to school districts; lump-sum payments.

If the adjustment under section 79-1065 results in a school district being entitled to the payment of additional funds, the district may apply to the State Department of Education for a lump-sum payment for any amount up to one hundred percent of the adjustment, except that when a school district is to receive a lump-sum payment pursuant to section 79-1022, one hundred percent of the adjustment shall be paid as one lump-sum payment on the last business day of December during the ensuing school fiscal year. The department shall notify the Director of Administrative Services of the amount of funds to be paid in a lump sum and the reduced amount of the monthly payments pursuant to section 79-1022. The department shall make such payment in a lump sum not later than the last business day of September of the year in which the final determination under this section is made.

Source: Laws 2000, LB 1213, § 2; Laws 2009, LB549, § 34.
Effective date August 30, 2009.

(c) SCHOOL TAXATION

79-1073 General fund property tax receipts; learning community coordinating council; certification; division; distribution.

On or before September 1 for each year, each learning community coordinating council shall determine the expected amounts to be distributed by the county treasurers to each member school district from general fund property tax receipts pursuant to subdivision (2)(b) of section 77-3442 and shall certify such amounts to each member school district, the county treasurer for each county containing territory in the learning community, and the State Department of Education. Such property tax receipts shall be divided among member school districts proportionally based on the difference of the school district's formula need calculated pursuant to section 79-1007.11 minus the sum of the state aid certified pursuant to section 79-1022 and the other actual receipts included in local system formula resources pursuant to section 79-1018.01 for the school fiscal year for which the distribution is being made.

Each time the county treasurer distributes property tax receipts from the common general fund levy to member school districts, the amount to be distributed to each district shall be proportional based on the total amounts to be distributed to each member school district for the school fiscal year.

Source: Laws 2006, LB 1024, § 93; Laws 2007, LB641, § 29; Laws 2008, LB988, § 49; Laws 2008, LB1154, § 11; Laws 2009, LB392, § 14; Laws 2009, LB545, § 23.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB392, section 14, with LB545, section 23, to reflect all amendments.

Note: Changes made by LB545 became effective May 20, 2009. Changes made by LB392 became effective May 27, 2009.

79-1073.01 Learning communities; special building funds; distribution.

Amounts levied by learning communities for special building funds for member school districts pursuant to subdivision (2)(g) of section 77-3442 shall be distributed by the county treasurer collecting such levy proceeds to all member school districts proportionally based on the formula students used in the most recent certification of state aid pursuant to section 79-1022.

Any amounts distributed pursuant to this section shall be used by the member school districts for special building funds.

Source: Laws 2006, LB 1024, § 94; Laws 2007, LB641, § 30; Laws 2009, LB392, § 15.
Effective date May 27, 2009.

(d) SCHOOL BUDGETS AND ACCOUNTING

79-1084 Class III school district; school board; budget; tax; levy; publication of expenditures; violation; penalty; duty of county board.

The school board of a Class III school district shall annually, on or before September 20, report in writing to the county board and the learning community coordinating council if the school district is a member of a learning community the entire revenue raised by taxation and all other sources and received by the school board for the previous school fiscal year and a budget for the ensuing school fiscal year broken down generally as follows: (1) The amount of funds required for the support of the schools during the ensuing

school fiscal year; (2) the amount of funds required for the purchase of school sites; (3) the amount of funds required for the erection of school buildings; (4) the amount of funds required for the payment of interest upon all bonds issued for school purposes; and (5) the amount of funds required for the creation of a sinking fund for the payment of such indebtedness. The secretary shall publish, within ten days after the filing of such budget, a copy of the fund summary pages of the budget one time at the legal rate prescribed for the publication of legal notices in a legal newspaper published in and of general circulation in such city or village or, if none is published in such city or village, in a legal newspaper of general circulation in the city or village. The secretary of the school board failing or neglecting to comply with this section shall be deemed guilty of a Class V misdemeanor and, in the discretion of the court, the judgment of conviction may provide for the removal from office of such secretary for such failure or neglect. For Class III school districts that are not members of a learning community, the county board shall levy and collect such taxes as are necessary to provide the amount of revenue from property taxes as indicated by all the data contained in the budget and the certificate prescribed by this section, at the time and in the manner provided in section 77-1601.

Source: Laws 1881, c. 78, subdivision XIV, § 23, p. 385; Laws 1885, c. 80, § 1, p. 329; Laws 1893, c. 31, § 2, p. 358; R.S.1913, § 6670; C.S.1922, § 6604; C.S.1929, § 79-2522; R.S.1943, § 79-2527; Laws 1947, c. 292, § 1, p. 904; Laws 1949, c. 256, § 243, p. 771; Laws 1959, c. 404, § 1, p. 1366; Laws 1972, LB 1070, § 2; Laws 1986, LB 960, § 42; Laws 1988, LB 1193, § 1; Laws 1993, LB 734, § 51; Laws 1995, LB 452, § 32; R.S.Supp.,1995, § 79-810; Laws 1996, LB 900, § 730; Laws 1997, LB 710, § 22; Laws 1998, Spec. Sess., LB 1, § 43; Laws 2006, LB 1024, § 98; Laws 2009, LB549, § 35.
Effective date August 30, 2009.

Cross References

For legal rate for publications, see section 33-141.

79-1086 Class V school district; board of education; budget; how prepared; certification of levy; levy of taxes.

(1) The board of education of a Class V school district that is not a member of a learning community shall annually during the month of July estimate the amount of resources likely to be received for school purposes, including the amounts available from fines, licenses, and other sources. Before the county board of equalization makes its levy each year, the board of education shall report to the county clerk the rate of tax deemed necessary to be levied upon the taxable value of all the taxable property of the district subject to taxation during the fiscal year next ensuing for (a) the support of the schools, (b) the purchase of school sites, (c) the erection, alteration, equipping, and furnishing of school buildings and additions to school buildings, (d) the payment of interest upon all bonds issued for school purposes, and (e) the creation of a sinking fund for the payment of such indebtedness. The county board of equalization shall levy the rate of tax so reported and demanded by the board of education and collect the tax in the same manner as other taxes are levied and collected.

(2) The school board of a Class V school district that is a member of a learning community shall annually, on or before September 20, report in writing to the county board and the learning community coordinating council the entire revenue raised by taxation and all other sources and received by the school board for the previous school fiscal year and a budget for the ensuing school fiscal year broken down generally as follows: (a) The amount of funds required for the support of the schools during the ensuing school fiscal year; (b) the amount of funds required for the purchase of school sites; (c) the amount of funds required for the erection of school buildings; (d) the amount of funds required for the payment of interest upon all bonds issued for school purposes; and (e) the amount of funds required for the creation of a sinking fund for the payment of such indebtedness. The secretary shall publish, within ten days after the filing of such budget, a copy of the fund summary pages of the budget one time at the legal rate prescribed for the publication of legal notices in a legal newspaper published in and of general circulation in such city or village or, if none is published in such city or village, in a legal newspaper of general circulation in the city or village. The secretary of the school board failing or neglecting to comply with this section shall be deemed guilty of a Class V misdemeanor and, in the discretion of the court, the judgment of conviction may provide for the removal from office of such secretary for such failure or neglect.

Source: Laws 1891, c. 45, § 21, p. 325; Laws 1899, c. 68, § 1, p. 299; R.S.1913, § 7027; C.S.1922, § 6658; C.S.1929, § 79-2721; Laws 1931, c. 146, § 1, p. 400; Laws 1937, c. 183, § 1, p. 722; C.S.Supp.,1941, § 79-2721; R.S.1943, § 79-2722; Laws 1945, c. 214, § 1, p. 628; Laws 1947, c. 298, § 1, p. 913; Laws 1949, c. 271, § 4, p. 889; Laws 1949, c. 256, § 264, p. 780; Laws 1955, c. 320, § 1, p. 989; Laws 1976, LB 757, § 2; Laws 1979, LB 187, § 240; Laws 1992, LB 1063, § 198; Laws 1992, Second Spec. Sess., LB 1, § 169; R.S.1943, (1994), § 79-1007; Laws 1996, LB 900, § 732; Laws 2006, LB 1024, § 99; Laws 2009, LB549, § 36. Effective date August 30, 2009.

(e) SITE AND FACILITIES ACQUISITION, MAINTENANCE, AND DISPOSITION

79-10,110 Health and safety modifications, qualified zone academy, or American Recovery and Reinvestment Act of 2009 purpose; school board; powers and duties; hearing; tax levy authorized; issuance of bonds authorized.

(1) After making a determination that an actual or potential environmental hazard or accessibility barrier exists, that a life safety code violation exists, or that expenditures are needed for indoor air quality or mold abatement and prevention within the school buildings or grounds under its control, a school board may make and deliver to the county clerk of such county in which any part of the school district is situated, not later than the date provided in section 13-508, an itemized estimate of the amounts necessary to be expended for the abatement of such environmental hazard, for accessibility barrier elimination, or for modifications for life safety code violations, indoor air quality, or mold abatement and prevention in such school buildings or grounds. The board shall designate the particular environmental hazard abatement project, accessibility barrier elimination project, or modification for life safety code violations,

indoor air quality, or mold abatement and prevention for which the tax levy provided for by this section will be expended, the period of years, which shall not exceed ten years, for which the tax will be levied for such project, and the amount of the levy for each year of the period.

(2) After a public hearing, a school board may undertake any qualified capital purpose in any qualified zone academy under its control and may levy a tax as provided in this section to repay a qualified zone academy bond issued for such undertaking. The board shall designate: (a) The particular qualified capital purpose for which the qualified zone academy bond was issued and for which the tax levy provided for by this section will be expended; (b) the period of years for which the tax will be levied to repay such qualified zone academy bond, not exceeding the maximum term for such qualified zone academy bond established pursuant to federal law or, for any such bond issued prior to May 20, 2009, fifteen years; and (c) the amount of the levy for each year of the period. The hearing required by this subsection shall be held only after notice of such hearing has been published for three consecutive weeks prior to the hearing in a legal newspaper published or of general circulation in the school district.

(3) After a public hearing, a school board may undertake construction of a new public school facility or the acquisition of land on which such a facility is to be constructed or any expansion, rehabilitation, modernization, renovation, or repair of any existing school facilities under its control and may levy a tax to repay any American Recovery and Reinvestment Act of 2009 bond. The board shall designate: (a) The particular project or projects for which the bond will be issued and for which the tax levy provided by this section will be expended; (b) the period of years for which the tax will be levied to repay such bond, not exceeding the maximum term established pursuant to federal law for the type of bond as permitted by the federal American Recovery and Reinvestment Act of 2009 or, if no such term is established, thirty years; and (c) the amount of the levy for each year of such period. Prior to the public hearing, the school board shall prepare an itemized estimate of the amounts necessary to be expended for the project or projects. The hearing required by this subsection shall be held only after notice of such hearing has been published for three consecutive weeks prior to the hearing in a legal newspaper published or of general circulation in the school district. The bond to be issued under this subsection may consist of any type or form of bond permitted by the federal American Recovery and Reinvestment Act of 2009 except qualified zone academy bonds, the use of which is authorized pursuant to subsection (2) of this section.

(4) The board may designate more than one project under subsection (1) of this section, more than one qualified capital purpose under subsection (2) of this section, or more than one American Recovery and Reinvestment Act of 2009 purpose under subsection (3) of this section and levy a tax pursuant to this section for each such project, qualified capital purpose, or American Recovery and Reinvestment Act of 2009 purpose, concurrently or consecutively, as the case may be, if the aggregate levy in each year and the duration of each such levy will not exceed the limitations specified in this section. Each levy for a project, a qualified capital purpose, or an American Recovery and Reinvestment Act of 2009 purpose which is authorized by this section may be imposed for such duration as the board specifies, notwithstanding the contemporaneous existence or subsequent imposition of any other levy for another project, qualified capital purpose, or American Recovery and Reinvestment Act of 2009

purpose imposed pursuant to this section and notwithstanding the subsequent issuance by the district of bonded indebtedness payable from its general fund levy.

(5) The county clerk shall levy such taxes, not to exceed five and one-fifth cents per one hundred dollars of taxable valuation for Class II, III, IV, V, and VI districts, and not to exceed the limits set for Class I districts in section 79-10,124, on the taxable property of the district necessary to (a) cover the environmental hazard abatement or accessibility barrier elimination project costs or costs for modification for life safety code violations, indoor air quality, or mold abatement and prevention itemized by the board pursuant to subsection (1) of this section and (b) repay any qualified zone academy bonds or American Recovery and Reinvestment Act of 2009 bonds pursuant to subsection (2) or (3) of this section. Such taxes shall be collected by the county treasurer at the same time and in the same manner as county taxes are collected and when collected shall be paid to the treasurer of the district and used to cover the project costs.

(6) If such board operates grades nine through twelve as part of an affiliated school system, it shall designate the fraction of the project or undertaking to be conducted for the benefit of grades nine through twelve. Such fraction shall be raised by a levy placed upon all of the taxable value of all taxable property in the affiliated school system pursuant to subsection (2) of section 79-1075. The balance of the project or undertaking to be conducted for the benefit of grades kindergarten through eight shall be raised by a levy placed upon all of the taxable value of all taxable property in the district which is governed by such board. The combined rate for both levies in the high school district, to be determined by such board, shall not exceed five and one-fifth cents on each one hundred dollars of taxable value.

(7) Each board which submits an itemized estimate shall establish an environmental hazard abatement and accessibility barrier elimination project account, a life safety code modification project account, an indoor air quality project account, or a mold abatement and prevention project account, each board which undertakes a qualified capital purpose shall establish a qualified capital purpose undertaking account, within the qualified capital purpose undertaking fund, and each board which undertakes an American Recovery and Reinvestment Act of 2009 purpose shall establish an American Recovery and Reinvestment Act of 2009 purpose undertaking account. Taxes collected pursuant to this section shall be credited to the appropriate account to cover the project or undertaking costs. Such estimates may be presented to the county clerk and taxes levied accordingly.

(8) For purposes of this section:

(a) Abatement includes, but is not limited to, any inspection and testing regarding environmental hazards, any maintenance to reduce, lessen, put an end to, diminish, moderate, decrease, control, dispose of, or eliminate environmental hazards, any removal or encapsulation of environmentally hazardous material or property, any restoration or replacement of material or property, any related architectural and engineering services, and any other action to reduce or eliminate environmental hazards in the school buildings or on the school grounds under the board's control, except that abatement does not include the encapsulation of any material containing more than one percent friable asbestos;

(b) Accessibility barrier means anything which impedes entry into, exit from, or use of any building or facility by all people;

(c) Accessibility barrier elimination includes, but is not limited to, inspection for and removal of accessibility barriers, maintenance to reduce, lessen, put an end to, diminish, control, dispose of, or eliminate accessibility barriers, related restoration or replacement of facilities or property, any related architectural and engineering services, and any other action to eliminate accessibility barriers in the school buildings or grounds under the board's control;

(d) American Recovery and Reinvestment Act of 2009 bond means any type or form of bond permitted by the federal American Recovery and Reinvestment Act of 2009 for use by schools, except qualified zone academy bonds;

(e) American Recovery and Reinvestment Act of 2009 purpose means any construction of a new public school facility or the acquisition of land on which such a facility is to be constructed or any expansion, rehabilitation, modernization, renovation, or repair of any existing school facilities financed in whole or in part with an American Recovery and Reinvestment Act of 2009 bond;

(f) Environmental hazard means any contamination of the air, water, or land surface or subsurface caused by any substance adversely affecting human health or safety if such substance has been declared hazardous by a federal or state statute, rule, or regulation;

(g) Modification for indoor air quality includes, but is not limited to, any inspection and testing regarding indoor air quality, any maintenance to reduce, lessen, put an end to, diminish, moderate, decrease, control, dispose of, or eliminate indoor air quality problems, any restoration or replacement of material or related architectural and engineering services, and any other action to reduce or eliminate indoor air quality problems or to enhance air quality conditions in new or existing school buildings or on school grounds under the control of a school board;

(h) Modification for life safety code violation includes, but is not limited to, any inspection and testing regarding life safety codes, any maintenance to reduce, lessen, put an end to, diminish, moderate, decrease, control, dispose of, or eliminate life safety hazards, any restoration or replacement of material or property, any related architectural and engineering services, and any other action to reduce or eliminate life safety hazards in new or existing school buildings or on school grounds under the control of a school board;

(i) Modification for mold abatement and prevention includes, but is not limited to, any inspection and testing regarding mold abatement and prevention, any maintenance to reduce, lessen, put an end to, diminish, moderate, decrease, control, dispose of, or eliminate mold problems, any restoration or replacement of material or related architectural and engineering services, and any other action to reduce or eliminate mold problems or to enhance air quality conditions in new or existing school buildings or on school grounds under the control of a school board;

(j) Qualified capital purpose means (i) rehabilitating or repairing the public school facility in which the qualified zone academy is established or (ii) providing equipment for use at such qualified zone academy;

(k) Qualified zone academy has the meaning found in (i) 26 U.S.C. 1397E(d)(4), as such section existed on October 3, 2008, for qualified zone academy bonds issued on or before such date, and (ii) 26 U.S.C. 54E(d)(1), as

such section existed on October 4, 2008, for qualified zone academy bonds issued on or after such date;

(l) Qualified zone academy allocation means the allocation of the qualified zone academy bond limitation by the State Department of Education to the qualified zone academies pursuant to (i) 26 U.S.C. 1397E(e)(2), as such section existed on October 3, 2008, for allocations relating to qualified zone academy bonds issued on or before such date, and (ii) 26 U.S.C. 54E(c)(2), as such section existed on October 4, 2008, for allocations relating to qualified zone academy bonds issued on or after such date; and

(m) Qualified zone academy bond has the meaning found in (i) 26 U.S.C. 1397E(d)(1), as such section existed on October 3, 2008, for such bonds issued on or before such date, and (ii) 26 U.S.C. 54E(a), as such section existed on October 4, 2008, for such bonds issued on or after such date.

(9) Accessibility barrier elimination project costs includes, but is not limited to, inspection, maintenance, accounting, emergency services, consultation, or any other action to reduce or eliminate accessibility barriers.

(10) For the purpose of paying amounts necessary for the abatement of environmental hazards, accessibility barrier elimination, or modifications for life safety code violations, indoor air quality, mold abatement and prevention, or for an American Recovery and Reinvestment Act of 2009 purpose, the board may borrow money, establish a sinking fund, and issue bonds and other evidences of indebtedness of the district, which bonds and other evidences of indebtedness shall be secured by and payable from an irrevocable pledge by the district of amounts received in respect of the tax levy provided for by this section and any other funds of the district available therefor. Bonds and other evidences of indebtedness issued by a district pursuant to this subsection shall not constitute a general obligation of the district or be payable from any portion of its general fund levy.

(11) The total principal amount of bonds for modifications to correct life safety code violations, for indoor air quality problems, for mold abatement and prevention, or for an American Recovery and Reinvestment Act of 2009 purpose which may be issued pursuant to this section shall not exceed the total amount specified in the itemized estimate described in subsections (1) and (3) of this section.

(12) The total principal amount of qualified zone academy bonds which may be issued pursuant to this section for qualified capital purposes with respect to a qualified zone academy shall not exceed the qualified zone academy allocation granted to the board by the department. The total amount that may be financed by qualified zone academy bonds pursuant to this section for qualified purposes with respect to a qualified zone academy shall not exceed seven and one-half million dollars statewide in a single year. In any year that the Nebraska qualified zone academy allocations exceed seven and one-half million dollars for qualified capital purposes to be financed with qualified zone academy bonds issued pursuant to this section, (a) the department shall reduce such allocations proportionally such that the statewide total for such allocations equals seven and one-half million dollars and (b) the difference between the Nebraska allocation and seven and one-half million dollars shall be available to qualified zone academies for requests that will be financed with qualified zone academy bonds issued without the benefit of this section.

Nothing in this section directs the State Department of Education to give any preference to allocation requests that will be financed with qualified zone academy bonds issued pursuant to this section.

(13) The State Department of Education shall establish procedures for allocating bond authority to school boards as may be necessary pursuant to an American Recovery and Reinvestment Act of 2009 bond.

Source: Laws 1983, LB 624, § 2; Laws 1985, LB 405, § 1; Laws 1987, LB 212, § 1; Laws 1988, LB 1073, § 19; Laws 1989, LB 487, § 8; Laws 1989, LB 706, § 9; Laws 1992, LB 1001, § 19; Laws 1993, LB 348, § 22; Laws 1994, LB 1310, § 6; R.S.1943, (1994), § 79-4,207; Laws 1996, LB 900, § 756; Laws 1996, LB 1044, § 817; Laws 1997, LB 710, § 24; Laws 1999, LB 813, § 34; Laws 2001, LB 240, § 1; Laws 2001, LB 797, § 42; Laws 2002, LB 568, § 10; Laws 2003, LB 67, § 23; Laws 2003, LB 540, § 10; Laws 2009, LB545, § 24; Laws 2009, LB549, § 37.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB545, section 24, with LB549, section 37, to reflect all amendments.

Note: Changes made by LB545 became effective May 20, 2009. Changes made by LB549 became effective August 30, 2009.

ARTICLE 11

SPECIAL POPULATIONS AND SERVICES

(a) EARLY CHILDHOOD EDUCATION

Section

(c) SPECIAL EDUCATION

SUBPART (i)—SPECIAL EDUCATION ACT

(i) SEAMLESS DELIVERY SYSTEM PILOT PROJECT

Section
79-11,138. Repealed. Laws 2009, LB 549, § 53.
79-11,139. Repealed. Laws 2009, LB 549, § 53.
79-11,140. Repealed. Laws 2009, LB 549, § 53.
79-11,141. Repealed. Laws 2009, LB 549, § 53.

(l) SPECIAL EDUCATION SERVICES TASK FORCE

79-11,151. Repealed. Laws 2009, LB 154, § 27.
79-11,152. Repealed. Laws 2009, LB 154, § 27.
79-11,153. Repealed. Laws 2009, LB 154, § 27.
79-11,154. Repealed. Laws 2009, LB 154, § 27.

(a) EARLY CHILDHOOD EDUCATION

79-1102.01 Early childhood education program; enrollment of kindergarten age children authorized.

For school years 2008-09 and 2009-10, any early childhood education program as defined in section 79-1101 established by a school board or an educational service unit that is not receiving a grant pursuant to section 79-1103 or funding through the Tax Equity and Educational Opportunities Support Act may enroll children who meet the age requirements to be enrolled in kindergarten pursuant to section 79-214, but who are not then enrolled in kindergarten and who are not of mandatory attendance age pursuant to section 79-201.

Source: Laws 2008, LB1153, § 2; Laws 2009, LB549, § 38.
Effective date August 30, 2009.

Cross References

Tax Equity and Educational Opportunities Support Act, see section 79-1001.

79-1104.01 Nebraska Early Childhood Education Endowment; endowment provider; requirements; endowment agreement; Early Childhood Education Endowment Fund; Early Childhood Education Endowment Cash Fund; created; investment.

(1) Within ninety days after July 14, 2006, the State Department of Education shall request proposals from private endowments with experience in managing public and private funds for the benefit of children and families in multiple locations in Nebraska to be the endowment provider for the Nebraska Early Childhood Education Endowment upon the terms set forth in this section.

(2) An endowment seeking to become the endowment provider for the Nebraska Early Childhood Education Endowment shall agree to:

(a) Irrevocably commit, subject to subdivision (4)(a) of this section, no less than twenty million dollars in a private endowment to be used solely as part of the Nebraska Early Childhood Education Endowment within five years after the effective date of the endowment agreement, of which no less than five million dollars shall be pledged on the effective date of the endowment agreement. A minimum of one million dollars shall be placed in the private endowment prior to December 31, 2006, and a minimum of five million dollars shall be placed in the private endowment prior to June 30, 2007;

(b) Commit all earnings deposited from such private endowment for deposit into the Early Childhood Education Endowment Cash Fund;

(c) Permit the board of trustees to determine the allocation of funds from the Early Childhood Education Endowment Cash Fund pursuant to section 79-1104.02; and

(d) Submit to the State Department of Education an annual financial statement of the private endowment, audited by an independent auditor and complying with all applicable Internal Revenue Service requirements. The financial statement shall report details on the private endowment, including the current value of the corpus and the annual receipts to the private endowment categorized by donations and interests, together with a report listing the amount and purpose of expenditures from the private endowment.

(3) Upon selection of an endowment provider, the State Department of Education and such endowment provider shall enter into an endowment agreement pursuant to which the state and the endowment provider will agree to deposit funds as provided in subsection (4) of this section.

(4)(a) Upon the effective date of an endowment agreement, the state shall provide for the Early Childhood Education Endowment Fund, which is hereby created, in accordance with section 79-1104.05. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(b) All interest, earnings, and proceeds from the Early Childhood Education Endowment Fund shall be deposited in the Early Childhood Education Endowment Cash Fund, which is hereby created. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. All interest, earnings, and proceeds from the Early Childhood Education Endowment Cash Fund shall be retained in such fund.

(c) Upon the effective date of an endowment agreement, the endowment provider shall deposit the amounts set forth in the endowment agreement into a private endowment for the sole benefit of the Early Childhood Education Endowment Fund. Money in the private endowment shall be managed by the endowment provider in accordance with sound, professional, fiduciary practices and in accordance with the endowment agreement.

(d) Earnings deposited from the private endowment shall be deposited into the Early Childhood Education Endowment Cash Fund at least annually or as the endowment agreement provides.

Source: Laws 2006, LB 1256, § 4; Laws 2008, LB1153, § 4; Laws 2009, LB456, § 1.
Effective date May 20, 2009.

Cross References

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

79-1104.05 Early Childhood Education Endowment Fund; funding.

The Early Childhood Education Endowment Fund shall consist of any funds allocated to the Early Childhood Education Endowment Fund from funds

belonging to the state for educational purposes described in Article VII, section 7, of the Constitution of Nebraska.

Source: Laws 2006, LB 1256, § 8; Laws 2009, LB456, § 2.
Effective date May 20, 2009.

(c) SPECIAL EDUCATION

SUBPART (i)—SPECIAL EDUCATION ACT

79-1110 Act, how cited.

Sections 79-1110 to 79-1167 shall be known and may be cited as the Special Education Act.

Source: Laws 1987, LB 367, § 1; Laws 1989, LB 487, § 14; Laws 1993, LB 520, § 22; Laws 1995, LB 742, § 4; R.S.Supp.,1995, § 79-3301; Laws 1996, LB 900, § 792; Laws 1997, LB 346, § 9; Laws 1997, LB 865, § 3; Laws 1998, Spec. Sess., LB 1, § 46; Laws 1999, LB 813, § 36; Laws 2000, LB 1135, § 23; Laws 2009, LB549, § 39.
Effective date August 30, 2009.

79-1127 Special education; board; duties.

The board of education of every school district shall provide or contract for special education programs and transportation for all resident children with disabilities who would benefit from such programs in accordance with the Special Education Act and all applicable requirements of the federal Individuals with Disabilities Education Act, 20 U.S.C. 1401 et seq., as such sections existed on January 1, 2009, and the regulations adopted thereunder.

Source: Laws 1973, LB 403, § 1; Laws 1986, LB 1093, § 2; R.S.Supp.,1986, § 43-641; Laws 1987, LB 367, § 20; R.S.1943, (1994), § 79-3320; Laws 1996, LB 900, § 809; Laws 1997, LB 346, § 17; Laws 2009, LB549, § 40.
Effective date August 30, 2009.

Cross References

Option students, how treated, see section 79-235.

79-1148 Children with disabilities; regional networks, schools, or centers; authorized.

The State Department of Education is authorized to set up one or more statewide regional networks, approved schools, or centers for children with disabilities. Any such regional network, school, or center may offer residential facilities or services for such children, and such services shall be under the control and supervision of the State Department of Education.

Source: Laws 1957, c. 388, § 1, p. 1347; R.R.S.1943, § 83-246; Laws 1961, c. 209, § 1, p. 624; Laws 1972, LB 690, § 9; Laws 1978, LB 871, § 28; R.S.1943, (1984), § 43-617; Laws 1987, LB 367, § 37; R.S.1943, (1994), § 79-3337; Laws 1996, LB 900, § 830; Laws 1997, LB 346, § 34; Laws 1999, LB 813, § 46; Laws 2009, LB549, § 41.
Effective date August 30, 2009.

79-1149 Regional network, school, or center; admission; rules and regulations.

The admission to any regional network, school, or center, as provided by section 79-1148, shall be by rules and regulations to be adopted, promulgated, and administered by the State Department of Education.

Source: Laws 1957, c. 388, § 2, p. 1347; R.R.S.1943, § 83-247; Laws 1961, c. 209, § 2, p. 624; R.S.1943, (1984), § 43-618; Laws 1987, LB 367, § 38; R.S.1943, (1994), § 79-3338; Laws 1996, LB 900, § 831; Laws 2009, LB549, § 42.
Effective date August 30, 2009.

79-1150 Regional network, school, or center; remittance of money.

All money derived from any source other than General Fund appropriations by any regional network, school, or center as provided in sections 79-1148 and 79-1149 shall be remitted to the State Treasurer for credit to the State Department of Education Cash Fund, and such money shall be made available to any such regional network, school, or center for purposes of education, training, or maintenance of students.

Source: Laws 1965, c. 382, § 2, p. 1234; Laws 1972, LB 1000, § 3; Laws 1978, LB 871, § 29; R.S.1943, (1984), § 43-619; Laws 1987, LB 367, § 39; R.S.1943, (1994), § 79-3339; Laws 1996, LB 900, § 832; Laws 2009, LB549, § 43.
Effective date August 30, 2009.

79-1161 Child with a disability; school district; protect rights of child; assignment of surrogate parent.

(1) School districts shall establish and maintain procedures to protect the rights of a child with a disability whenever (a) no parents of the child can be identified, (b) the school district cannot, after reasonable efforts, locate a parent of the child, (c) the child is a ward of the state, or (d) the child is an unaccompanied homeless youth as defined in the McKinney-Vento Homeless Assistance Act, 42 U.S.C. 11434a(6), as such section existed on January 1, 2009. Such procedures shall include the assignment of an individual to act as a surrogate for the parents. The school district shall make reasonable efforts to ensure the assignment of a surrogate not more than thirty days after there is a determination by the district that the child needs a surrogate. In the case of a child who is a ward of the state, such surrogate may alternatively be appointed by the judge overseeing the child's care if the surrogate meets the requirements of subdivision (2)(c) of this section.

(2) The surrogate parent shall (a) have no interest which conflicts with the interest of the child, (b) have knowledge and skills that insure adequate representation, and (c) not be an employee of any agency involved in the care or education of the child. A person otherwise qualified to be a surrogate parent under this subsection is not an employee of the agency solely because he or she is paid by the agency to serve as a surrogate parent. The surrogate parent appointed under this section may represent the child in all matters relating to the identification, evaluation, and educational placement of the child and the provision of a free appropriate public education to the child.

(3) The services of the surrogate parent shall be terminated when (a) the child is no longer eligible under subsection (1) of this section, (b) a conflict of interest

develops between the interest of the child and the interest of the surrogate parent, or (c) the surrogate parent fails to fulfill his or her duties as a surrogate parent. Issues arising from the selection, appointment, or removal of a surrogate parent by a school district shall be resolved through hearings established under sections 79-1162 to 79-1167. The surrogate parent and the school district which appointed the surrogate parent shall not be liable in civil actions for damages for acts of the surrogate parent unless such acts constitute willful and wanton misconduct.

Source: Laws 1988, LB 165, § 1; R.S.1943, (1994), § 79-4,147; Laws 1996, LB 900, § 843; Laws 1997, LB 346, § 42; Laws 2009, LB549, § 44.
Effective date August 30, 2009.

79-1168 Repealed. Laws 2009, LB 549, § 53.

79-1169 Repealed. Laws 2009, LB 549, § 53.

79-1170 Repealed. Laws 2009, LB 549, § 53.

79-1171 Repealed. Laws 2009, LB 549, § 53.

79-1172 Repealed. Laws 2009, LB 549, § 53.

79-1173 Repealed. Laws 2009, LB 549, § 53.

79-1174 Repealed. Laws 2009, LB 549, § 53.

79-1175 Repealed. Laws 2009, LB 549, § 53.

79-1176 Repealed. Laws 2009, LB 549, § 53.

79-1177 Repealed. Laws 2009, LB 549, § 53.

79-1178 Repealed. Laws 2009, LB 549, § 53.

(i) SEAMLESS DELIVERY SYSTEM PILOT PROJECT

79-11,136 Repealed. Laws 2009, LB 549, § 53.

79-11,137 Repealed. Laws 2009, LB 549, § 53.

79-11,138 Repealed. Laws 2009, LB 549, § 53.

79-11,139 Repealed. Laws 2009, LB 549, § 53.

79-11,140 Repealed. Laws 2009, LB 549, § 53.

79-11,141 Repealed. Laws 2009, LB 549, § 53.

(l) SPECIAL EDUCATION SERVICES TASK FORCE

79-11,151 Repealed. Laws 2009, LB 154, § 27.

79-11,152 Repealed. Laws 2009, LB 154, § 27.

79-11,153 Repealed. Laws 2009, LB 154, § 27.

79-11,154 Repealed. Laws 2009, LB 154, § 27.

ARTICLE 12
EDUCATIONAL SERVICE UNITS ACT

Section
79-1204. Role and mission.
79-1212. Reorganized units; board members.
79-1218. Board; meetings; organization; duties.
79-1241. Repealed. Laws 2009, LB 549, § 53.
79-1241.01. Core services; technology infrastructure; appropriation; legislative intent.
79-1241.03. Distribution of funds for school fiscal year 2008-09 and subsequent school years; certification by department; distribution.

79-1204 Role and mission.

(1) The role and mission of the educational service units is to serve as educational service providers in the state's system of elementary and secondary education.

(2) Educational service units shall:

(a) Act primarily as service agencies in providing core services and services identified and requested by member school districts;

(b) Provide for economy, efficiency, and cost-effectiveness in the cooperative delivery of educational services;

(c) Provide educational services through leadership, research, and development in elementary and secondary education;

(d) Act in a cooperative and supportive role with the State Department of Education and school districts in development and implementation of long-range plans, strategies, and goals for the enhancement of educational opportunities in elementary and secondary education; and

(e) Serve, when appropriate and as funds become available, as a repository, clearinghouse, and administrator of federal, state, and private funds on behalf of school districts which choose to participate in special programs, projects, or grants in order to enhance the quality of education in Nebraska schools.

(3) Core services shall be provided by educational service units to all member school districts. Core services shall be defined by each educational service unit as follows:

(a) Core services shall be within the following service areas in order of priority: (i) Staff development which shall include access to staff development related to improving the achievement of students in poverty and students with diverse backgrounds; (ii) technology, including distance education services; and (iii) instructional materials services;

(b) Core services shall improve teaching and student learning by focusing on enhancing school improvement efforts, meeting statewide requirements, and achieving statewide goals in the state's system of elementary and secondary education;

(c) Core services shall provide schools with access to services that:

(i) The educational service unit and its member school districts have identified as necessary services;

(ii) Are difficult, if not impossible, for most individual school districts to effectively and efficiently provide with their own personnel and financial resources;

(iii) Can be efficiently provided by each educational service unit to its member school districts; and

(iv) Can be adequately funded to ensure that the service is provided equitably to the state's public school districts;

(d) Core services shall be designed so that the effectiveness and efficiency of the service can be evaluated on a statewide basis; and

(e) Core services shall be provided by the educational service unit in a manner that minimizes the costs of administration or service delivery to member school districts.

(4) Educational service units shall meet minimum accreditation standards set by the State Board of Education that will:

(a) Provide for accountability to taxpayers;

(b) Assure that educational service units are assisting and cooperating with school districts to provide for equitable and adequate educational opportunities statewide; and

(c) Assure a level of quality in educational programs and services provided to school districts by the educational service units.

(5) Educational service units may contract to provide services to:

(a) Nonmember public school districts;

(b) Nonpublic school systems;

(c) Other educational service units; and

(d) Other political subdivisions, under the Interlocal Cooperation Act and the Joint Public Agency Act.

(6) Educational service units shall not regulate school districts unless specifically provided pursuant to another section of law.

Source: Laws 1987, LB 688, § 1; R.S.1943, (1994), § 79-2201.02; Laws 1996, LB 900, § 921; Laws 1997, LB 806, § 57; Laws 1999, LB 87, § 89; Laws 2006, LB 1208, § 8; Laws 2007, LB641, § 34; Laws 2009, LB549, § 45.
Effective date August 30, 2009.

Cross References

Interlocal Cooperation Act, see section 13-801.
Joint Public Agency Act, see section 13-2501.

79-1212 Reorganized units; board members.

Members of boards of educational service units existing prior to approval of any plan of reorganization shall serve as board members of educational service units which are reorganized pursuant to sections 79-1206 to 79-1211 until the expiration of their original terms. Such persons shall be members of the board of the reorganized educational service unit in which they reside. Within thirty days after approval of any plan of reorganization by the State Board of Education, the president of the board of each educational service unit being reorganized shall call a meeting of board members of such educational service unit. At such meeting, members of each such board shall appoint one member

from each election district to be created pursuant to the plan of reorganization not having representation on such board to serve until the next general election. The board shall take all necessary action to prepare for operation of the reorganized educational service unit following approval of any plan of reorganization by the State Board of Education. Expenses incurred by such board prior to such times shall be prorated between the counties comprising the educational service unit on the basis of the assessed valuation of such counties.

Source: Laws 1969, c. 746, § 3, p. 2810; Laws 1987, LB 688, § 18; R.S.1943, (1994), § 79-2203.02; Laws 1996, LB 900, § 929; Laws 1998, Spec. Sess., LB 1, § 51; Laws 2007, LB603, § 13; Laws 2009, LB549, § 46.
Effective date August 30, 2009.

79-1218 Board; meetings; organization; duties.

The board of each educational service unit shall meet and organize by naming one of its members as president, one as vice president, and one as secretary. The board shall employ a treasurer who shall be paid a salary to be fixed by the board.

The board of the educational service unit shall determine the participation of the educational service unit in providing supplementary educational services. If the board of the educational service unit does not provide supplementary educational services, it shall meet during each succeeding January to determine the participation in providing supplementary educational services for that calendar year. Meetings may be held by means of videoconferencing or telephone conference in accordance with subsections (2) and (3) of section 84-1411.

Source: Laws 1965, c. 504, § 4, p. 1610; Laws 1969, c. 748, § 1, p. 2822; Laws 1969, c. 746, § 5, p. 2811; Laws 1987, LB 688, § 20; R.S.1943, (1994), § 79-2204; Laws 1996, LB 900, § 935; Laws 2009, LB361, § 1.
Effective date August 30, 2009.

79-1241 Repealed. Laws 2009, LB 549, § 53.

79-1241.01 Core services; technology infrastructure; appropriation; legislative intent.

To carry out sections 79-1241.03 and 79-1243, it is the intent of the Legislature to appropriate for each fiscal year the amount appropriated in the prior year increased by the percentage growth in the fall membership of member districts plus the basic allowable growth rate described in section 79-1025. For purposes of this section, fall membership has the same meaning as in section 79-1003. Fall membership data used to compute growth shall be from the two most recently available fall membership reports.

Source: Laws 1998, LB 1110, § 3; Laws 1999, LB 386, § 6; Laws 2006, LB 1208, § 11; Laws 2007, LB603, § 25; Laws 2009, LB549, § 47.
Effective date August 30, 2009.

79-1241.03 Distribution of funds for school fiscal year 2008-09 and subsequent school years; certification by department; distribution.

For school fiscal year 2008-09 and each school fiscal year thereafter:

(1) One percent of the funds appropriated for core services and technology infrastructure shall be transferred to the Educational Service Unit Coordinating Council. The remainder of such funds shall be distributed pursuant to subdivisions (2) through (6) of this section;

(2)(a) The distance education and telecommunications allowance for each educational service unit shall equal eighty-five percent of the difference of the costs for telecommunications services, for access to data transmission networks that transmit data to and from the educational service unit, and for the transmission of data on such networks paid by the educational service unit as reported on the annual financial report for the most recently available complete data year minus the receipts from the federal Universal Service Fund pursuant to 47 U.S.C. 254, as such section existed on January 1, 2007, for the educational service unit as reported on the annual financial report for the most recently available complete data year and minus any receipts from school districts or other educational entities for payment of such costs as reported on the annual financial report of the educational service unit;

(b) The base allocation of each educational service unit shall equal two and one-half percent of the funds appropriated for distribution pursuant to this section;

(c) The satellite office allocation for each educational service unit shall equal one percent of the funds appropriated for distribution pursuant to this section for each office of the educational service unit, except the educational service unit headquarters, up to the maximum number of satellite offices. The maximum number of satellite offices used for the calculation of the satellite office allocation for any educational service unit shall equal the difference of the ratio of the number of square miles within the boundaries of the educational service unit divided by four thousand minus one with the result rounded to the closest whole number;

(d) The statewide adjusted valuation shall equal the total adjusted valuation for all member districts of educational service units pursuant to section 79-1016 used for the calculation of state aid for school districts pursuant to the Tax Equity and Educational Opportunities Support Act for the school fiscal year for which the distribution is being calculated pursuant to this section;

(e) The adjusted valuation for each educational service unit shall equal the total adjusted valuation of the member school districts pursuant to section 79-1016 used for the calculation of state aid for school districts pursuant to the act for the school fiscal year for which the distribution is being calculated pursuant to this section, except that such adjusted valuation for member school districts that are also member districts of a learning community shall be reduced by fifty percent. The adjusted valuation for each learning community shall equal fifty percent of the total adjusted valuation of the member school districts pursuant to section 79-1016 used for the calculation of state aid for school districts pursuant to the act for the school fiscal year for which the distribution is being calculated pursuant to this section;

(f) The local effort rate shall equal $0.0135 per one hundred dollars of adjusted valuation;

(g) Except as provided in subdivision (5) of this section, the statewide student allocation shall equal the difference of the sum of the amount appropriated for distribution pursuant to this section plus the product of the statewide adjusted valuation multiplied by the local effort rate minus the distance education and telecommunications allowance, base allocation, and satellite office allocation for all educational service units;

(h) The sparsity adjustment for each educational service unit and learning community shall equal the sum of one plus one-tenth of the ratio of the square miles within the boundaries of the educational service unit divided by the fall membership of the member school districts for the school fiscal year immediately preceding the school fiscal year for which the distribution is being calculated pursuant to this section;

(i) The adjusted students for each educational service unit shall equal the fall membership for the school fiscal year immediately preceding the school fiscal year for which aid is being calculated of the member school districts that will not be members of a learning community and fifty percent of the fall membership for such school fiscal year of the member school districts that will be members of a learning community pursuant to this section multiplied by the sparsity adjustment for the educational service unit, and the adjusted students for each learning community shall equal fifty percent of the fall membership for such school fiscal year of the member school districts multiplied by the sparsity adjustment for the learning community;

(j) The per student allocation shall equal the statewide student allocation divided by the total adjusted students for all educational service units and learning communities;

(k) The student allocation for each educational service unit and learning community shall equal the per student allocation multiplied by the adjusted students for the educational service unit or learning community;

(l) The needs for each educational service unit shall equal the sum of the distance education and telecommunications allowance, base allocation, satellite office allocation, and student allocation for the educational service unit and the needs for each learning community shall equal the student allocation for the learning community; and

(m) The distribution of core services and technology infrastructure funds for each educational service unit and learning community shall equal the needs for each educational service unit or learning community minus the product of the adjusted valuation for the educational service unit or learning community multiplied by the local effort rate;

(3) If an educational service unit is the result of a merger or received new member school districts from another educational service unit, such educational service unit shall, for each of the three fiscal years following the fiscal year in which the merger takes place or the new member school districts are received, receive core services and technology infrastructure funds pursuant to subdivisions (2) through (6) of this section in an amount not less than the core services and technology infrastructure funds received in the fiscal year immediately preceding the merger or receipt of new member school districts, except that if the total amount available to be distributed pursuant to subdivisions (2) through (6) of this section for such year is less than the total amount distributed pursuant to such subdivisions or section 79-1243 for the immediately preceding fiscal year, the minimum core services and technology infrastructure funds for

each educational service unit pursuant to this subdivision shall be reduced by a percentage equal to the ratio of the difference of the total amount distributed pursuant to subdivisions (2) through (6) of this section or section 79-1243 for the immediately preceding fiscal year minus the total amount available to be distributed pursuant to subdivisions (2) through (6) of this section for the fiscal year in question divided by the total amount distributed pursuant to subdivisions (2) through (6) of this section or section 79-1243 for the immediately preceding fiscal year. The core services and technology infrastructure funds received in the fiscal year immediately preceding a merger or receipt of new member school districts for an educational service unit shall equal the amount received in such fiscal year pursuant to subdivisions (2) through (6) of this section or section 79-1243 by any educational service unit affected by the merger or the transfer of school districts multiplied by a ratio equal to the valuation that was transferred to or retained by the educational service unit for which the minimum is being calculated divided by the total valuation of the educational service unit transferring or retaining the territory;

(4) For fiscal years 2008-09 through 2013-14, each educational service unit which will not have any member school districts that are members of a learning community shall receive core services and technology infrastructure funds under this section in an amount not less than ninety-five percent of the total of the core services and technology infrastructure funds that the educational service unit received in the immediately preceding fiscal year either pursuant to subdivisions (2) through (6) of this section or pursuant to section 79-1243, except that if the total amount available to be distributed pursuant to subdivisions (2) through (6) of this section for such year is less than the total amount distributed pursuant to such subdivisions or section 79-1243 for the immediately preceding fiscal year, the minimum core services and technology infrastructure funds for each educational service unit pursuant to this subdivision shall be reduced by a percentage equal to the ratio of the difference of the total amount distributed pursuant to subdivisions (2) through (6) of this section or section 79-1243 for the immediately preceding fiscal year minus the total amount available to be distributed pursuant to subdivisions (2) through (6) of this section for the fiscal year in question divided by the total amount distributed pursuant to subdivisions (2) through (6) of this section or section 79-1243 for the immediately preceding fiscal year;

(5) If the minimum core services and technology infrastructure funds pursuant to subdivision (3) or (4) of this section for any educational service unit exceed the amount that would otherwise be distributed to such educational service unit pursuant to subdivision (2) of this section, the statewide student allocation shall be reduced such that the total amount to be distributed pursuant to this section equals the appropriation for core services and technology infrastructure funds and no educational service unit receives less than the greater of any minimum amounts calculated for such educational service unit pursuant to subdivisions (3) and (4) of this section; and

(6) The State Department of Education shall certify the distribution of core services and technology infrastructure funds pursuant to subdivisions (2) through (6) of this section to each educational service unit and learning community on or before July 1, 2008, for school fiscal year 2008-09 and on or before July 1 of each year thereafter for the following school fiscal year. Any funds appropriated for distribution pursuant to this section shall be distributed in ten as nearly as possible equal payments on the first business day of each

month beginning in September of each school fiscal year and ending in June. Funds distributed to educational service units pursuant to this section shall be used for core services and technology infrastructure with the approval of representatives of two-thirds of the member school districts of the educational service unit, representing a majority of the adjusted students in the member school districts used in calculations pursuant to this section for such funds. Funds distributed to learning communities shall be used for learning community purposes pursuant to sections 79-2104 and 79-2115, with the approval of the learning community coordinating council.

For purposes of this section, the determination of whether or not a school district will be a member of an educational service unit or a learning community shall be based on the information available May 1 for the following school fiscal year.

Source: Laws 2007, LB603, § 24; Laws 2008, LB1154, § 15; Laws 2009, LB549, § 48.
Effective date August 30, 2009.

Cross References

Tax Equity and Educational Opportunities Support Act, see section 79-1001.

ARTICLE 16

PRIVATE, DENOMINATIONAL, OR PAROCHIAL SCHOOLS

Section
79-1601. Private, denominational, or parochial schools, teachers, and other individuals; laws applicable; election not to meet accreditation or approval requirements.
79-1606. Private, denominational, or parochial schools; nonconformity with school law; penalty.

79-1601 Private, denominational, or parochial schools, teachers, and other individuals; laws applicable; election not to meet accreditation or approval requirements.

(1) Except as provided in subsections (2) through (6) of this section, all private, denominational, and parochial schools in the State of Nebraska and all teachers employed or giving instruction in such schools shall be subject to and governed by the provisions of the general school laws of the state so far as the same apply to grades, qualifications, and certification of teachers and promotion of students. All private, denominational, and parochial schools shall have adequate equipment and supplies, shall be graded the same, and shall have courses of study for each grade conducted in such schools substantially the same as those given in the public schools which the students would attend in the absence of such private, denominational, or parochial schools.

(2) All private, denominational, or parochial schools shall either comply with the accreditation or approval requirements prescribed in section 79-318 or, for those schools which elect not to meet accreditation or approval requirements, the requirements prescribed in section 79-318 and subsections (2) through (6) of this section. Standards and procedures for approval and accreditation shall be based upon the program of studies, guidance services, the number and preparation of teachers in relation to the curriculum and enrollment, instructional materials and equipment, science facilities and equipment, library facilities and materials, and health and safety factors in buildings and grounds.

Rules and regulations which govern standards and procedures for private, denominational, and parochial schools which elect, pursuant to the procedures prescribed in subsections (2) through (6) of this section, not to meet state accreditation or approval requirements shall be based upon evidence that such schools offer a program of instruction leading to the acquisition of basic skills in the language arts, mathematics, science, social studies, and health. Such rules and regulations may include a provision for the visitation of such schools and regular achievement testing of students attending such schools in order to insure that such schools are offering instruction in the basic skills listed in this subsection. Any arrangements for visitation or testing shall be made through a parent representative of each such school. The results of such testing may be used as evidence that such schools are offering instruction in such basic skills but shall not be used to measure, compare, or evaluate the competency of students at such schools.

(3) The provisions of subsections (3) through (6) of this section shall apply to any private, denominational, or parochial school in the State of Nebraska which elects not to meet state accreditation or approval requirements. Elections pursuant to such subsections shall be effective when a statement is received by the Commissioner of Education signed by the parents or legal guardians of all students attending such private, denominational, or parochial school, stating that (a) either specifically (i) the requirements for approval and accreditation required by law and the rules and regulations adopted and promulgated by the State Board of Education violate sincerely held religious beliefs of the parents or legal guardians or (ii) the requirements for approval and accreditation required by law and the rules and regulations adopted and promulgated by the State Board of Education interfere with the decisions of the parents or legal guardians in directing the student's education, (b) an authorized representative of such parents or legal guardians will at least annually submit to the Commissioner of Education the information necessary to prove that the requirements of subdivisions (4)(a) through (c) of this section are satisfied, (c) the school offers the courses of instruction required by subsections (2), (3), and (4) of this section, and (d) the parents or legal guardians have satisfied themselves that individuals monitoring instruction at such school are qualified to monitor instruction in the basic skills as required by subsections (2), (3), and (4) of this section and that such individuals have demonstrated an alternative competency to monitor instruction or supervise students pursuant to subsections (3) through (6) of this section.

(4) Each such private, denominational, or parochial school shall (a) meet minimum requirements relating to health, fire, and safety standards prescribed by state law and the rules and regulations of the State Fire Marshal, (b) report attendance pursuant to section 79-201, (c) maintain a sequential program of instruction designed to lead to basic skills in the language arts, mathematics, science, social studies, and health, and (d) comply with the immunization requirements in section 79-217 if the statement signed by the parents or legal guardians indicate a nonreligious reason pursuant to subdivision (3)(a)(ii) of this section for the student attending a private, denominational, or parochial school which elects not to meet state accreditation or approval requirements. The State Board of Education shall establish procedures for receiving information and reports required by subsections (3) through (6) of this section from authorized parent representatives who may act as agents for parents or legal guardians of students attending such school and for individuals monitoring

instruction in the basic skills required by subsections (2), (3), and (4) of this section.

(5) Individuals employed or utilized by schools which elect not to meet state accreditation or approval requirements shall not be required to meet the certification requirements prescribed in sections 79-801 to 79-815 but shall either (a) take appropriate subject matter components of a nationally recognized teacher competency examination designated by the State Board of Education as (i) including the appropriate subject matter areas for purposes of satisfying the requirements of subsections (3) and (4) of this section and (ii) a nationally recognized examination or (b) offer evidence of competence to provide instruction in the basic skills required by subsections (3) and (4) of this section pursuant to informal methods of evaluation which shall be developed by the State Board of Education. Such evidence may include educational transcripts, diplomas, and other information regarding the formal educational background of such individuals. Information concerning test results, transcripts, diplomas, and other evidence of formal education may be transmitted to the State Department of Education by authorized representatives of parents or legal guardians. The results of such testing or alternative evaluation of individuals who monitor the instruction of students attending such schools may be used as evidence of whether or not such schools are offering adequate instruction in the basic skills prescribed in subsections (2), (3), and (4) of this section but shall not be used to prohibit any such school from employing such individuals. Failure of a monitor, who is tested for the purpose of satisfying in whole or in part the requirements of subsections (3) through (6) of this section, to attain a score equal to or exceeding both the state or national average score or rating on appropriate subject matter components of recognized teacher competency examinations designated by the State Board of Education may be by itself sufficient proof that such school does not offer adequate instruction in the basic skills prescribed in subsections (3) and (4) of this section.

(6) The demonstration of competency to monitor instruction in a private, denominational, or parochial school which has elected not to meet state accreditation or approval requirements shall in no way constitute or be construed to grant a license, permit, or certificate to teach in the State of Nebraska. Any school which elects not to meet state accreditation or approval requirements and does not meet the requirements of subsections (2) through (6) of this section shall not be deemed a school for purposes of section 79-201, and the parents or legal guardians of any students attending such school shall be subject to prosecution pursuant to such section or any statutes relating to habitual truancy.

Source: Laws 1919, c. 155, § 1, p. 346; Laws 1921, c. 53, § 1(h), p. 230; C.S.1922, § 6508f; C.S.1929, § 79-1906; R.S.1943, § 79-1913; Laws 1949, c. 256, § 506, p. 864; Laws 1984, LB 928, § 3; R.S.1943, (1994), § 79-1701; Laws 1996, LB 900, § 1004; Laws 1999, LB 268, § 1; Laws 1999, LB 813, § 55; Laws 2003, LB 685, § 25; Laws 2009, LB549, § 49.
Effective date August 30, 2009.

Cross References

Admission to public college or university, see section 85-607.
Identification of students, home school duties, see section 43-2007.
Religious beliefs, conflict with required immunizations, see section 79-221.

Sales and use tax exemption, see section 77-2704.12.
Student transfer, access to student files or records, see section 79-2,105.

79-1606 Private, denominational, or parochial schools; nonconformity with school law; penalty.

In case any private, denominational, or parochial school, after a final determination by the proper authorities under sections 79-1601 to 79-1607, fails, refuses, or neglects to conform to and comply with such sections, no person shall be granted or allowed a certificate to teach in such school and the students attending such school shall be required to attend the public school of the proper district as provided by law in like manner as though there were no such private, denominational, or parochial school. Full credit for certification under the law shall be given all teachers who have taught in private, denominational, or parochial schools the same as though they had taught in public schools.

Source: Laws 1919, c. 155, § 7, p. 349; Laws 1921, c. 53, § 1(n), p. 231; C.S.1922, § 6508l; C.S.1929, § 79-1912; R.S.1943, § 79-1919; Laws 1949, c. 256, § 511, p. 865; R.S.1943, (1994), § 79-1706; Laws 1996, LB 900, § 1009; Laws 2009, LB549, § 50.
Effective date August 30, 2009.

ARTICLE 21

LEARNING COMMUNITY

Section
79-2104. Learning community coordinating council; powers.
79-2110. Diversity plan; limitations; school building maximum capacity; attendance areas; school board; duties; application to attend school outside attendance area; procedure; continuing student; notice.
79-2113. Elementary learning center; establishment; achievement subcouncil; plan; powers and duties; location of facilities.
79-2117. Learning community coordinating council; achievement subcouncil; membership; meeting; hearing; duties.
79-2118. Diversity plan; contents; approval; report.
79-2120. State Department of Education; certification of students qualifying for free or reduced-price lunches.

79-2104 Learning community coordinating council; powers.

A learning community coordinating council shall have the authority to:

(1) Levy a common levy for the general funds of member school districts pursuant to sections 77-3442 and 79-1073;

(2) Levy a common levy for the special building funds of member school districts pursuant to sections 77-3442 and 79-1073.01;

(3) Levy for capital projects approved by the learning community coordinating council pursuant to sections 77-3442 and 79-2111;

(4) Collect, analyze, and report data and information, including, but not limited to, information provided by a school district pursuant to subsection (5) of section 79-201;

(5) Approve focus schools and focus programs to be operated by member school districts;

(6) Adopt, approve, and implement a diversity plan which shall include open enrollment and may include focus schools, focus programs, magnet schools, and pathways pursuant to section 79-2110;

(7) Administer the open enrollment provisions in section 79-2110 for the learning community as part of a diversity plan developed by the council to provide educational opportunities which will result in increased diversity in schools across the learning community;

(8) Annually conduct school fairs to provide students and parents the opportunity to explore the educational opportunities available at each school in the learning community and develop other methods for encouraging access to such information and promotional materials;

(9) Develop and approve reorganization plans for submission pursuant to the Learning Community Reorganization Act;

(10) Establish and administer elementary learning centers through achievement subcouncils pursuant to sections 79-2112 to 79-2114;

(11) Administer the learning community funds distributed to the learning community pursuant to section 79-2111;

(12) Approve or disapprove poverty plans and limited English proficiency plans for member school districts through achievement subcouncils established under section 79-2117;

(13) Establish a procedure for receiving community input and complaints regarding the learning community; and

(14) Establish a procedure to assist parents, citizens, and member school districts in accessing an approved center pursuant to the Dispute Resolution Act to resolve disputes involving member school districts or the learning community. Such procedure may include payment by the learning community for some mediation services.

Source: Laws 2006, LB 1024, § 106; Laws 2007, LB641, § 40; Laws 2008, LB1154, § 18; Laws 2009, LB392, § 16.
Effective date May 27, 2009.

Cross References

Dispute Resolution Act, see section 25-2901.
Learning Community Reorganization Act, see section 79-4,117.

79-2110 Diversity plan; limitations; school building maximum capacity; attendance areas; school board; duties; application to attend school outside attendance area; procedure; continuing student; notice.

(1)(a) Each diversity plan shall provide for open enrollment in all school buildings in the learning community, subject to specific limitations necessary to bring about diverse enrollments in each school building in the learning community. Such limitations, for school buildings other than focus schools and programs other than focus programs, shall include giving preference at each school building first to siblings of students who will be enrolled as continuing students in such school building or program for the first school year for which enrollment is sought in such school building and then to students that contribute to the socioeconomic diversity of enrollment at each building and may include establishing zone limitations in which students may access several schools other than their home attendance area school. Notwithstanding the limitations necessary to bring about diversity, open enrollment shall include providing access to students who do not contribute to the socioeconomic diversity of a school building, if, subsequent to the open enrollment selection process that is subject to limitations necessary to bring about diverse enroll-

ments, capacity remains in a school building. In such a case, students who have applied to attend such school building shall be selected to attend such school building on a random basis up to the remaining capacity of such building. A student who has otherwise been disqualified from the school building pursuant to the school district's code of conduct or related school discipline rules shall not be eligible for open enrollment pursuant to this section. Any student who attended a particular school building in the prior school year and who is seeking education in the grades offered in such school building shall be allowed to continue attending such school building as a continuing student.

(b) To facilitate the open enrollment provisions of this subsection, each school year each member school district in a learning community shall establish a maximum capacity for each school building under such district's control pursuant to procedures and criteria established by the learning community coordinating council. Each member school district shall also establish attendance areas for each school building under the district's control, except that the school board shall not establish attendance areas for focus schools or focus programs. The attendance areas shall be established such that all of the territory of the school district is within an attendance area for each grade. Students residing in a school district shall be allowed to attend a school building in such school district.

(c) For purposes of this section and sections 79-238 and 79-611, student who contributes to the socioeconomic diversity of enrollment means (i) a student who does not qualify for free or reduced-price lunches when, based upon the certification pursuant to section 79-2120, the school building the student will attend has more students qualifying for free or reduced-price lunches than the average percentage of such students in all school buildings in the learning community or (ii) a student who qualifies for free or reduced-price lunches when, based upon the certification pursuant to section 79-2120, the school building the student will attend has fewer students qualifying for free or reduced-price lunches than the average percentage of such students in all school buildings in the learning community.

(2)(a) On or before March 15 of each year beginning with the year immediately following the year in which the initial coordinating council for the learning community takes office, a parent or guardian of a student residing in a member school district in a learning community may submit an application to any school district in the learning community on behalf of a student who is applying to attend a school building for the following school year that is not in an attendance area where the applicant resides or a focus school, focus program, or magnet school as such terms are defined in section 79-769. On or before April 1 of each year beginning with the year immediately following the year in which the initial coordinating council for the learning community takes office, the school district shall accept or reject such applications based on the capacity of the school building, the eligibility of the applicant for the school building or program, the number of such applicants that will be accepted for a given school building, and whether or not the applicant contributes to the socioeconomic diversity of the school or program to which he or she has applied and for which he or she is eligible. The school district shall notify such parent or guardian in writing of the acceptance or rejection.

(b) A parent or guardian may provide information on the application regarding the applicant's potential qualification for free or reduced-price lunches. Any such information provided shall be subject to verification and shall only be used

for the purposes of this section. Nothing in this section requires a parent or guardian to provide such information. Determinations about an applicant's qualification for free or reduced-price lunches for purposes of this section shall be based on any verified information provided on the application. If no such information is provided the student shall be presumed not to qualify for free or reduced-price lunches for the purposes of this section.

(c) A student may not apply to attend a school building in the learning community for any grades that are offered by another school building for which the student had previously applied and been accepted pursuant to this section, absent a hardship exception as established by the individual school district. On or before September 1 of each year beginning with the year immediately following the year in which the initial coordinating council for the learning community takes office, each school district shall provide to the learning community coordinating council a complete and accurate report of all applications received, including the number of students who applied at each grade level at each building, the number of students accepted at each grade level at each building, the number of such students that contributed to the socioeconomic diversity that applied and were accepted, the number of applicants denied and the rationales for denial, and other such information as requested by the learning community coordinating council.

(3) Each diversity plan may also include establishment of one or more focus schools or focus programs and the involvement of every member school district in one or more pathways across member school districts. Enrollment in each focus school or focus program shall be designed to reflect the socioeconomic diversity of the learning community as a whole. School district selection of students for focus schools or focus programs shall be on a random basis from two pools of applicants, those who qualify for free and reduced-price lunches and those who do not qualify for free and reduced-price lunches. The percentage of students selected for focus schools from the pool of applicants who qualify for free and reduced-price lunches shall be as nearly equal as possible to the percentage of the student body of the learning community who qualify for free and reduced-price lunches. The percentage of students selected for focus schools from the pool of applicants who do not qualify for free and reduced-price lunches shall be as nearly equal as possible to the percentage of the student body of the learning community who do not qualify for free and reduced-price lunches. If more capacity exists in a focus school or program than the number of applicants for such focus school or program that contribute to the socioeconomic diversity of the focus school or program, the school district shall randomly select applicants up to the number of applicants that will be accepted for such building. A student who will complete the grades offered at a focus program, focus school, or magnet school that is part of a pathway shall be allowed to attend the focus program, focus school, or magnet school offering the next grade level as part of the pathway as a continuing student. A student who completes the grades offered at a focus program, focus school, or magnet school shall not be considered a continuing student in the school district responsible for the program or school.

(4) On or before February 15 of each year beginning with the year immediately following the year in which the initial coordinating council for the learning community takes office, a parent or guardian of a student who is currently attending a school building or program, except a magnet school, focus school, or focus program, outside of the attendance area where the

student resides and who will complete the grades offered at such school building prior to the following school year shall provide notice, on a form provided by the school district, to the school board of the school district containing such school building if such student will attend another school building within such district as a continuing student and which school building such student would prefer to attend. On or before March 1, such school board shall provide a notice to such parent or guardian stating which school building or buildings the student shall be allowed to attend in such school district as a continuing student for the following school year. If the student resides within the school district, the notice shall include the school building offering the grade the student will be entering for the following school year in the attendance area where the student resides. This subsection shall not apply to focus schools or programs.

(5) A parent or guardian of a student who moves to a new residence in the learning community after April 1 may apply directly to a school board within the learning community within ninety days after moving for the student to attend a school building outside of the attendance area where the student resides. Such school board shall accept or reject such application within fifteen days after receiving the application, based on the number of applications and qualifications pursuant to subsection (2) or (3) of this section for all other students.

(6) A parent or guardian of a student who wishes to change school buildings for emergency or hardship reasons may apply directly to a school board within the learning community at any time for the student to attend a school building outside of the attendance area where the student resides. Such application shall state the emergency or hardship and shall be kept confidential by the school board. Such school board shall accept or reject such application within fifteen days after receiving the application. Applications shall only be accepted if an emergency or hardship was presented which justifies an exemption from the procedures in subsection (4) of this section based on the judgment of such school board, and such acceptance shall not exceed the number of applications that will be accepted for the school year pursuant to subsection (2) or (3) of this section for such building.

Source: Laws 2006, LB 1024, § 16; Laws 2007, LB641, § 42; Laws 2008, LB1154, § 21; Laws 2009, LB62, § 6.
Effective date February 13, 2009.

79-2113 Elementary learning center; establishment; achievement subcouncil; plan; powers and duties; location of facilities.

(1) On or before the second June 1 immediately following the establishment of a new learning community, the learning community coordinating council shall establish at least one elementary learning center for each twenty-five elementary schools in which at least thirty-five percent of the students attending the school who reside in the attendance area of such school qualify for free or reduced-price lunches. The council shall determine how many of the initial elementary learning centers shall be located in each subcouncil district on or before September 1 immediately following the establishment of a new learning community.

(2) Each achievement subcouncil shall submit a plan to the learning community coordinating council for any elementary learning center in its subcouncil

district and the services to be provided by such elementary learning center. In developing the plan, the achievement subcouncil shall seek input from community resources and collaborate with such resources in order to maximize the available opportunities and the participation of elementary students and their families. An achievement subcouncil may, as part of such plan, recommend services be provided through contracts with, or grants to, entities other than school districts to provide some or all of the services. Such entities may include collaborative groups which may include the participation of a school district. An achievement subcouncil may also, as part of such plan, recommend that the elementary learning center serve as a clearinghouse for recommending programs provided by school districts or other entities and that the elementary learning center assist students in accessing such programs. The plans for the initial elementary learning centers shall be submitted by the achievement subcouncils to the coordinating council on or before January 1 immediately following the establishment of a new learning community.

(3) Each elementary learning center shall have at least one facility that is located in an area with a high concentration of poverty. Such facility may be owned or leased by the learning community, or the use of the facility may be donated to the learning community. Programs offered by the elementary learning center may be offered in such facility or in other facilities, including school buildings.

Source: Laws 2007, LB641, § 45; Laws 2008, LB1154, § 23; Laws 2009, LB392, § 17.
Effective date May 27, 2009.

79-2117 Learning community coordinating council; achievement subcouncil; membership; meeting; hearing; duties.

Each learning community coordinating council shall have an achievement subcouncil for each subcouncil district. Each achievement subcouncil shall consist of the three voting coordinating council members representing the subcouncil district plus any nonvoting coordinating council members choosing to participate who represent a school district that has territory within the subcouncil district. The voting coordinating council members shall also be the voting members on the achievement subcouncil. Each achievement subcouncil shall meet as necessary but shall meet and conduct a public hearing within its subcouncil district at least once each school year. Each achievement subcouncil shall:

(1) Develop a diversity plan recommendation for the territory in its subcouncil district that will provide educational opportunities which will result in increased diversity in schools in the subcouncil district;

(2) Administer elementary learning centers in cooperation with the elementary learning center executive director;

(3) Review and approve or disapprove of the poverty plans and limited English proficiency plans for the schools located in its subcouncil district;

(4) Receive community input and complaints regarding the learning community and academic achievement in the subcouncil district; and

(5) Hold public hearings at its discretion in its subcouncil district in response to issues raised by residents of the subcouncil district regarding the learning

community, a member school district, and academic achievement in the subcouncil district.

Source: Laws 2007, LB641, § 50; Laws 2008, LB1154, § 25; Laws 2009, LB392, § 18.
Effective date May 27, 2009.

79-2118 Diversity plan; contents; approval; report.

(1) Each learning community, together with its member school districts, shall develop a diversity plan to provide educational opportunities pursuant to sections 79-769 and 79-2110 in each subcouncil district designed to attract students from diverse backgrounds, which plan may be revised from time to time. The initial diversity plan shall be completed by December 31 of the year the initial learning community coordinating council for the learning community takes office. The goal of the diversity plan shall be to annually increase the socioeconomic diversity of enrollment at each grade level in each school building within the learning community until such enrollment reflects the average socioeconomic diversity of the entire enrollment of the learning community.

(2) Each diversity plan for a learning community shall include specific provisions relating to each subcouncil district within such learning community. The specific provisions relating to each subcouncil district shall be approved by both the achievement subcouncil for such district and by the learning community coordinating council.

(3) The learning community coordinating council shall report to the Education Committee of the Legislature on or before December 1 of each even-numbered year on the diversity and changes in diversity at each grade level in each school building within the learning community and on the academic achievement for different demographic groups in each school building within the learning community.

Source: Laws 2007, LB641, § 51; Laws 2008, LB1154, § 26; Laws 2009, LB392, § 19.
Effective date May 27, 2009.

79-2120 State Department of Education; certification of students qualifying for free or reduced-price lunches.

On or before March 1, 2009, and February 1 of each year thereafter, for purposes of subsection (3) of section 79-238 and sections 79-611 and 79-2110, the State Department of Education shall certify to each learning community and each member school district the average percentage of students qualifying for free or reduced-price lunches in each school building in each member school district and in the aggregate for all school buildings in the learning community based on the most current information available to the department on the immediately preceding January 1. The State Board of Education may adopt and promulgate rules and regulations to carry out this section.

Source: Laws 2009, LB62, § 5.
Effective date February 13, 2009.

CHAPTER 80
SOLDIERS AND SAILORS

Article.
3. Nebraska Veterans Homes. 80-316.
4. Veterans Aid. 80-401.01, 80-410.

ARTICLE 3
NEBRASKA VETERANS HOMES

Section
80-316. Division of Veterans' Homes; purpose; admission; requirements.

80-316 Division of Veterans' Homes; purpose; admission; requirements.

(1) The purpose of the Division of Veterans' Homes of the Department of Health and Human Services is to provide domiciliary and nursing home care and subsistence to:

(a) All persons who served on active duty in the armed forces of the United States other than active duty for training and who were discharged or otherwise separated with a characterization of honorable or general (under honorable conditions) if, at the time of making an application for admission to one of the Nebraska veterans homes:

(i) The applicant has been a bona fide resident of the State of Nebraska for at least two years;

(ii) The applicant has become disabled due to service, old age, or otherwise to an extent that it would prevent such applicant from earning a livelihood; and

(iii) The applicant's income from all sources is such that the applicant would be dependent wholly or partially upon public charities for support or the type of care needed is available only at a state institution;

(b) The spouse of any such person admitted to one of the homes who has attained the age of fifty years and has been married to such member for at least two years before his or her entrance into the home;

(c) Subject to subsection (2) of this section, the surviving spouses and parents of eligible servicemen and servicewomen as defined in subdivision (a) of this subsection who died while in the service of the United States or who have since died of a service-connected disability as determined by the United States Department of Veterans Affairs; and

(d) Subject to subsection (2) of this section, the surviving spouses of eligible servicemen or servicewomen as defined in subdivision (a) of this subsection who have since died.

(2) The surviving spouses and parents referred to in subdivision (1)(c) or (d) of this section shall be eligible for such care and subsistence if, at the time of applying, they:

(a) Have been bona fide residents of the State of Nebraska for at least two years;

(b) Have attained the age of fifty years;

(c) Are unable to earn a livelihood; and

(d) Are dependent wholly or partially upon public charities or the type of care needed is available only at a state institution.

(3) No one admitted to one of the Nebraska veterans homes under conditions enumerated in this section shall have a vested right to continued residence in such home if such person ceases to meet any of the eligibility requirements of this section, except that no person who has been regularly admitted shall be denied continued residence solely because of his or her marriage to a member of one of the homes.

Source: Laws 1997, LB 396, § 5; Laws 2005, LB 54, § 26; Laws 2007, LB296, § 719; Laws 2009, LB488, § 1.
Effective date August 30, 2009.

ARTICLE 4

VETERANS AID

Section

80-401.01 Terms, defined.

For purposes of sections 80-401 to 80-412, unless the context otherwise requires:

(1) Recognized veterans organization means the American Legion, the American Ex-Prisoners of War, the Disabled American Veterans, the Military Order of the Purple Heart, the Paralyzed Veterans of America, the Veterans of Foreign Wars of the United States, the Vietnam Veterans of America, and any other veterans organization which the Director of Veterans' Affairs determines (a) is recognized by the United States Department of Veterans Affairs for claims representation, (b) has a presence in each of this state's congressional districts, and (c) maintains a state headquarters sanctioned by its national organization;

(2) Veteran of the Spanish-American War means a person who served on active duty in the armed forces of the United States between April 21, 1898, and July 4, 1902, or who, being a citizen of the United States at the time of his or her entry into such service, served with the military forces of any government allied with the United States in that war;

(3) Veteran of World War I means a person who served on active duty in the armed forces of the United States between April 6, 1917, and November 11, 1918, or who, being a resident of the United States at the time of his or her entry into such service, served with the military forces of any government allied with the United States in that war;

(4) Veteran of World War II means a person who served on active duty in the armed forces of the United States between December 7, 1941, and December 31, 1946, or who, being a citizen of the United States at the time of his or her entry into such service, served with the military forces of any government allied with the United States in that war;

(5) Veteran of the Korean War means a person who served on active duty in the armed forces of the United States between June 25, 1950, and January 31,

1955, or who, being a citizen of the United States at the time of his or her entry into such service, served with the military forces of any government allied with the United States in that war;

(6) Veteran of the Vietnam War means a person (a) who served on active duty in the armed forces of the United States (i) between August 5, 1964, and May 7, 1975, or (ii) in the Republic of Vietnam between February 28, 1961, and May 7, 1975, and (b) who, being a citizen of the United States at the time of his or her entry into such service, served with the military forces of any government allied with the United States in that war;

(7) Veteran of Lebanon means a person who served on active duty in the armed forces of the United States between August 25, 1982, and February 26, 1984, or who, being a citizen of the United States at the time of his or her entry into such service, served with the military forces of any government allied with the United States in that war;

(8) Veteran of Grenada means a person who served on active duty in the armed forces of the United States between October 23, 1983, and November 23, 1983, or who, being a citizen of the United States at the time of his or her entry into such service, served with the military forces of any government allied with the United States in that war;

(9) Veteran of Panama means a person who served on active duty in the armed forces of the United States between December 20, 1989, and January 31, 1990, or who, being a citizen of the United States at the time of his or her entry into such service, served with the military forces of any government allied with the United States in that war;

(10) Veteran of the Persian Gulf War means a person who served on active duty in the armed forces of the United States beginning on August 2, 1990, and ending on the date thereafter prescribed by presidential proclamation or by law, or who, being a citizen of the United States at the time of his or her entry into such service, served with the military forces of any government allied with the United States in that war;

(11) Veteran of the Global War on Terror means a person who served on active duty in the armed forces of the United States beginning on September 14, 2001, and ending on the date thereafter prescribed by presidential proclamation or by law, or who, being a citizen of the United States at the time of his or her entry into such service, served with the military forces of any government allied with the United States in that war;

(12) Active duty means full-time duty in the armed forces other than active duty for training; and

(13) Active duty for training means full-time duty in the armed forces performed by reserves for training purposes.

Source: Laws 1947, c. 306, § 2, p. 927; Laws 1951, c. 302, § 1, p. 993; Laws 1955, c. 328, § 1, p. 1024; Laws 1967, c. 562, § 1, p. 1853; Laws 1967, c. 561, § 2, p. 1849; Laws 1969, c. 754, § 1, p. 2835; Laws 1974, LB 621, § 1; Laws 1975, LB 90, § 3; Laws 1978, LB 571, § 1; Laws 1981, LB 221, § 1; Laws 1985, LB 49, § 1; Laws 1987, LB 626, § 2; Laws 1990, LB 857, § 1; Laws 1991, LB 720, § 1; Laws 1992, LB 835, § 4; Laws 1993, LB 2, § 1; Laws 1994,

LB 241, § 1; Laws 2001, LB 368, § 2; Laws 2003, LB 799, § 1; Laws 2005, LB 54, § 29; Laws 2009, LB422, § 1.
Effective date August 30, 2009.

80-410 Director; Veterans' Advisory Commission; state and county veterans service officers; employees; qualifications.

(1) The Director of Veterans' Affairs, all members of the Veterans' Advisory Commission, all state service officers, all assistant state service officers, and all personnel, except certain special and clerical help, of the state veterans service offices shall have served in the armed forces of the United States during the dates set forth in section 80-401.01, shall have been discharged or otherwise separated with a characterization of honorable from such service, and shall have been bona fide residents of the State of Nebraska continuously for at least five years immediately prior to their assuming a position in any of the offices mentioned.

(2) All county veterans service officers shall have served on active duty in the armed forces of the United States, other than active duty for training, shall have been discharged or otherwise separated with a characterization of honorable from the service, and shall have been bona fide residents of the State of Nebraska continuously for at least five years immediately prior to assuming any such position.

(3) All members of the county veterans service committees and all personnel, except certain special and clerical help, of the county veterans service offices shall have all of the qualifications described in subsection (2) of this section, except that such persons may have been discharged or otherwise separated with a characterization of general (under honorable conditions).

Source: Laws 1947, c. 306, § 18, p. 934; Laws 1953, c. 326, § 4, p. 1080; Laws 1967, c. 563, § 3, p. 1857; Laws 1969, c. 754, § 9, p. 2842; Laws 2005, LB 54, § 33; Laws 2009, LB52, § 1.
Effective date August 30, 2009.

Cross References

Director, qualifications of, see section 80-401.02.
Veterans' Advisory Commission, qualifications of members, see section 80-401.06.

CHAPTER 81
STATE ADMINISTRATIVE DEPARTMENTS

Article.

ARTICLE 1
THE GOVERNOR AND ADMINISTRATIVE DEPARTMENTS

(a) GENERAL PROVISIONS

(a) GENERAL PROVISIONS

81-108 Department heads; restrictions on office holding or employment; exceptions.

(1) Except as provided in subsection (2) of this section, no head of any department referred to in section 81-101 shall hold any other public office or receive any profit from any other public or private employment. For purposes of this section, employment shall not be interpreted to mean membership on the board of directors of any corporation, business, or association, whether or not the head of the department receives compensation for such membership.

(2) Nothing in this section shall be interpreted as prohibiting the head of one of the departments referred to in section 81-101 from serving on any public advisory or policymaking board, commission, committee, or council.

Source: Laws 1919, c. 190, § 6, p. 438; C.S.1922, § 7247; C.S.1929, § 81-109; R.S.1943, § 81-108; Laws 1953, c. 335, § 3, p. 1101; Laws 1955, c. 329, § 5, p. 1027; Laws 1959, c. 424, § 2, p. 1423; Laws 1981, LB 249, § 5; Laws 1983, LB 82, § 1; Laws 1991, LB 852, § 1; Laws 2009, LB322, § 4.
Effective date August 30, 2009.

(f) DEFERRED BUILDING RENEWAL AND MAINTENANCE

81-188.02 State Building Renewal Assessment Fund; capital improvement project; depreciation charges.

(1) For purposes of this section, capital improvement project means (a) construction of a new facility, structure, or building, (b) construction of additions to an existing facility, structure, or building, (c) renovation of an existing facility, structure, or building if the total project cost of such renovation represents not less than fifteen percent of the value of the existing facility, structure, or building as determined by the Department of Administrative Services, (d) purchase of an existing facility, structure, or building, and (e) acquisition of a facility, structure, or building through means of conveyance other than sale and purchase.

(2) Beginning with the fiscal year that commences subsequent to the calendar year in which has occurred substantial completion of a capital improvement project as defined in subdivisions (1)(a) through (1)(c) of this section or

acquisition of a capital improvement project as defined in subdivisions (1)(d) and (1)(e) of this section, the department shall assess a capital improvement depreciation charge to the agency maintaining ownership or control of the related facility, structure, or building and shall assess such charge for each fiscal year thereafter, except that no depreciation charges shall be assessed or paid pursuant to this section for the period beginning July 1, 2009, and ending June 30, 2011.

(3) The annual depreciation charge for a capital improvement project as defined in subdivisions (1)(a) through (1)(c) of this section shall be computed as one percent of the total project cost of the capital improvement project. The annual depreciation charge for a capital improvement project as defined in subdivision (1)(d) of this section shall be computed as one percent of the greater of the purchase price or the value, as determined by the department, of the capital improvement project at the time of acquisition. The annual depreciation charge for a capital improvement project as defined in subdivision (1)(e) of this section shall be computed as one percent of the value, as determined by the department, of the capital improvement project at the time of acquisition. The department may assess the charge annually or in monthly, quarterly, or semiannual installments.

(4) Depreciation charges shall not be assessed pursuant to this section for capital improvement projects relating to facilities, structures, or buildings owned, leased, or operated by the: (i) University of Nebraska; (ii) Nebraska state colleges; (iii) Department of Aeronautics; (iv) Department of Roads; (v) Game and Parks Commission; or (vi) Board of Educational Lands and Funds or to other buildings or grounds owned, leased, or operated by the State of Nebraska which are specifically exempted by the Department of Administrative Services because the assessment of such depreciation charges would result in the ineligibility for federal funding or would result in hardship on an agency, board, or commission due to other exceptional or unusual circumstances. Depreciation charges shall not be assessed pursuant to this section for capital improvement projects relating to facilities, structures, or buildings of which the department is custodian pursuant to section 81-1108.17 and for which charges are assessed pursuant to subdivision (4)(b) of such section.

(5) Payment of depreciation charges assessed pursuant to this section shall be remitted to the State Treasurer for credit to the State Building Renewal Assessment Fund.

Source: Laws 1998, LB 1100, § 9; Laws 2001, LB 666, § 1; Laws 2002, LB 1310, § 14; Laws 2003, LB 410, § 5; Laws 2004, LB 439, § 16; Laws 2004, LB 1092, § 3; Laws 2007, LB322, § 21; Laws 2009, LB318, § 1.
Operative date July 1, 2009.

81-188.04 University Building Renewal Assessment Fund; capital improvement project; depreciation charges.

(1) For purposes of this section, capital improvement project means (a) construction of a new facility, structure, or building, (b) construction of additions to an existing facility, structure, or building, (c) renovation of an existing facility, structure, or building if the total project cost of such renovation represents not less than fifteen percent of the value of the existing facility, structure, or building as determined by the Department of Administrative

Services, (d) purchase of an existing facility, structure, or building, and (e) acquisition of a facility, structure, or building through means of conveyance other than sale and purchase.

(2) Beginning with the fiscal year that commences subsequent to the calendar year in which has occurred substantial completion of a capital improvement project by the University of Nebraska as defined in subdivisions (1)(a) through (1)(c) of this section or acquisition of a capital improvement project by the University of Nebraska as defined in subdivisions (1)(d) and (1)(e) of this section, the department shall assess a capital improvement depreciation charge to the Board of Regents of the University of Nebraska and shall assess such charge for each fiscal year thereafter, except that no depreciation charges shall be assessed or paid pursuant to this section for the period beginning July 1, 2009, and ending June 30, 2011.

(3) The annual depreciation charge for a capital improvement project as defined in subdivisions (1)(a) through (1)(c) of this section shall be computed as one percent of the total project cost of the capital improvement project. The annual depreciation charge for a capital improvement project as defined in subdivision (1)(d) of this section shall be computed as one percent of the greater of the purchase price or the value, as determined by the department, of the capital improvement project at the time of acquisition. The annual depreciation charge for a capital improvement project as defined in subdivision (1)(e) of this section shall be computed as one percent of the value, as determined by the department, of the capital improvement project at the time of acquisition. The department may assess the charge annually or in monthly, quarterly, or semiannual installments.

(4) Depreciation charges shall not be assessed pursuant to this section for capital improvement projects relating to facilities, structures, or buildings from which revenue is derived and pledged for the retirement of revenue bonds issued under sections 85-403 to 85-411.

(5) Payment of depreciation charges assessed pursuant to this section shall be remitted to the State Treasurer for credit to the University Building Renewal Assessment Fund.

Source: Laws 1998, LB 1100, § 11; Laws 2002, LB 1310, § 16; Laws 2003, LB 410, § 7; Laws 2004, LB 1092, § 5; Laws 2007, LB322, § 22; Laws 2009, LB318, § 2.
Operative date July 1, 2009.

81-188.06 State College Building Renewal Assessment Fund; capital improvement project; depreciation charges.

(1) For purposes of this section, capital improvement project means (a) construction of a new facility, structure, or building, (b) construction of additions to an existing facility, structure, or building, (c) renovation of an existing facility, structure, or building if the total project cost of such renovation represents not less than fifteen percent of the value of the existing facility, structure, or building as determined by the Department of Administrative Services, (d) purchase of an existing facility, structure, or building, and (e) acquisition of a facility, structure, or building through means of conveyance other than sale and purchase.

(2) Beginning with the fiscal year that commences subsequent to the calendar year in which has occurred substantial completion of a capital improvement

project by the Nebraska state colleges as defined in subdivisions (1)(a) through (1)(c) of this section or acquisition of a capital improvement project by the Nebraska state colleges as defined in subdivisions (1)(d) and (1)(e) of this section, the department shall assess a depreciation charge to the Board of Trustees of the Nebraska State Colleges and shall assess such charge for each fiscal year thereafter, except that no depreciation charges shall be assessed or paid pursuant to this section for the period beginning July 1, 2009, and ending June 30, 2011.

(3) The annual depreciation charge for a capital improvement project as defined in subdivisions (1)(a) through (1)(c) of this section shall be computed as one percent of the total project cost of the capital improvement project. The annual depreciation charge for a capital improvement project as defined in subdivision (1)(d) of this section shall be computed as one percent of the greater of the purchase price or the value, as determined by the department, of the capital improvement project at the time of acquisition. The annual depreciation charge for a capital improvement project as defined in subdivision (1)(e) of this section shall be computed as one percent of the value, as determined by the department, of the capital improvement project at the time of acquisition. The department may assess the charge annually or in monthly, quarterly, or semiannual installments.

(4) Depreciation charges shall not be assessed pursuant to this section for capital improvement projects relating to facilities, structures, or buildings from which revenue is derived and pledged for the retirement of revenue bonds issued under sections 85-403 to 85-411.

(5) Payment of depreciation charges assessed pursuant to this section shall be remitted to the State Treasurer for credit to the State College Building Renewal Assessment Fund.

Source: Laws 1998, LB 1100, § 13; Laws 2002, LB 1310, § 18; Laws 2003, LB 410, § 9; Laws 2004, LB 1092, § 7; Laws 2007, LB322, § 23; Laws 2009, LB318, § 3.
Operative date July 1, 2009.

ARTICLE 2

DEPARTMENT OF AGRICULTURE

(m) SEEDS

(n) COMMERCIAL FERTILIZER AND SOIL CONDITIONER

(m) SEEDS

81-2,147 Law, how cited.

Sections 81-2,147 to 81-2,147.12 shall be known and cited as the Nebraska Seed Law.

Source: Laws 1969, c. 759, § 1, p. 2860; Laws 1985, LB 460, § 11; Laws 2009, LB263, § 2.
Effective date August 30, 2009.

81-2,147.12 Preemption of local law.

The Nebraska Seed Law and any rules and regulations adopted and promulgated thereunder shall supersede and preempt any ordinance, rule, regulation, or resolution enacted by any political subdivision of the state regarding the regulation of seeds. No political subdivision shall prohibit or in any other manner regulate any matter relating to the registration, labeling, or sale of seeds based upon the type, nature, or genetic makeup of such seeds. No political subdivision shall prohibit or in any other manner regulate any matter relating to the registration, labeling, sale, storage, transportation, distribution, notification of use, planting, or cultivation of seeds that is in addition to or in conflict with the Nebraska Seed Law and any rules and regulations adopted and promulgated thereunder. Nothing in this section shall be construed to preempt or otherwise limit the authority of any city or county to adopt and enforce zoning regulations.

Source: Laws 2009, LB263, § 1.
Effective date August 30, 2009.

(n) COMMERCIAL FERTILIZER AND SOIL CONDITIONER

81-2,162.22 Act, how cited.

Sections 81-2,162.01 to 81-2,162.28 shall be known and may be cited as the Nebraska Commercial Fertilizer and Soil Conditioner Act.

Source: Laws 1955, c. 334, § 22, p. 1046; Laws 1975, LB 333, § 23; Laws 1987, LB 201, § 5; Laws 2009, LB263, § 4.
Effective date August 30, 2009.

81-2,162.28 Preemption of local law.

The Nebraska Commercial Fertilizer and Soil Conditioner Act and any rules and regulations adopted and promulgated thereunder shall supersede and preempt any ordinance, rule, regulation, or resolution enacted by any political subdivision of the state regarding the regulation of fertilizer and soil conditioners. No political subdivision shall prohibit or in any other manner regulate any matter relating to the registration, labeling, or sale of fertilizer and soil conditioners. No political subdivision shall prohibit or in any other manner regulate any matter relating to the storage, transportation, distribution, notification of use, or use that is in addition to or in conflict with the Nebraska Commercial Fertilizer and Soil Conditioner Act and any rules and regulations adopted and promulgated thereunder. Nothing in this section shall be construed to preempt or otherwise limit the authority of any city or county to adopt and enforce zoning regulations or any natural resources district to enforce the Nebraska Ground Water Management and Protection Act.

Source: Laws 2009, LB263, § 3.
Effective date August 30, 2009.

Cross References

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

ARTICLE 6
HEALTH AND HUMAN SERVICES

(p) TRANSPORTATION SERVICES

(p) TRANSPORTATION SERVICES

81-6,120 Transportation services; restrictions on providers; criminal history record information check required; fingerprinting; costs; release of results; violation; penalty.

(1) No individual who has been convicted of a felony or of any crime involving moral turpitude, or who has been charged with or indicted for a felony or crime involving moral turpitude and there has been no final resolution of the prosecution of the crime, shall provide transportation services under contract with the Department of Health and Human Services, whether as an employee or as a volunteer, for vulnerable adults as defined in section 28-371 or for persons under nineteen years of age.

(2) In order to assure compliance with subsection (1) of this section, any individual who will be providing such transportation services to such vulnerable adults or persons under nineteen years of age and any individual who is providing such services on August 30, 2009, shall be subject to a national criminal history record information check by the Department of Health and Human Services through the Nebraska State Patrol.

(3) In addition to the national criminal history record information check required in subsection (2) of this section, all individuals employed to provide transportation services under contract with the Department of Health and Human Services to vulnerable adults or persons under nineteen years of age shall submit to a national criminal history record information check every two years during the period of such employment.

(4) Individuals shall submit two full sets of fingerprints to the Nebraska State Patrol to be submitted to the Federal Bureau of Investigation for the national criminal history record information check required under this section. The individual shall pay the actual cost of fingerprinting and the national criminal history record information check.

(5)(a) Individuals shall authorize release of the results and contents of a national criminal history record information check under this section to the employer and the Department of Health and Human Services as provided in this section.

(b) The Nebraska State Patrol shall not release the contents of a national criminal history record information check under this section to the employer or the individual but shall only indicate in writing to the employer and the individual whether the individual has a criminal record.

(c) The Nebraska State Patrol shall release the results and the contents of a national criminal history record information check under this section in writing to the department in accordance with applicable federal law.

(6) The Department of Health and Human Services may develop and implement policies that provide for administrative exceptions to the prohibition in subsection (1) of this section, including, but not limited to, situations in which relatives of the vulnerable adult or person under nineteen years of age provide transportation services for such vulnerable adult or person under nineteen years of age or situations in which the circumstances of the crime or the elapsed time since the commission of the crime do not warrant the prohibition. Any decision made by the department regarding an administrative exception under this section is discretionary and is not appealable.

(7) An individual who does not comply with this section is guilty of a Class V misdemeanor.

Source: Laws 2009, LB97, § 30.
Operative date August 30, 2009.

ARTICLE 7

DEPARTMENT OF ROADS

(a) GENERAL POWERS

(a) GENERAL POWERS

81-701.03 Department of Roads; assume highway safety program of Department of Motor Vehicles.

Beginning on July 1, 2009, the Department of Roads shall assume responsibility for the powers and duties of the highway safety program of the Department of Motor Vehicles, except that the Department of Motor Vehicles shall retain jurisdiction over the Motorcycle Safety Education Act.

Source: Laws 2009, LB219, § 2.
Operative date July 1, 2009.

Cross References

Motorcycle Safety Education Act, see section 60-2120.

ARTICLE 8

INDEPENDENT BOARDS AND COMMISSIONS

(g) REAL ESTATE COMMISSION

(g) REAL ESTATE COMMISSION

81-885 Act, how cited.

Sections 81-885 to 81-885.55 shall be known and may be cited as the Nebraska Real Estate License Act.

Source: Laws 2009, LB30, § 1.
Effective date August 30, 2009.

81-885.02 Broker, associate broker, real estate salesperson; license required; exemption.

After September 2, 1973, it shall be unlawful for any person, directly or indirectly, to engage in or conduct, or to advertise or hold himself or herself out as engaging in or conducting the business, or acting in the capacity, of a real estate broker, associate broker, or real estate salesperson within this state without first obtaining a license as such broker, associate broker, or salesperson, as provided in the Nebraska Real Estate License Act, unless he or she is exempted from obtaining a license under section 81-885.04.

Source: Laws 1973, LB 68, § 2; Laws 1983, LB 182, § 2; Laws 2009, LB30, § 2.
Effective date August 30, 2009.

81-885.05 Railroads; public utilities; applicability of act.

The Nebraska Real Estate License Act shall not apply to railroads and other public utilities regulated by the State of Nebraska, or their subsidiaries or affiliated corporations, or to the officers or regular employees thereof, unless

performance of any of the acts described in subdivision (2) of section 81-885.01 is in connection with the sale, purchase, lease, or other disposition of real estate or investment therein unrelated to the principal business activity of such railroad or other public utility or affiliated or subsidiary corporation thereof.

Source: Laws 1973, LB 68, § 5; Laws 1983, LB 182, § 5; Laws 2009, LB30, § 3.
Effective date August 30, 2009.

81-885.09 Attorney General; opinions on questions of law; act as attorney; fees and expenses; paid from State Real Estate Commission's Fund.

The Attorney General shall render to the State Real Estate Commission opinions on all questions of law relating to the interpretation of the Nebraska Real Estate License Act or arising in the administration thereof and shall act as attorney for the commission in all actions and proceedings brought by or against it under or pursuant to the act. All fees and expenses of the Attorney General arising out of such duties shall be paid out of the State Real Estate Commission's Fund.

Source: Laws 1973, LB 68, § 9; Laws 1983, LB 182, § 8; Laws 2009, LB30, § 4.
Effective date August 30, 2009.

81-885.10 Commission; powers; licensing; consent decrees; civil fine.

The commission shall have the full power to regulate the issuance of licenses and the activities of licensees and to revoke or suspend licenses issued under the Nebraska Real Estate License Act, to censure licensees, and to enter into consent decrees. The commission may, alone or in combination with such disciplinary actions, impose a civil fine on a licensee for each violation alleged in a complaint for which the commission has made a finding of guilt, except that the total fine for such violations shall not exceed two thousand five hundred dollars per complaint.

Source: Laws 1973, LB 68, § 10; Laws 1983, LB 182, § 9; Laws 2009, LB30, § 5.
Effective date August 30, 2009.

81-885.14 Fees; license; annual renewal; procedure.

(1) To pay the expense of the maintenance and operation of the office of the commission and the enforcement of the Nebraska Real Estate License Act, the commission shall, at the time an application is submitted, collect from an applicant for each broker's or salesperson's examination a fee to be established by the commission of not more than two hundred fifty dollars and an application fee of not more than two hundred fifty dollars. The commission shall also collect a reexamination fee to be established by the commission of not more than two hundred fifty dollars for each reexamination. The commission may direct an applicant to pay the examination or reexamination fee to a third party who has contracted with the commission to administer the examination. An applicant who is granted a license under section 81-885.17 without being required to take an examination shall not be required to pay the examination and application fees. Prior to the issuance of an original license, each applicant who has passed the examination required by section 81-885.13 or who has received a license under section 81-885.17 shall pay a license fee to be

established by the commission. The license fee established by the commission shall not exceed the following amounts: For a broker's license, not more than two hundred fifty dollars; and for a salesperson's license, not more than two hundred dollars. After the original issuance of a license, a renewal application and an annual fee to be established by the commission of not more than two hundred fifty dollars for each broker, and not more than two hundred dollars for each salesperson, shall be due and payable on or before the last day of November of each year. Failure to remit annual fees when due shall automatically cancel such license on December 31 of that year, but otherwise the license shall remain in full force and effect continuously from the date of issuance unless suspended or revoked by the commission for just cause. Any licensee who fails to file an application for the renewal of any license and pay the renewal fee as provided in this section may file a late renewal application and shall pay, in addition to the renewal fee, an amount to be established by the commission of not more than twenty-five dollars for each month or fraction thereof beginning with the first day of December if such late application is filed before July 1 of the ensuing year. Any check presented to the commission as a fee for either an original or renewal license or for examination for license which is returned to the State Treasurer unpaid or any electronic payment presented to the commission as a fee for either an original or renewal license or for examination for license that is not accepted against the commission shall be cause for revocation or denial of license.

(2) An inactive broker or salesperson may renew his or her license by submitting an application before December 1 prior to the ensuing year. Such broker or salesperson shall submit the renewal fee together with the completed renewal application on which he or she has noted his or her present inactive status. Any broker or salesperson whose license has been renewed on such inactive status shall not be permitted to engage in the real estate business until such time as he or she fulfills the requirements for active status. Any license which has been inactive for a continuous period of more than three years shall be reinstated only if the licensee has met the examination requirement of an original applicant.

Source: Laws 1973, LB 68, § 14; Laws 1976, LB 899, § 1; Laws 1978, LB 361, § 7; Laws 1980, LB 936, § 2; Laws 1983, LB 182, § 13; Laws 1990, LB 350, § 6; Laws 1991, LB 118, § 3; Laws 1991, LB 204, § 2; Laws 2009, LB11, § 1.
Effective date August 30, 2009.

81-885.15 Fees; deposited in State Real Estate Commission's Fund; investment.

All fees collected under the Nebraska Real Estate License Act shall be deposited in the state treasury in a fund to be known as the State Real Estate Commission's Fund. The commission may use such part of the money in this fund as is necessary to be used by it in the administration and enforcement of the act. The fund shall be paid out only upon proper vouchers and upon warrants issued by the Director of Administrative Services and countersigned by the State Treasurer, as provided by law. The expenses of conducting the office must always be kept within the income collected and deposited with the State Treasurer by such commission and such office, and the expense thereof shall not be supported or paid from any other state fund. Any money in the State Real Estate Commission's 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 1973, LB 68, § 15; Laws 1983, LB 182, § 14; Laws 2009, LB30, § 6.
Effective date August 30, 2009.

Cross References

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

81-885.19 License; form; pocket cards; issuance; broker's branch office; license; fee.

The commission shall prescribe the form of license. Each license shall have placed thereon the seal of the commission. The license of each salesperson and associate broker shall be delivered or mailed to the broker by whom the salesperson or associate broker is employed and shall be kept in the custody and control of such broker. It is the duty of each broker to display his or her own license and those of his or her associate brokers and salespersons conspicuously in his or her place of business. The commission shall annually prepare and deliver a pocket card certifying that the person whose name appears thereon is a licensed real estate broker or a licensed real estate associate broker or salesperson, as the case may be, stating the period of time for which fees have been paid and including, on salesperson's and associate broker's cards only, the name and address of the broker employing such salesperson or associate broker. If a broker maintains more than one place of business within the state, a branch office license shall be issued to such broker for each branch office so maintained by him or her upon the payment of an annual fee to be established by the commission of not more than fifty dollars and the branch office license shall be displayed conspicuously in each branch office. The broker or an associate broker shall be the manager of a branch office.

Source: Laws 1973, LB 68, § 19; Laws 1983, LB 182, § 17; Laws 1990, LB 350, § 9; Laws 1991, LB 204, § 3; Laws 2002, LB 863, § 17; Laws 2009, LB29, § 1.
Effective date August 30, 2009.

81-885.24 Commission; investigative powers; disciplinary powers; civil fine; violations of unfair trade practices.

The commission may, upon its own motion, and shall, upon the sworn complaint in writing of any person, investigate the actions of any broker, associate broker, salesperson, or subdivider, may censure the licensee or certificate holder, revoke or suspend any license or certificate issued under the Nebraska Real Estate License Act, or enter into consent orders, and, alone or in combination with such disciplinary actions, may impose a civil fine on a licensee pursuant to section 81-885.10, whenever the license or certificate has been obtained by false or fraudulent representation or the licensee or certificate holder has been found guilty of any of the following unfair trade practices:

(1) Refusing because of religion, race, color, national origin, ethnic group, sex, familial status, or disability to show, sell, or rent any real estate for sale or rent to prospective purchasers or renters;

(2) Intentionally using advertising which is misleading or inaccurate in any material particular or in any way misrepresents any property, terms, values, policies, or services of the business conducted;

(3) Failing to account for and remit any money coming into his or her possession belonging to others;

(4) Commingling the money or other property of his or her principals with his or her own;

(5) Failing to maintain and deposit in a separate non-interest-bearing checking account all money received by a broker acting in such capacity, or as escrow agent or the temporary custodian of the funds of others, in a real estate transaction unless all parties having an interest in the funds have agreed otherwise in writing;

(6) Accepting, giving, or charging any form of undisclosed compensation, consideration, rebate, or direct profit on expenditures made for a principal;

(7) Representing or attempting to represent a real estate broker, other than the employer, without the express knowledge and consent of the employer;

(8) Accepting any form of compensation or consideration by an associate broker or salesperson from anyone other than his or her employing broker without the consent of his or her employing broker;

(9) Acting in the dual capacity of agent and undisclosed principal in any transaction;

(10) Guaranteeing or authorizing any person to guarantee future profits which may result from the resale of real property;

(11) Placing a sign on any property offering it for sale or rent without the written consent of the owner or his or her authorized agent;

(12) Offering real estate for sale or lease without the knowledge and consent of the owner or his or her authorized agent or on terms other than those authorized by the owner or his or her authorized agent;

(13) Inducing any party to a contract of sale or lease to break such contract for the purpose of substituting, in lieu thereof, a new contract with another principal;

(14) Negotiating a sale, exchange, listing, or lease of real estate directly with an owner or lessor if he or she knows that such owner has a written outstanding listing contract in connection with such property granting an exclusive agency or an exclusive right to sell to another broker or negotiating directly with an owner to withdraw from or break such a listing contract for the purpose of substituting, in lieu thereof, a new listing contract;

(15) Discussing or soliciting a discussion of, with an owner of a property which is exclusively listed with another broker, the terms upon which the broker would accept a future listing upon the expiration of the present listing unless the owner initiates the discussion;

(16) Violating any provision of sections 76-2401 to 76-2430;

(17) Soliciting, selling, or offering for sale real estate by offering free lots or conducting lotteries for the purpose of influencing a purchaser or prospective purchaser of real estate;

(18) Providing any form of compensation or consideration to any person for performing the services of a broker, associate broker, or salesperson who has not first secured his or her license under the Nebraska Real Estate License Act

unless such person is (a) a nonresident who is licensed in his or her resident regulatory jurisdiction or (b) a citizen and resident of a foreign country which does not license persons conducting the activities of a broker and such person provides reasonable written evidence to the Nebraska broker that he or she is a resident citizen of that foreign country, is not a resident of this country, and conducts the activities of a broker in that foreign country;

(19) Failing to include a fixed date of expiration in any written listing agreement and failing to leave a copy of the agreement with the principal;

(20) Failing to deliver within a reasonable time a completed and dated copy of any purchase agreement or offer to buy or sell real estate to the purchaser and to the seller;

(21) Failing by a broker to deliver to the seller in every real estate transaction, at the time the transaction is consummated, a complete, detailed closing statement showing all of the receipts and disbursements handled by such broker for the seller, failing to deliver to the buyer a complete statement showing all money received in the transaction from such buyer and how and for what the same was disbursed, and failing to retain true copies of such statements in his or her files;

(22) Making any substantial misrepresentations;

(23) Acting for more than one party in a transaction without the knowledge of all parties for whom he or she acts;

(24) Failing by an associate broker or salesperson to place, as soon after receipt as practicable, in the custody of his or her employing broker any deposit money or other money or funds entrusted to him or her by any person dealing with him or her as the representative of his or her licensed broker;

(25) Filing a listing contract or any document or instrument purporting to create a lien based on a listing contract for the purpose of casting a cloud upon the title to real estate when no valid claim under the listing contract exists;

(26) Violating any rule or regulation adopted and promulgated by the commission in the interest of the public and consistent with the Nebraska Real Estate License Act;

(27) Failing by a subdivider, after the original certificate has been issued, to comply with all of the requirements of the Nebraska Real Estate License Act;

(28) Conviction of a felony or entering a plea of guilty or nolo contendere to a felony charge by a broker or salesperson;

(29) Demonstrating negligence, incompetency, or unworthiness to act as a broker, associate broker, or salesperson, whether of the same or of a different character as otherwise specified in this section; or

(30) Inducing or attempting to induce a person to transfer an interest in real property, whether or not for monetary gain, or discouraging another person from purchasing real property, by representing that (a) a change has occurred or will or may occur in the composition with respect to religion, race, color, national origin, ethnic group, sex, familial status, or disability of the owners or occupants in the block, neighborhood, or area or (b) such change will or may result in the lowering of property values, an increase in criminal or antisocial

behavior, or a decline in the quality of schools in the block, neighborhood, or area.

Source: Laws 1973, LB 68, § 24; Laws 1975, LB 354, § 3; Laws 1978, LB 361, § 10; Laws 1981, LB 238, § 2; Laws 1982, LB 403, § 1; Laws 1983, LB 182, § 20; Laws 1985, LB 109, § 1; Laws 1990, LB 350, § 11; Laws 2002, LB 863, § 19; Laws 2009, LB30, § 7. Effective date August 30, 2009.

81-885.25 Censure, revoke, or suspend license; impose civil fine; hearing; notice; contents.

(1) Before the commission censures a licensee, imposes a civil fine, or revokes or suspends a license, the commission shall send to the licensee a copy of the complaint by certified mail which contains the charges against the licensee and, unless the licensee waives the right to a hearing and has executed a consent order, give the licensee a hearing on the matter.

(2) The license holder shall have full authority to be heard in person or by counsel before the commission in reference to such charges. The commission shall, at least twenty days prior to the date set for hearing, notify the licensee in writing of the date and place of the hearing. Such notice may be served by delivering it personally to the license holder or by sending it by either registered or certified mail to the last-known business address of such license holder. If the license holder is an associate broker or a salesperson, the commission shall also notify the broker employing the license holder by mailing a copy of such notice to the broker's last-known business address.

Source: Laws 1973, LB 68, § 25; Laws 1983, LB 182, § 21; Laws 1984, LB 480, § 2; Laws 1990, LB 350, § 12; Laws 2009, LB30, § 8. Effective date August 30, 2009.

81-885.29 Findings and determination by commission; license revoked or suspended; when; censure; civil fine; stay of execution; probation.

After the hearing the commission shall state in writing, officially signed by the chairperson and attested to by the director, its findings and determination and its order in the matter. If the commission determines that the license holder has been guilty of any violation of the Nebraska Real Estate License Act or the rules and regulations of the commission, the commission may revoke or suspend the license, enter an order censuring the license holder, or impose a civil fine pursuant to section 81-885.10. The execution of a penalty of suspension may be stayed by the commission and the licensee may be placed on probation for the suspension period, after satisfactory completion of which his or her license shall be fully reinstated. Any violation of the act or the rules and regulations by the licensee during the period of probation shall cause the immediate execution of the suspension penalty.

Source: Laws 1973, LB 68, § 29; Laws 1975, LB 354, § 4; Laws 1983, LB 182, § 23; Laws 1990, LB 350, § 14; Laws 2002, LB 863, § 20; Laws 2009, LB30, § 9.
Effective date August 30, 2009.

81-885.31 Civil fines; distribution; collection procedure.

(1) All civil fines collected pursuant to the Nebraska Real Estate License Act shall be remitted to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

(2) Any civil fine imposed pursuant to the act which remains unpaid for more than sixty days shall constitute a debt to the State of Nebraska which may be recovered by the Attorney General, along with reasonable attorney's fees and court costs, in a proper form of action in the name of the state in the district court of the county in which the violator resides. The commission shall consider such debt to be grounds for denial, refusal to renew, or refusal to reinstate a license under the act or grounds for additional disciplinary action by the commission.

Source: Laws 2009, LB30, § 10.
Effective date August 30, 2009.

81-885.43 Violations; Attorney General; maintain action.

Except as provided in subsection (2) of section 81-885.31, whenever, in the judgment of the commission, any person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of the Nebraska Real Estate License Act, the Attorney General may maintain an action in the name of the State of Nebraska, in the district court of the county in which such violation or threatened violation occurred, to abate and temporarily and permanently enjoin such acts and practices and to enforce compliance with the act. The plaintiff shall not be required to give any bond nor shall any court costs be adjudged against the plaintiff.

Source: Laws 1973, LB 68, § 43; Laws 1983, LB 182, § 28; Laws 2009, LB30, § 11.
Effective date August 30, 2009.

81-885.44 Complaint for violations of act.

The commission by and through its director may prefer a complaint for violation of the Nebraska Real Estate License Act.

Source: Laws 1973, LB 68, § 44; Laws 1983, LB 182, § 29; Laws 2009, LB30, § 12.
Effective date August 30, 2009.

81-885.46 License or certificate under prior law; renewal.

Any real estate license or subdivision certificate issued prior to September 2, 1973, shall, for purposes of renewal, be considered to have been originally issued under the Nebraska Real Estate License Act.

Source: Laws 1973, LB 68, § 46; Laws 1983, LB 182, § 30; Laws 2009, LB30, § 13.
Effective date August 30, 2009.

81-885.47 Repealed. Laws 2009, LB 30, § 17.

81-885.48 Terms, how construed.

Except for purposes of section 81-885.04, the terms employ, employed, employer, or employee as used in the Nebraska Real Estate License Act shall not necessarily be construed to imply an employer and employee relationship.

The use of such terms shall not prohibit the establishment of any independent contract or other relationship between a business and an individual, between individuals, or between businesses, including an employer and employee relationship.

Source: Laws 1978, LB 361, § 13; Laws 2009, LB30, § 14.
Effective date August 30, 2009.

81-887.03 Auctioneers; nonresident; additional requirements.

Nothing contained in sections 81-887.01 to 81-887.03 shall be construed to permit any person to conduct a sale of real estate without first complying with the requirements of the Nebraska Real Estate License Act.

Source: Laws 1953, c. 339, § 3, p. 1112; Laws 2009, LB30, § 15.
Effective date August 30, 2009.

Cross References

Nebraska Real Estate License Act, see section 81-885.

(p) TORT CLAIMS, STATE CLAIMS BOARD, AND RISK MANAGEMENT PROGRAM

81-8,210 Terms, defined.

For purposes of the State Tort Claims Act:

(1) State agency includes all departments, agencies, boards, bureaus, and commissions of the State of Nebraska and corporations the primary function of which is to act as, and while acting as, instrumentalities or agencies of the State of Nebraska but shall not include corporations that are essentially private corporations or entities created pursuant to the Interlocal Cooperation Act or the Joint Public Agency Act. State agency does not include any contractor with the State of Nebraska;

(2) State Claims Board means the board created by section 81-8,220;

(3) Employee of the state means any one or more officers or employees of the state or any state agency and shall include duly appointed members of boards or commissions when they are acting in their official capacity. State employee does not include any employee of an entity created pursuant to the Interlocal Cooperation Act or the Joint Public Agency Act or any contractor with the State of Nebraska;

(4) Tort claim means any claim against the State of Nebraska for money only on account of damage to or loss of property or on account of personal injury or death caused by the negligent or wrongful act or omission of any employee of the state, while acting within the scope of his or her office or employment, under circumstances in which the state, if a private person, would be liable to the claimant for such damage, loss, injury, or death but does not include any claim accruing before January 1, 1970, any claim against an employee of the state for money only on account of damage to or loss of property or on account of personal injury or death caused by the negligent or wrongful act or omission of the employee while acting within the scope of his or her employment occurring on or after August 25, 1989, and any claim allowed under the Nebraska Claims for Wrongful Conviction and Imprisonment Act;

(5) Award means any amount determined by the Risk Manager or State Claims Board to be payable to a claimant under section 81-8,211 or the amount of any compromise or settlement under section 81-8,218; and

(6) Risk Manager means the Risk Manager appointed under section 81-8,239.01.

Source: Laws 1969, c. 756, § 2, p. 2845; Laws 1988, LB 864, § 20; Laws 1989, LB 541, § 2; Laws 1991, LB 81, § 6; Laws 1999, LB 87, § 92; Laws 2008, LB821, § 1; Laws 2009, LB260, § 10.
Effective date August 30, 2009.

Cross References

Interlocal Cooperation Act, see section 13-801.
Joint Public Agency Act, see section 13-2501.
Nebraska Claims for Wrongful Conviction and Imprisonment Act, see section 29-4601.

81-8,227 Tort claim; limitation of action.

(1) Except as provided in subsection (2) of this section, every tort claim permitted under the State Tort Claims Act shall be forever barred unless within two years after such claim accrued the claim is made in writing to the Risk Manager in the manner provided by such act. The time to begin suit under such act shall be extended for a period of six months from the date of mailing of notice to the claimant by the Risk Manager or State Claims Board as to the final disposition of the claim or from the date of withdrawal of the claim under section 81-8,213 if the time to begin suit would otherwise expire before the end of such period.

(2) The date of a qualifying pardon from the Board of Pardons, a final order by a court vacating a conviction, or a conviction that was reversed and remanded for a new trial and no subsequent conviction was obtained, whichever is later, shall be the date the claimant's claim shall accrue under the Nebraska Claims for Wrongful Conviction and Imprisonment Act for purposes of complying with the notice and filing requirements of the State Tort Claims Act. The Nebraska Claims for Wrongful Conviction and Imprisonment Act applies to a claimant who would have had a claim if the act had been in effect before August 30, 2009, or who has a claim on or after such date. If a claimant had a qualifying pardon from the Board of Pardons, a final order by a court vacating a conviction, or a conviction that was reversed and remanded for a new trial and no subsequent conviction was obtained, before August 30, 2009, the claimant's claim shall accrue under the Nebraska Claims for Wrongful Conviction and Imprisonment Act on August 30, 2009, for purposes of complying with the notice and filing requirements of the State Tort Claims Act.

(3) If a claim is made or filed under any other law of this state and a determination is made by a state agency or court that the State Tort Claims Act provides the exclusive remedy for the claim, the time to make a claim and begin suit under such act shall be extended for a period of six months from the date of the court order making such determination or the date of mailing of notice to the claimant of such determination by a state agency if the time to make the claim and to begin suit under such act would otherwise expire before the end of such period. The time to begin a suit under such act may be further extended as provided in subsection (1) of this section.

(4) If a claim is brought under the Nebraska Hospital-Medical Liability Act, the filing of a request for review under section 44-2840 shall extend the time to

begin suit under the State Tort Claims Act an additional ninety days following the issuance of the opinion by the medical review panel if the time to begin suit under the State Tort Claims Act would otherwise expire before the end of such ninety-day period.

(5) This section and section 25-213 shall constitute the only statutes of limitations applicable to the State Tort Claims Act.

Source: Laws 1969, c. 756, § 19, p. 2851; Laws 1974, LB 949, § 3; Laws 1984, LB 692, § 21; Laws 1988, LB 864, § 38; Laws 2008, LB821, § 7; Laws 2009, LB260, § 11.
Effective date August 30, 2009.

Cross References

Nebraska Claims for Wrongful Conviction and Imprisonment Act, see section 29-4601.
Nebraska Hospital-Medical Liability Act, see section 44-2855.

(r) COMMISSION ON THE STATUS OF WOMEN

81-8,255 Repealed. Laws 2009, LB 154, § 27.

81-8,256 Repealed. Laws 2009, LB 154, § 27.

81-8,257 Repealed. Laws 2009, LB 154, § 27.

81-8,258 Repealed. Laws 2009, LB 154, § 27.

81-8,259 Repealed. Laws 2009, LB 154, § 27.

81-8,260 Repealed. Laws 2009, LB 154, § 27.

81-8,260.01 Repealed. Laws 2009, LB 154, § 27.

81-8,260.02 Repealed. Laws 2009, LB 154, § 27.

(x) NEBRASKA LEWIS AND CLARK BICENTENNIAL COMMISSION

81-8,307 Repealed. Laws 2009, LB 154, § 27.

81-8,308 Repealed. Laws 2009, LB 154, § 27.

ARTICLE 11

DEPARTMENT OF ADMINISTRATIVE SERVICES

(a) GENERAL PROVISIONS

Section
81-1108.17. Department of Administrative Services; custodian of state property; director; administrator; powers and duties; Capitol Buildings Parking Revolving Fund; created; purpose; use.
81-1108.40. Repealed. Laws 2009, LB 207, § 5.
81-1117.05. State employee; payment of wages; methods authorized.
81-1118.07. State purchasing bureau; use reverse auction; powers and duties.
81-1120.27. Telecommunications system; uses; member of Legislature; long-distance calls; how made.

(e) PAYMENT OF EXPENSES

81-1174. Reimbursement for expenses; contents; automobile; airplane; statement required; receipts; limitation.

(a) GENERAL PROVISIONS

81-1108.17 Department of Administrative Services; custodian of state property; director; administrator; powers and duties; Capitol Buildings Parking Revolving Fund; created; purpose; use.

(1) The Department of Administrative Services shall be the custodian of the state laboratory and laboratory grounds, the Governor's Mansion and grounds, and all other buildings and lands owned or leased by the State of Nebraska except as exempted under subsections (5) and (6) of section 81-1108.15 or as provided in the Nebraska State Capitol Preservation and Restoration Act.

(2) To aid in the performance of his or her duties, the Director of Administrative Services shall appoint an administrator. The administrator, under the direction of the director, shall have complete control and all powers necessary to properly maintain the state laboratory and laboratory grounds, the Governor's Mansion and grounds, and all other buildings and lands owned or leased by the State of Nebraska except as exempted under subsections (5) and (6) of section 81-1108.15 or as provided in the Nebraska State Capitol Preservation and Restoration Act.

(3) Except as provided in the act, the administrator, under the direction of the director, is authorized to (a) lease space or provide facilities for the parking of state officers' and employees' vehicles as well as state-owned vehicles, (b) lease, rent, or permit for use as apartments, dwellings, offices, and parking areas any or all of the property acquired for parking or for future building needs, (c) lease state property to the federal government or political subdivisions of the state using the system of charges in subsection (4) of this section, and (d) lease state property to a private entity to provide services necessary for state operations or for the convenience of state officers and employees when the space is not needed for public use. All leases shall contain the provision that upon notice that such property is needed for public use, the use or occupancy of the property shall cease. All money received as rent from any property acquired shall be remitted to the State Treasurer and credited to the State Building Revolving Fund, except that receipts from parking charges for employee, public, and state vehicle parking shall be credited to the Capitol Buildings Parking Revolving Fund, which fund is hereby created, for the purposes of providing and maintaining parking for state employees and visitors.

(4) The system of charges for state buildings and facilities shall include an amount sufficient to (a) accurately reflect operating costs, including routine maintenance and repair costs, and (b) fund building renewal projects under the Deferred Building Renewal Act and renovation, remodeling, and repair projects beyond the scope of the act. The proceeds received under subdivision (a) of this subsection shall be remitted to the State Treasurer for credit to the State Building Revolving Fund. The proceeds received under subdivision (b) of this subsection shall be remitted to the State Treasurer for credit to the State Building Renewal Assessment Fund. The administrator shall develop a system of equitable billings and charges for parking facilities under his or her control and used by state employees and state vehicles. The system of charges shall include an amount sufficient to cover the operating, maintenance, and repair costs associated with the parking facilities. The administrator, under policies and procedures established by the Director of Administrative Services, may expend funds from time to time credited to the Capitol Buildings Parking Revolving Fund for the purposes of obtaining, operating, and maintaining

parking facilities for employees and visitors. All money derived from any source other than that to be credited to the State Building Revolving Fund, the Capitol Buildings Parking Revolving Fund, the Department of Administrative Services Cash Fund, the State Building Renewal Assessment Fund, or other appropriate revolving fund shall be remitted to the State Treasurer and credited to the General Fund.

(5) The administrator shall see that all parts and apartments of the buildings leased are properly ventilated and kept clean and in order.

(6) The administrator shall at all times have charge of and supervision over the police, janitors, and other employees in and about the state laboratory and laboratory grounds, the Governor's Mansion and grounds, and all other buildings and lands owned or leased by the State of Nebraska except as exempted under subsections (5) and (6) of section 81-1108.15 or as provided in the Nebraska State Capitol Preservation and Restoration Act. The administrator shall institute, in the name of the state and with the advice of the Attorney General, civil and criminal proceedings against any person for injury or threatened injury to any public property in the state laboratory and laboratory grounds, the Governor's Mansion and grounds, and all other buildings and lands owned or leased by the State of Nebraska under his or her control, or for committing or threatening to commit a nuisance in or on the buildings or lands.

(7) The administrator shall keep in his or her office a complete record containing all plans and surveys of the state laboratory and grounds, the Governor's Mansion and grounds, and all other buildings and lands owned or leased by the State of Nebraska and of underground construction under such buildings and lands. This subsection shall not apply to the State Capitol and capitol grounds.

Source: Laws 1929, c. 192, § 1, p. 677; C.S.1929, § 72-707; Laws 1937, c. 161, § 1, p. 625; Laws 1939, c. 94, § 1, p. 407; Laws 1941, c. 144, § 1, p. 573; C.S.Supp.,1941, § 72-707; R.S.1943, § 72-706; Laws 1955, c. 278, § 1, p. 879; Laws 1961, c. 354, § 2, p. 1114; Laws 1965, c. 436, § 2, p. 1388; Laws 1965, c. 439, § 1, p. 1394; Laws 1965, c. 538, § 23, p. 1711; Laws 1967, c. 468, § 1, p. 1457; Laws 1971, LB 675, § 1; R.R.S.1943, § 72-706; Laws 1974, LB 1048, § 8; Laws 1976, LB 986, § 4; Laws 1979, LB 576, § 3; Laws 1981, LB 381, § 21; Laws 1983, LB 607, § 3; Laws 1993, LB 311, § 3; Laws 1995, LB 530, § 7; Laws 1997, LB 314, § 10; Laws 1998, LB 1100, § 21; Laws 2004, LB 439, § 19; Laws 2008, LB744, § 1; Laws 2009, LB207, § 3.
Effective date August 30, 2009.

Cross References

Deferred Building Renewal Act, see section 81-190.
Nebraska State Capitol Preservation and Restoration Act, see section 72-2201.

81-1108.40 Repealed. Laws 2009, LB 207, § 5.

81-1117.05 State employee; payment of wages; methods authorized.

The Department of Administrative Services may make payments that include, but are not limited to, wages and reimbursable expenses to state employees by electronic funds transfer or a similar means of direct deposit. For purposes of

this section, state employee means any person or officer employed by the state who works a full-time or part-time schedule on an ongoing basis.

Source: Laws 2001, LB 308, § 1; Laws 2009, LB167, § 2.
Effective date August 30, 2009.

81-1118.07 State purchasing bureau; use reverse auction; powers and duties.

(1) Notwithstanding any other provision of law, the state purchasing bureau created by section 81-1118 may use a reverse auction for the acquisition of goods if the bureau determines that the use of a reverse auction would be advantageous to the state.

(2) If the bureau conducts a reverse auction, the bureau shall provide notification of the intent to use the reverse auction process in the bid solicitation documents and, unless the solicitation is canceled, an award shall be made to the bidder determined by the bureau to be the lowest responsible bidder at the close of the bidding process. The bureau may require bidders to register before the opening date and time of the reverse auction.

(3) The bureau may contract with a third-party vendor to conduct a reverse auction pursuant to this section.

(4) The bureau may adopt and promulgate rules and regulations to implement this section.

(5) For purposes of this section, reverse auction means a process in which (a) bidders compete to provide goods in an open and interactive environment, which may include the use of electronic media, (b) bids are opened and made public immediately, and (c) bidders are given opportunity to submit revised bids until the bidding process is complete.

Source: Laws 2009, LB168, § 1.
Effective date August 30, 2009.

81-1120.27 Telecommunications system; uses; member of Legislature; long-distance calls; how made.

(1) The facilities of the state's telecommunications systems are provided for the conduct of state business. In addition, the state's telecommunications systems, cellular telephones, electronic handheld devices, or computers may be used by state employees and officials for emails, text messaging, local calls, and long-distance calls to children at home, teachers, doctors, day care centers, baby-sitters, family members, or others to inform them of unexpected schedule changes, and for other essential personal business. Any such use for essential personal business shall be kept to a minimum and shall not interfere with the conduct of state business. A state employee or official shall be responsible for payment or reimbursement of charges, if any, that directly result from any such communication. The Department of Administrative Services may establish procedures for reimbursement of charges pursuant to this section.

(2) A member of the Legislature, while engaged in legislative business, may make personal long-distance calls on the state telecommunications system or by using his or her state credit card. At the end of every month upon the member's receipt of his or her long-distance call record, the personal long-distance calls shall be designated by the member and the member billed for such calls. Reimbursement to the state for such personal long-distance calls by the member shall be made within thirty days from the date of designation.

(3) A member of the Legislature, at his or her own sole discretion, may designate any long-distance call as sensitive or confidential in nature. If a long-distance call is designated as sensitive or confidential in nature, any long-distance call record used in an audit shall contain only the date the long-distance call was made and the cost of the call. In no case shall the person conducting the audit have access to a long-distance call number designated as sensitive or confidential in nature by the member without the written consent of the member. No calls made to or by a member of the Legislature which are sensitive or confidential in nature shall be required to be disclosed except that such calls shall be so designated by the member, and only the amount of the call and such designation shall be made available to a person conducting an audit.

For purposes of this subsection, sensitive or confidential in nature shall mean that either the member of the Legislature or the caller would reasonably expect that the nature or the content of the call would not be disclosed to another person without the consent of the member and the caller.

Source: Laws 1967, c. 572, § 13, p. 1885; R.R.S.1943, § 81-1120.13; Laws 1975, LB 427, § 18; Laws 1992, LB 722, § 3; Laws 1993, LB 579, § 3; Laws 2009, LB626, § 6.
Effective date August 30, 2009.

(e) PAYMENT OF EXPENSES

81-1174 Reimbursement for expenses; contents; automobile; airplane; statement required; receipts; limitation.

Whenever any state officer, state employee, or member of any commission, council, committee, or board of the state is seeking reimbursement for actual expenses incurred by him or her in the line of duty, he or she shall be required to present a request for payment or reimbursement to the Director of Administrative Services not later than sixty days after the final day on which expenses were incurred for which reimbursement is sought. Each request shall be fully itemized, including the amount, date, place, and essential character of the expense incurred.

When reimbursement is requested for mileage by automobile, air travel by commercial carrier, air travel in airplanes chartered by the department or agency, or air travel by personally rented airplane, the points between which such travel occurred, the times of arrival and departure, and the necessity and purpose of such travel shall be stated on such request. When reimbursement is requested for mileage by automobile, the motor vehicle license plate number, the total miles traveled, and the rate per mile being requested shall also be shown on each request.

The Accounting Administrator may require less supporting detail for requests covered in this section but shall not impose reporting requirements which exceed those listed unless specifically authorized by other provisions of law. No request shall be submitted by an individual for an expense when such expense has been paid by the agency or department concerned.

When reimbursement for expenses incurred in air travel by privately owned airplane is requested, the cost of operating the airplane at rates per mile as established by the Department of Administrative Services shall be shown on such request. Travel by privately owned airplane or personally rented airplane

shall only be authorized when it is more economical than surface transportation or will result in a substantial savings of expense or productive time.

The statement of expenses shall be duly verified and supported by receipts for all of such expenditures, except immaterial items identified by the director, for which reimbursement is requested.

No charge for mileage shall be allowed when such mileage accrues while using an automobile owned by the State of Nebraska.

No personal maintenance expenses shall be allowed to any state officer, state employee, or member of any commission, council, committee, or board of the state when such expenses are incurred in the city or town in which the residence or primary work location of such individual is located, except that individuals required to attend official functions, conferences, or hearings within such location, not to include normal day-to-day operations of the department, agency, commission, council, committee, or board, may be paid or reimbursed in accordance with policies established by the Director of Administrative Services. The approval to attend a function, conference, or hearing shall be obtained from the director of the department, agency, commission, council, committee, or board prior to an individual's attendance at such function, conference, or hearing.

Nothing in this section shall be construed to prohibit the furnishing of coffee, tea, and any similar beverage by the Legislature or the Legislative Council to its employees or guests.

Source: Laws 1941, c. 180, § 10, p. 706; C.S.Supp.,1941, § 84-306; R.S.1943, § 84-306; Laws 1945, c. 253, § 1, p. 790; Laws 1949, c. 286, § 2, p. 985; Laws 1949, c. 243, § 4(2), p. 660; Laws 1965, c. 568, § 1, p. 1854; Laws 1977, LB 365, § 1; Laws 1978, LB 869, § 1; Laws 1979, LB 576, § 7; Laws 1979, LB 578, § 1; Laws 1984, LB 663, § 1; Laws 1985, LB 413, § 1; R.S.Supp.,1986, § 84-306.01; Laws 1988, LB 864, § 60; Laws 1999, LB 32, § 2; Laws 2003, LB 292, § 17; Laws 2009, LB533, § 1.
Effective date May 27, 2009.

ARTICLE 12

DEPARTMENT OF ECONOMIC DEVELOPMENT

(a) GENERAL PROVISIONS

Section
81-1201.21. Job Training Cash Fund; created; use; investment.

(n) NEBRASKA VENTURE CAPITAL FORUM ACT

81-12,106. Repealed. Laws 2009, LB 3, § 1.
81-12,107. Repealed. Laws 2009, LB 3, § 1.
81-12,108. Repealed. Laws 2009, LB 3, § 1.
81-12,109. Repealed. Laws 2009, LB 3, § 1.
81-12,110. Repealed. Laws 2009, LB 3, § 1.
81-12,111. Repealed. Laws 2009, LB 3, § 1.
81-12,112. Repealed. Laws 2009, LB 3, § 1.
81-12,113. Repealed. Laws 2009, LB 3, § 1.
81-12,114. Repealed. Laws 2009, LB 3, § 1.
81-12,115. Repealed. Laws 2009, LB 3, § 1.
81-12,116. Repealed. Laws 2009, LB 3, § 1.

(p) BUILDING ENTREPRENEURIAL COMMUNITIES ACT

81-12,125. Act, how cited.

(a) GENERAL PROVISIONS

81-1201.21 Job Training Cash Fund; created; use; investment.

(1) There is hereby created the Job Training Cash Fund. The fund shall be under the direction of the Department of Economic Development. Money may be transferred to the fund pursuant to subdivision (1)(b)(iv) of section 48-621 and from the Cash Reserve Fund at the direction of the Legislature. The department shall establish a subaccount for all money transferred from the Cash Reserve Fund to the Job Training Cash Fund on or after July 1, 2005. Any unexpended or unobligated balance remaining within such subaccount on July 1, 2014, shall be transferred by the State Treasurer to the Cash Reserve Fund no later than July 10, 2014. Any obligated amount not transferred from the subaccount that remains unexpended on July 1, 2013, shall be transferred by the State Treasurer to the Cash Reserve Fund no later than December 31, 2015.

(2) The department shall use the Job Training Cash Fund to provide reimbursements for job training activities, including employee assessment, preemployment training, on-the-job training, training equipment costs, and other reasonable costs related to helping industry and business locate or expand in Nebraska, or to provide upgrade skills training of the existing labor force necessary to adapt to new technology or the introduction of new product lines.

(3) The department shall establish a subaccount within the fund to provide job training grants targeted to small employers, rural employers, and poverty area employers meeting one of the following criteria: (a) Employ twenty-five or fewer employees, (b) located in rural areas of Nebraska, or (c) located in areas of high concentration of poverty within the corporate limits of a city or village consisting of one or more contiguous census tracts, as determined by the most recent federal decennial census, which contain a percentage of persons below the poverty line of greater than thirty percent, and all census tracts contiguous to such tract or tracts, as determined by the most recent federal decennial census. The department shall calculate the amount of prior year investment income earnings accruing to the fund and allocate such amount to the subaccount for small, rural, or poverty area employer grants.

(4) 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 1989, LB 305, § 3; Laws 1994, LB 1066, § 107; Laws 1995, LB 1, § 15; Laws 2000, LB 953, § 11; Laws 2005, LB 427, § 1; Laws 2007, LB322, § 27; Laws 2008, LB956, § 1; Laws 2009, LB316, § 22.
Effective date May 20, 2009.

Cross References

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

(n) NEBRASKA VENTURE CAPITAL FORUM ACT

81-12,106 Repealed. Laws 2009, LB 3, § 1.

81-12,107 Repealed. Laws 2009, LB 3, § 1.

81-12,108 Repealed. Laws 2009, LB 3, § 1.

81-12,109 Repealed. Laws 2009, LB 3, § 1.

81-12,110 Repealed. Laws 2009, LB 3, § 1.

81-12,111 Repealed. Laws 2009, LB 3, § 1.

81-12,112 Repealed. Laws 2009, LB 3, § 1.

81-12,113 Repealed. Laws 2009, LB 3, § 1.

81-12,114 Repealed. Laws 2009, LB 3, § 1.

81-12,115 Repealed. Laws 2009, LB 3, § 1.

81-12,116 Repealed. Laws 2009, LB 3, § 1.

(p) BUILDING ENTREPRENEURIAL COMMUNITIES ACT

81-12,125 Act, how cited.

Sections 81-12,125 to 81-12,127 shall be known and may be cited as the Building Entrepreneurial Communities Act. The act terminates on January 1, 2015.

Source: Laws 2005, LB 90, § 1; Laws 2009, LB164, § 13.
Operative date August 30, 2009.
Termination date January 1, 2015.

ARTICLE 13

PERSONNEL

(d) STATE EMPLOYEES

Section
81-1394. Participation in employee discount program; authorized.

(d) STATE EMPLOYEES

81-1394 Participation in employee discount program; authorized.

Notwithstanding any other provision of law, any state employee may participate in an employee discount program administered by the personnel division of the Department of Administrative Services. Any such program shall be made available to all state employees.

Source: Laws 2009, LB167, § 1.
Effective date August 30, 2009.

ARTICLE 14

LAW ENFORCEMENT

(b) COMMISSION ON LAW ENFORCEMENT AND CRIMINAL JUSTICE

Section
81-1429. Law Enforcement Improvement Fund; how funded.

(e) OFFICE OF VIOLENCE PREVENTION

81-1447. Office of Violence Prevention; established; director; advisory council; members; terms; vacancy.
81-1448. Membership on advisory council; no effect on other office or position.
81-1449. Advisory council members; expenses.

(b) COMMISSION ON LAW ENFORCEMENT AND CRIMINAL JUSTICE

81-1429 Law Enforcement Improvement Fund; how funded.

A Law Enforcement Improvement Fund fee of two dollars shall be taxed as costs in each criminal proceeding, including traffic infractions and misdemeanors, filed in all courts of this state for violations of state law or city or village ordinances. No such fee shall be collected in any juvenile court proceeding or when waived under section 29-2709. Such fee shall be remitted to the State Treasurer on forms prescribed by the State Treasurer within ten days after the close of each calendar quarter. The State Treasurer shall credit the money to the Law Enforcement Improvement Fund.

Source: Laws 1971, LB 929, § 10; Laws 1972, LB 1485, § 2; Laws 1981, LB 45, § 1; Laws 1982, LB 717, § 1; Laws 1989, LB 233, § 10; Laws 2000, LB 994, § 11; Laws 2006, LB 746, § 9; Laws 2009, LB35, § 31.
Operative date August 30, 2009.

(e) OFFICE OF VIOLENCE PREVENTION

81-1447 Office of Violence Prevention; established; director; advisory council; members; terms; vacancy.

There is established within the Nebraska Commission on Law Enforcement and Criminal Justice the Office of Violence Prevention. The office shall consist of a director appointed by the Governor. There also is established an advisory council to the Office of Violence Prevention. The members of the advisory council shall be appointed by the Governor and serve at his or her discretion. The advisory council shall consist of six members and, of those members, each congressional district, as such districts existed on May 28, 2009, shall have at least one member on the council. The Governor shall consider appointing members representing the following areas, if practicable: Two members representing local government; two members representing law enforcement; one member representing community advocacy; and one member representing education with some expertise in law enforcement and juvenile crime. Members of the advisory council shall serve for terms 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.

Source: Laws 2009, LB63, § 37.
Effective date May 28, 2009.

81-1448 Membership on advisory council; no effect on other office or position.

Notwithstanding any other provision of law, membership on the advisory council to the Office of Violence Prevention shall not disqualify any member from holding his or her office or position or cause the forfeiture thereof.

Source: Laws 2009, LB63, § 38.
Effective date May 28, 2009.

81-1449 Advisory council members; expenses.

Members of the advisory council to the Office of Violence Prevention shall serve without compensation but may 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 2009, LB63, § 39.
Effective date May 28, 2009.

81-1450 Office of Violence Prevention; director; administration and supervision; responsibilities; advisory council; meetings; duties.

(1) The Office of Violence Prevention and its director shall be administered and supervised, respectively, by the Nebraska Commission on Law Enforcement and Criminal Justice. Among its responsibilities, the Office of Violence Prevention and its director shall be responsible for developing, fostering, promoting, and assessing violence prevention programs. To accomplish this mission, the duties of the director shall include, but not be limited to, program fundraising, program evaluation, coordination of programs, and assistance with the administration and distribution of funds to violence prevention programs.

(2) The advisory council to the Office of Violence Prevention shall meet at least quarterly. Among its responsibilities, the advisory council shall recommend to the commission rules and regulations regarding program fundraising, program evaluation, coordination of programs, and the criteria used to assess and award funds to violence prevention programs. Priority for funding shall be given to communities and organizations seeking to implement violence prevention programs which appear to have the greatest benefit to the state and which have, as goals, the reduction of street and gang violence and the reduction of homicides and injuries caused by firearms. The duties of the advisory council shall include, but not be limited to, receiving applications for violence prevention funds, evaluating such applications, and making recommendations to the commission regarding the merits of each application and the amount of any funds that should be awarded. If any funds are awarded to a violence prevention program, the advisory council shall continuously monitor how such funds are being used by the program, conduct periodic evaluations of such programs, assess the progress and success regarding the stated goals of each program awarded funds, and recommend to the commission any modification, continuation, or discontinuation of funding.

Source: Laws 2009, LB63, § 40.
Effective date May 28, 2009.

81-1451 Violence Prevention Cash Fund; created; administration; investment.

The Violence Prevention Cash Fund is created. The fund shall be administered by the Nebraska Commission on Law Enforcement and Criminal Justice. The State Treasurer shall credit to the fund such money as is transferred to the fund by the Legislature, donated as gifts, bequests, or other contributions to such fund from public or private entities, and made available by any department or agency of the United States if so directed by such department or agency. 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 2009, LB63, § 41.
Effective date May 28, 2009.

Cross References

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

ARTICLE 15

ENVIRONMENTAL PROTECTION

(g) PETROLEUM PRODUCTS AND HAZARDOUS SUBSTANCES STORAGE AND HANDLING

Section
81-15,124.01. Environmental Quality Council; rules and regulations.

(k) WASTEWATER TREATMENT FACILITIES CONSTRUCTION ASSISTANCE ACT

81-15,158. Municipality or county; failure to make payment; effect.

(l) WASTE REDUCTION AND RECYCLING

81-15,160. Waste Reduction and Recycling Incentive Fund; created; use; investment; grants; restrictions.

(r) TECHNICAL ADVISORY COMMITTEE

81-15,189. Repealed. Laws 2009, LB 154, § 27.
81-15,190. Repealed. Laws 2009, LB 154, § 27.

(g) PETROLEUM PRODUCTS AND HAZARDOUS SUBSTANCES STORAGE AND HANDLING

81-15,124.01 Environmental Quality Council; rules and regulations.

(1) The Environmental Quality Council shall adopt and promulgate rules and regulations consistent with principles of risk-based corrective action governing all phases of remedial action to be taken by owners, operators, and other persons in response to a release or suspected release of a regulated substance from a tank. Such rules and regulations shall include:

(a) Provisions governing remedial action to be taken by owners and operators pursuant to section 81-15,124;

(b) Provisions by which the Department of Environmental Quality may determine the cleanup levels to be achieved through soil or water remediation and the applicable limitations for air emissions at the petroleum release site or occurring by reason of such remediation; and

(c) Such other provisions necessary to carry out the Petroleum Products and Hazardous Substances Storage and Handling Act.

(2) In developing rules and regulations, the Environmental Quality Council shall take into account risk-based corrective action assessment principles which identify the risks presented to the public health and safety or the environment by each release in a manner that will protect the public health and safety and the environment using, to the extent appropriate, a tiered approach consistent with the American Society for Testing of Materials guidance for risk-based corrective action applicable to petroleum release sites.

Source: Laws 1989, LB 289, § 34; Laws 1993, LB 3, § 61; Laws 1996, LB 1226, § 18; Laws 1998, LB 1161, § 44; Laws 2009, LB154, § 19.
Effective date August 30, 2009.

(k) WASTEWATER TREATMENT FACILITIES CONSTRUCTION ASSISTANCE ACT

81-15,158 Municipality or county; failure to make payment; effect.

If a municipality or county fails to make any payment pursuant to a loan within sixty days of the date due, such payment shall be deducted from the amount of aid to municipalities or counties to which the municipality or county is entitled under sections 77-27,136 to 77-27,137.01 or section 77-27,137.03. Such amount shall be paid directly to the Wastewater Treatment Facilities Construction Loan Fund.

Source: Laws 1988, LB 766, § 12; Laws 1989, LB 623, § 4; Laws 1994, LB 1139, § 45; Laws 2009, LB218, § 9.
Operative date July 1, 2011.

(l) WASTE REDUCTION AND RECYCLING

81-15,160 Waste Reduction and Recycling Incentive Fund; created; use; investment; grants; restrictions.

(1) The Waste Reduction and Recycling Incentive Fund is created. The department shall deduct from the fund amounts sufficient to reimburse itself for its costs of administration of the fund. The fund shall be administered by the Department of Environmental Quality. The fund shall consist of proceeds from the fees imposed pursuant to the Waste Reduction and Recycling Incentive Act.

(2) The fund may be used for purposes which include, but are not limited to:

(a) Technical and financial assistance to political subdivisions for creation of recycling systems and for modification of present recycling systems;

(b) Recycling and waste reduction projects, including public education, planning, and technical assistance;

(c) Market development for recyclable materials separated by generators, including public education, planning, and technical assistance;

(d) Capital assistance for establishing private and public intermediate processing facilities for recyclable materials and facilities using recyclable materials in new products;

(e) Programs which develop and implement composting of yard waste and composting with sewage sludge;

(f) Technical assistance for waste reduction and waste exchange for waste generators;

(g) Programs to assist communities and counties to develop and implement household hazardous waste management programs;

(h) Capital assistance for establishing private and public facilities to manufacture combustible waste products and to incinerate combustible waste to generate and recover energy resources, except that no disbursements shall be made under this section for scrap tire processing related to tire-derived fuel; and

(i) Grants for reimbursement of costs to cities of the second class, villages, and counties of five thousand or fewer population for the deconstruction of abandoned buildings. Eligible deconstruction costs will be related to the recovery and processing of recyclable or reusable material from the abandoned buildings.

(3) Grants up to one million dollars annually shall be available until June 30, 2014, for new scrap tire projects only, if acceptable scrap tire project applications are received. Eligible categories of disbursement under section 81-15,161 may include, but are not limited to:

(a) Reimbursement for the purchase of crumb rubber generated and used in Nebraska, with disbursements not to exceed fifty percent of the cost of the crumb rubber;

(b) Reimbursement for the purchase of tire-derived product which utilizes a minimum of twenty-five percent recycled tire content, with disbursements not to exceed twenty-five percent of the product's retail cost, except that persons who applied for a grant between June 1, 1999, and May 31, 2001, for the purchase of tire-derived product which utilizes a minimum of twenty-five percent recycled tire content may apply for reimbursement on or before July 1, 2002. Reimbursement shall not exceed twenty-five percent of the product's retail cost and may be funded in fiscal years 2001-02 and 2002-03;

(c) Participation in the capital costs of building, equipment, and other capital improvement needs or startup costs for scrap tire processing or manufacturing of tire-derived product, with disbursements not to exceed fifty percent of such costs or five hundred thousand dollars, whichever is less;

(d) Participation in the capital costs of building, equipment, or other startup costs needed to establish collection sites or to collect and transport scrap tires, with disbursements not to exceed fifty percent of such costs;

(e) Cost-sharing for the manufacturing of tire-derived product, with disbursements not to exceed twenty dollars per ton or two hundred fifty thousand dollars, whichever is less, to any person annually;

(f) Cost-sharing for the processing of scrap tires, with disbursements not to exceed twenty dollars per ton or two hundred fifty thousand dollars, whichever is less, to any person annually;

(g) Cost-sharing for the use of scrap tires for civil engineering applications for specified projects, with disbursements not to exceed twenty dollars per ton or two hundred fifty thousand dollars, whichever is less, to any person annually; and

(h) Disbursement to a political subdivision up to one hundred percent of costs incurred in cleaning up scrap tire collection and disposal sites.

The director shall give preference to projects which utilize scrap tires generated and used in Nebraska.

(4) Priority for grants made under section 81-15,161 shall be given to grant proposals demonstrating a formal public/private partnership except for grants awarded from fees collected under subsection (6) of section 13-2042.

(5) Grants awarded from fees collected under subsection (6) of section 13-2042 may be renewed for up to a five-year grant period. Such applications shall include an updated integrated solid waste management plan pursuant to section 13-2032. Annual disbursements are subject to available funds and the grantee meeting established grant conditions. Priority for such grants shall be given to grant proposals showing regional participation and programs which address the first integrated solid waste management hierarchy as stated in section 13-2018 which shall include toxicity reduction. Disbursements for any one year shall not exceed fifty percent of the total fees collected after rebates under subsection (6) of section 13-2042 during that year.

(6) Any person who stores waste tires in violation of section 13-2033, which storage is the subject of abatement or cleanup, shall be liable to the State of Nebraska for the reimbursement of expenses of such abatement or cleanup paid by the Department of Environmental Quality.

(7) The Department of Environmental Quality may receive gifts, bequests, and any other contributions for deposit in the Waste Reduction and Recycling Incentive Fund. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1990, LB 163, § 2; Laws 1992, LB 1257, § 95; Laws 1993, LB 203, § 20; Laws 1993, LB 444, § 1; Laws 1994, LB 1034, § 7; Laws 1994, LB 1066, § 122; Laws 1997, LB 495, § 9; Laws 1999, LB 592, § 3; Laws 2001, LB 461, § 16; Laws 2002, Second Spec. Sess., LB 1, § 7; Laws 2003, LB 143, § 11; Laws 2007, LB568, § 3; Laws 2009, LB180, § 2; Laws 2009, LB379, § 1.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB180, section 2, with LB379, section 1, to reflect all amendments.

Note: Changes made by LB379 became effective March 19, 2009. Changes made by LB180 became effective August 30, 2009.

Cross References

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

(r) TECHNICAL ADVISORY COMMITTEE

81-15,189 Repealed. Laws 2009, LB 154, § 27.

81-15,190 Repealed. Laws 2009, LB 154, § 27.

ARTICLE 16
STATE ENERGY OFFICE

(b) LIGHTING AND THERMAL EFFICIENCY STANDARDS

Section
81-1623. Repealed. Laws 2009, LB 316, § 29.

(b) LIGHTING AND THERMAL EFFICIENCY STANDARDS

81-1623 Repealed. Laws 2009, LB 316, § 29.

ARTICLE 18
CRIME VICTIMS AND WITNESSES

(a) CRIME VICTIM'S REPARATIONS

Section
81-1801. Terms, defined.
81-1801.02. Community Trust; authorized; powers and duties; create separate funds; distribution committee.
81-1802. Crime Victim's Reparations Committee; created; members.
81-1803. Committee; members; appointment; terms.
81-1805. Committee; members; expenses.
81-1813. Committee; adopt rules and regulations; forms and materials; provide.
81-1818. Personal injury or death; situations for which compensation is permitted; natural disaster; distribution authorized.
81-1820. Hearing officer; emergency award of compensation; when; conditions; review.

(a) CRIME VICTIM'S REPARATIONS

81-1801 Terms, defined.

For purposes of the Nebraska Crime Victim's Reparations Act, unless the context otherwise requires:

(1) Commission shall mean the Nebraska Commission on Law Enforcement and Criminal Justice;

(2) Committee shall mean the Crime Victim's Reparations Committee;

(3) Dependent shall mean a relative of a deceased victim who was dependent upon the victim's income at the time of death, including a child of a victim born after a victim's death;

(4) Executive director shall mean the executive director of the commission;

(5) Personal injury shall mean actual bodily harm;

(6) Relative shall mean spouse, parent, grandparent, stepparent, natural born child, stepchild, adopted child, grandchild, brother, sister, half brother, half sister, or spouse's parent; and

(7) Victim shall mean a person who is injured or killed as a result of conduct specified in section 81-1818 or as a result of a natural disaster.

Source: Laws 1978, LB 910, § 1; Laws 1981, LB 328, § 4; Laws 1986, LB 540, § 2; Laws 1991, LB 186, § 1; Laws 2009, LB598, § 2. Effective date August 30, 2009.

81-1801.02 Community Trust; authorized; powers and duties; create separate funds; distribution committee.

(1) A nonprofit organization, to be known as the Community Trust, may be created. After a tragedy, the Community Trust shall accept contributions from the public, manage such funds, and make distributions to help individuals, families, and communities in Nebraska who have suffered from a tragedy of violence or natural disaster. The committee shall oversee the Community Trust. The committee shall require at least annual reports from the Community Trust.

(2) The Community Trust shall be a qualified organization under section 501(c)(3) of the Internal Revenue Code thereby enabling contributions to the Community Trust to be tax deductible for the donor if the donor itemizes deductions for income tax purposes and distributions to be tax-free to the extent allowed under applicable sections of the Internal Revenue Code. The Community Trust shall create a separate fund for each tragedy and shall begin accepting contributions immediately after a tragedy. A report of distributions shall be made within two weeks after the distribution, and contributions shall be acknowledged within two weeks after receipt.

(3) The procedures for applications, hearings, and compensation orders for victims shall follow the procedures in the Nebraska Crime Victim's Reparations Act, as applicable, unless the board of directors of the Community Trust creates an alternative procedure. In any alternative procedure, the Community Trust shall establish a distribution committee for the tragedy within one week after the tragedy, establish eligible recipient criteria and eligible uses of the fund, begin initial distribution of the fund within three weeks after the tragedy, make subsequent distributions within three months after the tragedy, and complete all distributions within six months after the tragedy.

Source: Laws 2009, LB598, § 1.
Effective date August 30, 2009.

81-1802 Crime Victim's Reparations Committee; created; members.

A Crime Victim's Reparations Committee is hereby created. The committee shall consist of five members of the commission and two public members to be appointed by the Governor subject to approval by the Legislature. One public member shall represent charitable organizations, and one public member shall represent businesses. The members of the committee shall select a chairperson who is a member of the commission.

Source: Laws 1978, LB 910, § 2; Laws 1981, LB 328, § 5; Laws 1986, LB 540, § 3; Laws 2009, LB598, § 3.
Effective date August 30, 2009.

81-1803 Committee; members; appointment; terms.

Members of the committee shall serve for terms of four years, except that of the public members first appointed one shall be appointed for a term of two years and one for a term of four years.

Source: Laws 1978, LB 910, § 3; Laws 1986, LB 540, § 4; Laws 2009, LB598, § 4.
Effective date August 30, 2009.

81-1805 Committee; members; expenses.

Members of the committee shall receive no reimbursement for the performance of their duties as members of the committee, except that such members shall receive reimbursement for actual and necessary expenses as provided in sections 81-1174 to 81-1177.

Source: Laws 1978, LB 910, § 5; Laws 1981, LB 204, § 199; Laws 1986, LB 540, § 6; Laws 2009, LB598, § 5.
Effective date August 30, 2009.

81-1813 Committee; adopt rules and regulations; forms and materials; provide.

The committee may, subject to the approval of the commission, adopt and promulgate rules and regulations prescribing the procedures to be followed in the filing of applications and proceedings under the Nebraska Crime Victim's Reparations Act and any other matters the committee considers appropriate, including special circumstances, such as when expenses of job retraining or similar employment-related rehabilitative services are involved, under which an award from the Victim's Compensation Fund may exceed ten thousand dollars.

The committee shall make available all forms and educational materials necessary to promote the existence of the programs to persons throughout the state.

Source: Laws 1978, LB 910, § 13; Laws 1981, LB 328, § 7; Laws 1986, LB 540, § 14; Laws 2009, LB598, § 6.
Effective date August 30, 2009.

81-1818 Personal injury or death; situations for which compensation is permitted; natural disaster; distribution authorized.

The committee or hearing officer may order:

(1) The payment of compensation from the Victim's Compensation Fund or a distribution from the Community Trust for personal injury or death which resulted from:

(a) An attempt on the part of the applicant to prevent the commission of crime, to apprehend a suspected criminal, to aid or attempt to aid a police officer in the performance of his or her duties, or to aid a victim of a crime; or

(b) The commission or attempt on the part of one other than the applicant of an unlawful criminal act committed or attempted in the State of Nebraska; or

(2) A distribution from the Community Trust for loss resulting from a natural disaster.

Source: Laws 1978, LB 910, § 18; Laws 1986, LB 540, § 19; Laws 2009, LB598, § 7.
Effective date August 30, 2009.

81-1820 Hearing officer; emergency award of compensation; when; conditions; review.

(1) Prior to the hearing officer taking action on an application for compensation from the Victim's Compensation Fund, the applicant may request that a hearing officer make an emergency award of compensation to the applicant. If it appears to the hearing officer that the claim is one for which compensation is probable and undue hardship will result to the applicant if immediate payment is not made, the hearing officer may make an emergency award of compensation to the applicant pending a final decision in the case, except that:

(a) The amount of the emergency compensation shall not exceed five hundred dollars;

(b) The amount of the emergency compensation shall be deducted from the final compensation made to the applicant; and

(c) The excess amount of the emergency compensation over the final amount shall be repaid by the applicant to the committee.

(2) If the hearing officer refuses to make an emergency award of compensation to the applicant, the applicant may request an emergency hearing before the committee which may be conducted by means of teleconference. The committee shall forthwith specify a time and place for an emergency hearing and shall give written notice to the applicant. If it appears to the committee that the claim is one for which compensation is probable and undue hardship will result to the applicant if immediate payment is not made, the committee may make an emergency award of compensation to the applicant pending a

final decision in the case, subject to the conditions and limitations stated in subsection (1) of this section.

Source: Laws 1978, LB 910, § 20; Laws 1986, LB 540, § 21; Laws 2009, LB598, § 8.
Effective date August 30, 2009.

81-1822 Compensation; situations when not awarded.

No compensation shall be awarded:

(1) If the victim aided or abetted the offender in the commission of the unlawful act;

(2) If the offender will receive economic benefit or unjust enrichment from the compensation;

(3) If the victim violated a criminal law of the state, which violation caused or contributed to his or her injuries or death;

(4) If the victim is injured as a result of the operation of a motor vehicle, boat, or airplane (a) unless the vehicle was used in a deliberate attempt to injure or kill the victim, (b) unless the operator is charged with a violation of section 60-6,196 or 60-6,197 or a city or village ordinance enacted in conformance with either of such sections, or (c) unless any chemical test of the operator's breath or blood indicates an alcohol concentration equal to or in excess of the limits prescribed in section 60-6,196; or

(5) If the victim incurs an economic loss which does not exceed ten percent of his or her net financial resources. For purposes of this subdivision, a victim's net financial resources shall not include the present value of future earnings and shall be determined by the committee by deducting from the victim's total financial resources:

(a) One year's earnings;

(b) The victim's equity in his or her home, not exceeding thirty thousand dollars;

(c) One motor vehicle; and

(d) Any other property which would be exempt from execution under section 25-1552 or 40-101.

Nothing in this section shall limit payments to a victim by an offender which are made as full or partial restitution of the victim's actual pecuniary loss. Subdivision (5) of this section shall not apply to distributions from the Community Trust.

Source: Laws 1978, LB 910, § 22; Laws 1982, LB 942, § 7; Laws 1986, LB 540, § 23; Laws 1990, LB 87, § 7; Laws 1993, LB 370, § 489; Laws 2001, LB 773, § 18; Laws 2009, LB598, § 9.
Effective date August 30, 2009.

81-1823 Award; limitations; how paid.

Except as provided in section 81-1813, no compensation shall be awarded under the Nebraska Crime Victim's Reparations Act from the Victim's Compensation Fund in an amount in excess of ten thousand dollars for each applicant per incident unless expenses for job retraining or similar employment-related rehabilitative services for the victim are deemed necessary. In such case, amounts in excess of ten thousand dollars shall be used only for such purposes.

Each award shall be paid in installments unless the hearing officer or committee decides otherwise.

Source: Laws 1978, LB 910, § 23; Laws 1986, LB 540, § 24; Laws 2009, LB598, § 10.
Effective date August 30, 2009.

81-1825 Committee; subrogation rights.

When an order for the payment of compensation for personal injury or death is made from the Victim's Compensation Fund, the committee shall be subrogated to the cause of action of the applicant against the person responsible for the injury or death and shall be entitled to bring an action against such person for the amount of the damages sustained by the applicant. If an amount greater than that paid under the order is recovered and collected in the action, the committee shall pay the balance to the applicant.

Source: Laws 1978, LB 910, § 25; Laws 1986, LB 540, § 26; Laws 2009, LB598, § 11.
Effective date August 30, 2009.

81-1833 Committee; report; contents.

(1) The committee shall prepare and submit to the commission a biennial report of its activities under the Nebraska Crime Victim's Reparations Act, including the name of each applicant, a brief description of the facts in each case, and the amount of compensation awarded, except that if the applicant was the victim of a sexual assault the victim's name shall not be included in the report, but shall be available to the Governor or a member of the Legislature upon request to the committee. Such report shall be submitted to the Governor and Clerk of the Legislature as part of the commission's report submitted pursuant to section 81-1423.

(2) The committee shall act as the oversight committee for the Community Trust and shall annually report its activities and findings as the oversight committee to the commission, the Governor, and the Clerk of the Legislature. If any questionable or improper actions or inactions on the part of the Community Trust are observed, the committee shall immediately notify the Attorney General who shall investigate the matter.

Source: Laws 1978, LB 910, § 33; Laws 1979, LB 322, § 60; Laws 1980, LB 319, § 6; Laws 1981, LB 545, § 37; Laws 1981, LB 328, § 8; Laws 1986, LB 540, § 31; Laws 2009, LB598, § 12.
Effective date August 30, 2009.

81-1834 Award; payment.

Any award to a claimant and any judgment in favor of a claimant under the Nebraska Crime Victim's Reparations Act from the Victim's Compensation Fund shall be certified by the committee to the Director of Administrative Services who shall promptly issue a warrant for payment of such award of judgment out of the fund if sufficient money is available in such fund.

Source: Laws 1978, LB 910, § 34; Laws 1986, LB 540, § 32; Laws 2009, LB598, § 13.
Effective date August 30, 2009.

81-1835 Victim's Compensation Fund; created; use; investment.

The Victim's Compensation Fund is created. The fund shall be used to pay awards or judgments under the Nebraska Crime Victim's Reparations Act other than distributions from the Community Trust. The fund shall include deposits pursuant to sections 29-2286, 81-1836, and 83-183.01 and shall be in such amount as the Legislature shall determine to be reasonably sufficient to meet anticipated claims. When the amount of money in the fund is not sufficient to pay any awards or judgments under the act, the Director of Administrative Services shall immediately advise the Legislature and request an emergency appropriation to satisfy such awards and judgments. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1978, LB 910, § 35; Laws 1986, LB 540, § 33; Laws 1987, LB 353, § 2; Laws 1995, LB 7, § 132; Laws 2009, LB598, § 14.
Effective date August 30, 2009.

Cross References

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

81-1839 Committee; payments for legal representation; when.

Notwithstanding the provisions of sections 81-1836 to 81-1838, the committee shall make payments from the Victim's Compensation Fund to any person accused of crime upon the order of a court of competent jurisdiction after a showing by such person that such money shall be used for the exclusive purpose of retaining legal representation at any stage of the proceedings against such person, including the appeals process.

Source: Laws 1978, LB 910, § 39; Laws 1986, LB 540, § 36; Laws 2009, LB598, § 15.
Effective date August 30, 2009.

81-1840 Action to defeat purpose of sections; null and void.

Any action taken by any person convicted of a crime, whether by way of execution of a power of attorney, creation of corporate entities or otherwise, to defeat the purpose of sections 81-1836 to 81-1839 shall be null and void as against the public policy of this state.

Source: Laws 1978, LB 910, § 40; Laws 2009, LB598, § 16.
Effective date August 30, 2009.

81-1841 Act, how cited.

Sections 81-1801 to 81-1842 shall be known and may be cited as the Nebraska Crime Victim's Reparations Act.

Source: Laws 1978, LB 910, § 41; Laws 2004, LB 270, § 6; Laws 2009, LB598, § 17.
Effective date August 30, 2009.

ARTICLE 20
NEBRASKA STATE PATROL

(b) RETIREMENT SYSTEM

Section
81-2017. Retirement system; contributions; payment; funding of system.

(b) RETIREMENT SYSTEM

81-2017 Retirement system; contributions; payment; funding of system.

(1) Commencing July 1, 2005, and until July 1, 2009, each officer while in the service of the Nebraska State Patrol shall pay or have paid on his or her behalf a sum equal to thirteen percent of his or her monthly compensation. Commencing July 1, 2009, and until July 1, 2010, each officer while in the service of the Nebraska State Patrol shall pay or have paid on his or her behalf a sum equal to fifteen percent of his or her monthly compensation. Commencing July 1, 2010, each officer while in the service of the Nebraska State Patrol shall pay or have paid on his or her behalf a sum equal to sixteen percent of his or her monthly compensation. Such amounts shall be deducted monthly by the Director of Administrative Services who shall draw a warrant monthly in the amount of the total deductions from the compensation of members of the Nebraska State Patrol in accordance with subsection (4) of this section, and the State Treasurer shall credit the amount of such warrant to the State Patrol Retirement Fund. The director shall cause a detailed report of all monthly deductions to be made each month to the board.

(2) In addition, commencing July 1, 2005, and until July 1, 2010, there shall be assessed against the appropriation of the Nebraska State Patrol a sum equal to the amount of fifteen percent of each officer's monthly compensation which shall be credited to the State Patrol Retirement Fund. Commencing July 1, 2010, there shall be assessed against the appropriation of the Nebraska State Patrol a sum equal to the amount of sixteen percent of each officer's monthly compensation which shall be credited to the State Patrol Retirement Fund.

(3) For the fiscal year beginning on July 1, 2002, and each fiscal year thereafter, the actuary for the board shall perform an actuarial valuation of the system using the entry age actuarial cost method. Under this method, the actuarially required funding rate is equal to the normal cost rate, plus the contribution rate necessary to amortize the unfunded actuarial accrued liability on a level payment basis. The normal cost under this method shall be determined for each individual member on a level percentage of salary basis. The normal cost amount is then summed for all members. Beginning July 1, 2006, any existing unfunded liabilities shall be reinitialized and amortized over a thirty-year period, and during each subsequent actuarial valuation, changes in the funded actuarial accrued liability due to changes in benefits, actuarial assumptions, the asset valuation method, or actuarial gains or losses shall be measured and amortized over a thirty-year period beginning on the valuation date of such change. If the unfunded actuarial accrued liability under the entry age actuarial cost method is zero or less than zero on an actuarial valuation date, then all prior unfunded actuarial accrued liabilities shall be considered fully funded and the unfunded actuarial accrued liability shall be reinitialized and amortized over a thirty-year period as of the actuarial valuation date. If the actuarially required contribution rate exceeds the rate of all contributions

required pursuant to the Nebraska State Patrol Retirement Act, there shall be a supplemental appropriation sufficient to pay for the differences between the actuarially required contribution rate and the rate of all contributions required pursuant to the Nebraska State Patrol Retirement Act. Such valuation shall be on the basis of actuarial assumptions recommended by the actuary, approved by the board, and kept on file with the board.

(4) The state shall pick up the member contributions required by this section for all compensation paid on or after January 1, 1985, and the contributions so picked up shall be treated as employer contributions in determining federal tax treatment under the Internal Revenue Code as defined in section 49-801.01, except that the state shall continue to withhold federal income taxes based upon these contributions until the Internal Revenue Service or the federal courts rule that, pursuant to section 414(h) of the code, these contributions shall not be included as gross income of the member until such time as they are distributed or made available. The state shall pay these member contributions from the same source of funds which is used in paying earnings to the member. The state shall pick up these contributions by a compensation deduction through a reduction in the cash compensation of the member. Member contributions picked up shall be treated for all purposes of the Nebraska State Patrol Retirement Act in the same manner and to the extent as member contributions made prior to the date picked up.

Source: Laws 1947, c. 211, § 4, p. 688; Laws 1959, c. 286, § 6, p. 1085; Laws 1965, c. 387, § 1, p. 1243; Laws 1971, LB 987, § 10; Laws 1975, LB 235, § 1; R.S.1943, (1978), § 60-444; Laws 1981, LB 462, § 5; Laws 1984, LB 218, § 4; Laws 1989, LB 506, § 14; Laws 1991, LB 549, § 49; Laws 1994, LB 833, § 36; Laws 1994, LB 1287, § 1; Laws 1995, LB 369, § 6; Laws 1995, LB 574, § 81; Laws 2001, LB 408, § 21; Laws 2002, LB 407, § 50; Laws 2004, LB 514, § 1; Laws 2005, LB 503, § 12; Laws 2006, LB 1019, § 12; Laws 2007, LB324, § 4; Laws 2009, LB188, § 7.
Operative date July 1, 2009.

ARTICLE 22

AGING SERVICES

(d) PREADMISSION SCREENING

Section
81-2265. Repealed. Laws 2009, LB 288, § 54.
81-2267. Repealed. Laws 2009, LB 288, § 54.
81-2270. Purchase of services with state funds; sliding-fee scale.
81-2271. Rules and regulations.

(d) PREADMISSION SCREENING

81-2265 Repealed. Laws 2009, LB 288, § 54.

81-2267 Repealed. Laws 2009, LB 288, § 54.

81-2270 Purchase of services with state funds; sliding-fee scale.

Services identified by care plans for those not eligible for services provided through the home and community-based waiver for the aged and disabled may

be purchased with funds appropriated through section 81-2235 based on a sliding-fee scale.

Source: Laws 1993, LB 801, § 6; Laws 1996, LB 1044, § 892; Laws 2009, LB288, § 37.
Operative date August 30, 2009.

81-2271 Rules and regulations.

The Department of Health and Human Services shall adopt and promulgate rules and regulations to establish procedures and standards to implement the intent of sections 81-2268 to 81-2271.

Source: Laws 1993, LB 801, § 7; Laws 1996, LB 1044, § 893; Laws 2009, LB288, § 38.
Operative date August 30, 2009.

ARTICLE 31

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Section
81-3119. Health and Human Services Cash Fund; created; investment.

81-3119 Health and Human Services Cash Fund; created; investment.

The Health and Human Services Cash Fund is created and shall consist of funds from contracts, grants, gifts, or fees. On or before July 15, 2008, one million dollars shall be transferred from the Health and Human Services Cash Fund to the Rural Health Professional Incentive Fund. On July 9, 2009, two hundred fifteen thousand dollars shall be transferred from the Health and Human Services Cash Fund to the State Medicaid Fraud Control Unit Cash Fund. Any money in the Health and Human Services 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 2007, LB296, § 10; Laws 2008, LB961, § 6; Laws 2009, LB288, § 39.
Operative date May 30, 2009.

Cross References

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

ARTICLE 34

ENGINEERS AND ARCHITECTS REGULATION ACT

Section
81-3401. Act, how cited.
81-3432. Engineers and Architects Regulation Fund; created; use; investment.
81-3432.01. Repayment of qualified educational debt; authorized; eligibility.

81-3401 Act, how cited.

Sections 81-3401 to 81-3455 shall be known and may be cited as the Engineers and Architects Regulation Act.

Source: Laws 1997, LB 622, § 1; Laws 2009, LB446, § 1.
Effective date August 30, 2009.

81-3432 Engineers and Architects Regulation Fund; created; use; investment.

The Engineers and Architects Regulation Fund is created. The secretary of the board shall receive and account for all money derived from the operation of the Engineers and Architects Regulation Act and shall remit the money to the State Treasurer for credit to the Engineers and Architects Regulation Fund. All expenses certified by the board as properly and necessarily incurred in the discharge of duties, including compensation and administrative staff, and any expense incident to the administration of the act relating to other states shall be paid out of the fund. Loan repayments payable pursuant to section 81-3432.01 shall be paid out of the fund. Warrants for the payment of expenses shall be issued by the Director of Administrative Services and paid by the State Treasurer upon presentation of vouchers regularly drawn by the chairperson and secretary of the board and approved by the board. At no time shall the total amount of warrants exceed the total amount of the fees collected under the act and to the credit of the fund. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1997, LB 622, § 32; Laws 2009, LB446, § 2.
Effective date August 30, 2009.

Cross References

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

81-3432.01 Repayment of qualified educational debt; authorized; eligibility.

(1) The board may repay qualified educational debt owed by an eligible graduate. Such repayment shall be made from the Engineers and Architects Regulation Fund. To be eligible for loan repayment, a recipient shall be a graduate of (a) a National Architectural Accrediting Board-accredited architecture program in Nebraska or (b) an ABET-accredited engineering program in Nebraska and shall have obtained qualified educational debt.

(2) For purposes of this section, qualified educational debt means government and commercial loans obtained by a student for postsecondary education tuition, other educational expenses, and reasonable living expenses, as determined by the board.

(3) The board may adopt and promulgate rules and regulations governing any loan repayment under this section.

Source: Laws 2009, LB446, § 3.
Effective date August 30, 2009.

ARTICLE 36

RURAL DEVELOPMENT COMMISSION

Section
81-3602. Rural Development Commission; members; terms; meetings; expenses.

81-3602 Rural Development Commission; members; terms; meetings; expenses.

(1)(a) The Rural Development Commission shall consist of members who represent a wide range of rural Nebraska interests.

(b) The Governor shall appoint five members to the commission. The Governor shall appoint a representative of his or her office and the Director of Economic Development or his or her designee, the Director of Agriculture or his or her designee, the chief executive officer of the Department of Health and Human Services or his or her designee, and the Director of the Nebraska State Historical Society or his or her designee.

(c) The Speaker of the Legislature shall appoint one member of the Legislature to the commission. Such member shall be a nonvoting member of the commission.

(d) Other members shall be appointed by the Governor to represent federal agencies, local governments, tribal governments, nonprofit organizations, regional economic development organizations, the private sector, postsecondary education, and youth.

(e) The chairperson and vice-chairperson of the commission shall be elected by a majority of the members of the commission at the first commission meeting in odd-numbered years and shall each serve a two-year term as chairperson and vice-chairperson, respectively.

(2) The commission shall meet at the call of the chairperson or a majority of the members. The chairperson shall call such meetings as he or she determines necessary to fulfill the duties of the commission. A quorum shall be one-half of the members.

(3) The members of the commission shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177 and pursuant to policies of the commission.

Source: Laws 1993, LB 190, § 2; R.S.1943, (1994), § 81-1283; Laws 1998, LB 1053, § 2; Laws 2003, LB 48, § 1; Laws 2003, LB 48, § 3; Laws 2007, LB296, § 777; Laws 2009, LB231, § 1.
Effective date August 30, 2009.

CHAPTER 82
STATE CULTURE AND HISTORY

Article.
3. Nebraska Arts Council. 82-331, 82-332.

ARTICLE 3
NEBRASKA ARTS COUNCIL

Section
82-331. Nebraska Cultural Preservation Endowment Fund; created; use; investment.
82-332. Nebraska Arts and Humanities Cash Fund; created; use; investment.

82-331 Nebraska Cultural Preservation Endowment Fund; created; use; investment.

(1) There is hereby established in the state treasury a trust fund to be known as the Nebraska Cultural Preservation Endowment Fund. The fund shall consist of funds appropriated or transferred by the Legislature, and only the earnings of the fund may be used as provided in this section.

(2) On August 1, 1998, the State Treasurer shall transfer five million dollars from the General Fund to the Nebraska Cultural Preservation Endowment Fund.

(3) Except as provided in subsection (4) of this section, it is the intent of the Legislature that the State Treasurer shall transfer (a) an amount not to exceed five hundred thousand dollars from the General Fund to the Nebraska Cultural Preservation Endowment Fund on December 31 of 2009 and 2010 and (b) an amount not to exceed one million five hundred thousand dollars from the General Fund to the Nebraska Cultural Preservation Endowment Fund on December 31 of 2011 and 2012.

(4) Prior to the transfer of funds from any state account into the Nebraska Cultural Preservation Endowment Fund, the Nebraska Arts Council shall provide documentation to the budget division of the Department of Administrative Services that qualified endowments have generated a dollar-for-dollar match of new money, up to the amount of state funds authorized by the Legislature to be transferred to the Nebraska Cultural Preservation Endowment Fund. The budget division of the Department of Administrative Services shall notify the State Treasurer to execute a transfer of state funds up to the amount specified by the Legislature, but only to the extent that the Nebraska Arts Council has provided documentation of a dollar-for-dollar match. Funds not transferred shall be carried forward to the succeeding year and be added to the funds authorized for a dollar-for-dollar match during that year.

(5) The Legislature shall not appropriate or transfer money from the Nebraska Cultural Preservation Endowment Fund for any purpose other than the purposes stated in sections 82-330 to 82-333, except that the Legislature may appropriate or transfer money from the fund upon a finding that the purposes of such sections are not being accomplished by the fund.

(6) Any money in the Nebraska Cultural Preservation Endowment Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(7) All investment earnings from the Nebraska Cultural Preservation Endowment Fund shall be credited to the Nebraska Arts and Humanities Cash Fund.

Source: Laws 1998, LB 799, § 2; Laws 2008, LB1165, § 1; Laws 2009, LB316, § 23.
Effective date May 20, 2009.

Cross References

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

82-332 Nebraska Arts and Humanities Cash Fund; created; use; investment.

(1) The Nebraska Arts and Humanities Cash Fund is created. The fund shall consist of all funds credited from the Nebraska Cultural Preservation Endowment Fund pursuant to section 82-331. The Nebraska Arts Council shall administer and distribute the Nebraska Arts and Humanities Cash Fund. All disbursements from the Nebraska Arts and Humanities Cash Fund shall be matched dollar-for-dollar by sources other than state funds. The match funds shall be new money generated for endowments established by the Nebraska Arts Council or Nebraska Humanities Council or qualified endowments of their constituent organizations, new money generated as a result of seed grants to recipients, or new money generated by the Nebraska Arts Council or Nebraska Humanities Council for arts or humanities education. Matching funds shall also include earnings generated by qualified private endowments formed in accordance with this section. New money used as a match shall not be limited to matching the Nebraska Arts and Humanities Cash Fund in the state fiscal year the new money is received, but it shall be used as a match no later than the subsequent fiscal year. For an endowment to be a qualified endowment (a) the endowment must meet the standards set by the Nebraska Arts Council or Nebraska Humanities Council, (b) the endowment must be intended for long-term stabilization of the organization, and (c) the funds of the endowment must be endowed and only the earnings thereon expended. An organization is a constituent organization if it receives funding from the Nebraska Arts Council or Nebraska Humanities Council and is tax exempt under section 501 of the Internal Revenue Code. The match funds required by this section shall not include in-kind contributions. The budget division of the Department of Administrative Services shall approve allotment and disbursement of funds from the Nebraska Arts and Humanities Cash Fund only to the extent the Nebraska Arts Council has provided documentation of the dollar-for-dollar match required by this section. Funds from the Nebraska Arts and Humanities Cash Fund may be used for the purpose of obtaining challenge grants from the National Endowment for the Humanities or the National Endowment for the Arts.

(2) Rules and regulations of the Nebraska Arts Council shall provide that the ultimate use of disbursements from the Nebraska Arts and Humanities Cash Fund shall be in a ratio of seventy percent to projects, endowments, or programs designated by the Nebraska Arts Council and thirty percent to projects, endowments, or programs designated by the Nebraska Humanities Council.

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

Source: Laws 1998, LB 799, § 3; Laws 2009, LB316, § 24.
Effective date May 20, 2009.

Cross References

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

CHAPTER 83
STATE INSTITUTIONS

Article.
1. Management.
   (a) General Provisions. 83-123.
   (f) Correctional Services, Parole, and Pardons. 83-174.03, 83-183.
3. Hospitals.
   (d) Cost of Patient Care. 83-380.
4. Penal and Correctional Institutions.
   (i) Criminal Detention Minimum Standards. 83-4,133.
   (l) Incarceration Work Camps. 83-4,142, 83-4,143.
9. Department of Correctional Services.
   (j) Lethal Injection. 83-964 to 83-972.
12. Developmental Disabilities Services. 83-1209 to 83-1217.02.

ARTICLE 1
MANAGEMENT

(a) GENERAL PROVISIONS

Section
83-123. Department of Correctional Services; license plates; materials; Department of Motor Vehicles; duties.

(f) CORRECTIONAL SERVICES, PAROLE, AND PARDONS

83-174.03. Certain sex offenders; supervision by Office of Parole Administration; notice prior to release; risk assessment and evaluation; conditions of community supervision.
83-183. Persons committed; employment; wages; use; rules and regulations.

(a) GENERAL PROVISIONS

83-123 Department of Correctional Services; license plates; materials; Department of Motor Vehicles; duties.

Out of the fund appropriated by the Legislature, the Department of Correctional Services shall purchase the materials for, manufacture, and deliver the license plates each year to the various counties in the State of Nebraska. The Department of Motor Vehicles shall furnish the information concerning license plates, together with the number of plates to be manufactured for each county in the state for the current licensing year, to the Department of Correctional Services.

Source: Laws 1931, c. 22, § 2, p. 95; C.S.Supp.,1941, § 83-137; R.S.1943, § 83-123; Laws 1951, c. 319, § 2, p. 1091; Laws 1953, c. 207, § 14, p. 730; Laws 1959, c. 442, § 3, p. 1486; Laws 1959, c. 284, § 5, p. 1078; Laws 1969, c. 497, § 2, p. 2067; Laws 1993, LB 31, § 24; Laws 1993, LB 112, § 46; Laws 2009, LB49, § 9.
Effective date August 30, 2009.

(f) CORRECTIONAL SERVICES, PAROLE, AND PARDONS

83-174.03 Certain sex offenders; supervision by Office of Parole Administration; notice prior to release; risk assessment and evaluation; conditions of community supervision.

(1) Any individual who, on or after July 14, 2006, (a) is convicted of or completes a term of incarceration for a registrable offense under section 29-4003 and has a previous conviction for a registrable offense under such section, (b) is convicted of sexual assault of a child in the first degree pursuant to section 28-319.01, or (c) is convicted of or completes a term of incarceration for an aggravated offense as defined in section 29-4001.01, shall, upon completion of his or her term of incarceration or release from civil commitment, be supervised in the community by the Office of Parole Administration for the remainder of his or her life.

(2) Notice shall be provided to the Office of Parole Administration by an agency or political subdivision which has custody of an individual required to be supervised in the community pursuant to subsection (1) of this section at least sixty days prior to the release of such individual from custody.

(3) Individuals required to be supervised in the community pursuant to subsection (1) of this section shall undergo a risk assessment and evaluation by the Office of Parole Administration to determine the conditions of community supervision to be imposed to best protect the public from the risk that the individual will reoffend.

(4) Conditions of community supervision imposed on an individual by the Office of Parole Administration may include the following:

(a) Drug and alcohol testing if the conviction resulting in the imposition of community supervision involved the use of drugs or alcohol;

(b) Restrictions on employment and leisure activities necessary to minimize interaction with potential victims;

(c) Requirements to report regularly to the individual's community supervision officer;

(d) Requirements to reside at a specified location and notify the individual's community supervision officer of any change in address or employment;

(e) A requirement to allow the Office of Parole Administration access to medical records from the individual's current and former providers of treatment;

(f) A requirement that the individual submit himself or herself to available medical, psychological, psychiatric, or other treatment, including, but not limited to, polygraph examinations; or

(g) Any other conditions designed to minimize the risk of recidivism, including, but not limited to, the use of electronic monitoring, which are not unduly restrictive.

Source: Laws 2006, LB 1199, § 89; Laws 2009, LB285, § 13.
Operative date January 1, 2010.

83-183 Persons committed; employment; wages; use; rules and regulations.

(1) To establish good habits of work and responsibility, to foster vocational training, and to reduce the cost of operating the facilities, persons committed to the department shall be employed, eight hours per day, so far as possible in constructive and diversified activities in the production of goods, services, and foodstuffs to maintain the facilities, for state use, and for other purposes authorized by law. To accomplish these purposes, the director may establish and maintain industries and farms in appropriate facilities and may enter into

arrangements with any other board or agency of the state, any natural resources district, or any other political subdivision, except that any arrangements entered into with school districts, educational service units, community colleges, state colleges, or universities shall include supervision provided by the department, for the employment of persons committed to the department for state or governmental purposes. Nothing in this subsection shall be construed to effect a reduction in the number of work release positions.

(2) The director shall make rules and regulations governing the hours, conditions of labor, and the rates of compensation of persons committed to the department. In determining the rates of compensation, such regulations may take into consideration the quantity and quality of the work performed by such person, whether or not such work was performed during regular working hours, the skill required for its performance, and the economic value of similar work outside of correctional facilities.

(3) Except as provided in section 83-183.01, wage payments to a person committed to the department shall be set aside by the chief executive officer of the facility in a separate fund. The fund shall enable such person committed to the department to contribute to the support of his or her dependents, if any, to make necessary purchases from the commissary, and to set aside sums to be paid to him or her at the time of his or her release from the facility.

(4) The director may authorize the chief executive officer to invest the earnings of a person committed to the department. Any accrued interest thereon shall be credited to such person's fund.

(5) The director may authorize the chief executive officer to reimburse the state from the wage fund of a person committed to the department for:

(a) The actual value of property belonging to the state or any other person intentionally or recklessly destroyed by such person committed to the department during his or her commitment;

(b) The actual value of the damage or loss incurred as a result of unauthorized use of property belonging to the state or any other person by such person committed to the department;

(c) The actual cost to the state for injuries or other damages caused by intentional acts of such person committed to the department; and

(d) The reasonable costs incurred in returning such person committed to the department to the facility to which he or she is committed in the event of his or her escape.

(6) No person committed to the department shall be required to engage in excessive labor, and no such person shall be required to perform any work for which he or she is declared unfit by a physician designated by the director. No person who performs labor or work pursuant to this section shall be required to wear manacles, shackles, or other restraints.

(7) The director may authorize that a portion of the earnings of a person committed to the department be retained by that person for personal use.

Source: Laws 1969, c. 817, § 14, p. 3080; Laws 1980, LB 319, § 10; Laws 1993, LB 31, § 32; Laws 1994, LB 889, § 1; Laws 1999, LB 865, § 7; Laws 2002, LB 112, § 1; Laws 2009, LB63, § 42.
Effective date May 28, 2009.

ARTICLE 3
HOSPITALS

(d) COST OF PATIENT CARE

(d) COST OF PATIENT CARE

83-380 Cost of patient care; Director of Administrative Services; notify county clerk of amount due; levy; disbursement; withholding of funds by state.

Within thirty days after June 30, 1971, and each year thereafter, the department shall certify to the Director of Administrative Services all amounts not previously certified due to each state institution from the several counties having patients chargeable thereto. The Director of Administrative Services shall thereupon notify the county clerk of each county of the amount each county owes. The county board shall add to its next levy an amount sufficient to raise the amount certified as due. The county shall pay the amount certified into the state treasury on or before the next June 1 following such certification.

From any county which fails to pay the total amount certified as due annually by the next June 1 following certification, there shall be withheld by the State Treasurer from the next allocation to such county due under the provisions of section 77-27,137.03 an amount sufficient to equal the amount unpaid from such county which amount shall be deducted from the county's portion and not the municipalities' under section 77-27,137.01. The State Treasurer shall credit the amount withheld the same as if the county had paid it when due as above provided.

Source: Laws 1969, c. 812, § 18, p. 3056; Laws 1971, LB 1012, § 2; Laws 1996, LB 1044, § 950; Laws 2007, LB296, § 797; Laws 2009, LB218, § 10.
Operative date July 1, 2011.

ARTICLE 4
PENAL AND CORRECTIONAL INSTITUTIONS

(i) CRIMINAL DETENTION MINIMUM STANDARDS

(l) INCARCERATION WORK CAMPS

(i) CRIMINAL DETENTION MINIMUM STANDARDS

83-4,133 Detention facility; governing body; failure to take corrective action; petition by Jail Standards Board; hearing; order; appeal.

If the governing body of the juvenile detention facility or criminal detention facility fails to initiate corrective action within six months after the receipt of such inspection report, fails to correct the disclosed conditions, or fails to close

the criminal detention facility or juvenile detention facility or the objectionable portion thereof, the Jail Standards Board may petition the district court within the judicial district in which such facility is located to close the facility. Such petition shall include the inspection report regarding such facility. The local governing body shall then have thirty days to respond to such petition and shall serve a copy of the response on the Jail Standards Board by certified mail, return receipt requested. Thereafter, a hearing shall be held on the petition before the district court, and an order shall be rendered by such court which either:

(1) Dismisses the petition of the Jail Standards Board;

(2) Directs that corrective action be initiated in some form by the local governing body of the facility in question; or

(3) Directs that the facility be closed. An appeal from the decision of the district court may be taken to the Court of Appeals.

Source: Laws 1975, LB 417, § 32; Laws 1978, LB 212, § 10; R.S.Supp.,1980, § 83-952; Laws 1991, LB 732, § 154; Laws 1992, LB 1184, § 22; Laws 1998, LB 695, § 6; Laws 2009, LB218, § 11.
Operative date July 1, 2011.

(l) INCARCERATION WORK CAMPS

83-4,142 Department of Correctional Services; duties; legislative intent.

The Department of Correctional Services shall develop and implement an incarceration work camp for placement of felony offenders as a condition of a sentence of intensive supervision probation, as a transitional phase prior to release on parole, or as assigned by the Director of Correctional Services pursuant to subsection (2) of section 83-176. As part of the incarceration work camp, an intensive residential drug treatment program may be developed and implemented for felony offenders.

It is the intent of the Legislature that the incarceration work camp serve to reduce prison overcrowding and to make prison bed space available for violent offenders. It is the further intent of the Legislature that the incarceration work camp serve the interests of society by addressing the criminogenic needs of certain designated offenders and by deterring such offenders from engaging in further criminal activity. To accomplish these goals, the incarceration work camp shall provide regimented, structured, disciplined programming, including all of the following: Work programs; vocational training; behavior management and modification; money management; substance abuse awareness, counseling, and treatment; and education, programming needs, and aftercare planning, which will increase the offender's abilities to lead a law-abiding, productive, and fulfilling life as a contributing member of a free society.

Source: Laws 1997, LB 882, § 2; Laws 2005, LB 538, § 27; Laws 2007, LB83, § 1; Laws 2009, LB274, § 1.
Effective date August 30, 2009.

83-4,143 Eligibility for incarceration work camp; court, Board of Parole, or Director of Correctional Services; considerations; duration.

(1) It is the intent of the Legislature that the court target the felony offender (a) who is eligible and by virtue of his or her criminogenic needs is suitable to be sentenced to intensive supervision probation with placement at the incarceration work camp, (b) for whom the court finds that other conditions of a sentence of intensive supervision probation, in and of themselves, are not suitable, and (c) who, without the existence of an incarceration work camp, would, in all likelihood, be sentenced to prison.

(2) When the court is of the opinion that imprisonment is appropriate, but that a brief and intensive period of regimented, structured, and disciplined programming within a secure facility may better serve the interests of society, the court may place an offender in an incarceration work camp for a period not to exceed one hundred eighty days as a condition of a sentence of intensive supervision probation. The court may consider such placement if the offender (a) is a male or female offender convicted of a felony offense in a district court, (b) is medically and mentally fit to participate, with allowances given for reasonable accommodation as determined by medical and mental health professionals, and (c) has not previously been incarcerated for a violent felony crime. Offenders convicted of a crime under sections 28-319 to 28-322.04 or of any capital crime are not eligible to be placed in an incarceration work camp.

(3) It is also the intent of the Legislature that the Board of Parole may recommend placement of felony offenders at the incarceration work camp. The offenders recommended by the board shall be offenders currently housed at other Department of Correctional Services adult correctional facilities and shall complete the incarceration work camp programming prior to release on parole.

(4) When the Board of Parole is of the opinion that a felony offender currently incarcerated in a Department of Correctional Services adult correctional facility may benefit from a brief and intensive period of regimented, structured, and disciplined programming immediately prior to release on parole, the board may direct placement of such an offender in an incarceration work camp for a period not to exceed one hundred eighty days as a condition of release on parole. The board may consider such placement if the felony offender (a) is medically and mentally fit to participate, with allowances given for reasonable accommodation as determined by medical and mental health professionals, and (b) has not previously been incarcerated for a violent felony crime. Offenders convicted of a crime under sections 28-319 to 28-322.04 or of any capital crime are not eligible to be placed in an incarceration work camp.

(5) The Director of Correctional Services may assign a felony offender to an incarceration work camp if he or she believes it is in the best interests of the felony offender and of society, except that offenders convicted of a crime under sections 28-319 to 28-321 or of any capital crime are not eligible to be assigned to an incarceration work camp pursuant to this subsection.

Source: Laws 1997, LB 882, § 3; Laws 2000, LB 288, § 1; Laws 2005, LB 538, § 28; Laws 2006, LB 1199, § 104; Laws 2007, LB83, § 2; Laws 2009, LB97, § 29; Laws 2009, LB274, § 2.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB97, section 29, with LB274, section 2, to reflect all amendments.

Note: Changes made by LB274 became effective August 30, 2009. Changes made by LB97 became operative January 1, 2010.

ARTICLE 9
DEPARTMENT OF CORRECTIONAL SERVICES

(j) LETHAL INJECTION

(j) LETHAL INJECTION

83-964 Sentence of death; how enforced.

A sentence of death shall be enforced by the intravenous injection of a substance or substances in a quantity sufficient to cause death. The lethal substance or substances shall be administered in compliance with an execution protocol created and maintained by the Department of Correctional Services.

Source: Laws 1973, LB 268, § 17; R.S.1943, (2008), § 29-2532; Laws 2009, LB36, § 9.
Effective date August 30, 2009.

83-965 Director of Correctional Services; written execution protocol; contents.

(1) A sentence of death shall be enforced by the Director of Correctional Services. Upon receipt of an execution warrant, the director shall proceed at the time named in the warrant to enforce the sentence, unless the director is informed that enforcement of the sentence has been stayed by competent judicial authority, the sentence has been commuted, or the conviction has been pardoned.

(2) The director shall create, modify, and maintain a written execution protocol describing the process and procedures by which an execution will be carried out consistent with this section. The director shall (a) select the substance or substances to be employed in an execution by lethal injection, (b) create a documented process for obtaining the necessary substances, (c) designate an execution team composed of one or more executioners and any other personnel deemed necessary to effectively and securely conduct an execution, (d) describe the respective responsibilities of each member of the execution team, (e) describe the training required of each member of the execution team, and (f) perform or authorize any other details deemed necessary and appropriate by the director.

(3) The execution protocol shall require that the first or only substance injected be capable of rendering the convicted person unconscious and that a determination sufficient to reasonably verify that the convicted person is

unconscious be made before the administration of any additional substances, if any.

Source: Laws 2009, LB36, § 10.
Effective date August 30, 2009.

83-966 Lethal injection; participation of professional; how treated under other law.

Notwithstanding any other provision of law:

(1) Any prescription, preparation, compounding, dispensing, obtaining, or administration of the substances deemed necessary to perform a lethal injection shall not constitute the practice of medicine or any other profession relating to health care which is subject by law to regulation, licensure, or certification;

(2) A pharmacist or pharmaceutical supplier may dispense the designated substances, without a prescription, to the Director of Correctional Services or the director's designee upon production of a written request from the director for the designated substances necessary to conduct an execution;

(3) Obtaining, preparing, compounding, dispensing, and administering the substance or substances designated by the execution protocol does not violate the Uniform Controlled Substances Act or sections 71-2501 to 71-2512; and

(4) If a person who is a member of the execution team is licensed by a board or department, the licensing board or department shall not censure, reprimand, suspend, revoke, or take any other disciplinary action against that person's license as a result of that person's participation in a court-ordered execution.

Source: Laws 2009, LB36, § 11.
Effective date August 30, 2009.

Cross References

Uniform Controlled Substances Act, see section 28-401.01.

83-967 Director of Correctional Services; administration of substances; execution team; confidentiality.

(1) The Director of Correctional Services may designate any person qualified under the terms of the execution protocol to administer to the convicted person the substances necessary to comply with the execution protocol.

(2) The identity of all members of the execution team, and any information reasonably calculated to lead to the identity of such members, shall be confidential and exempt from disclosure pursuant to sections 84-712 to 84-712.09 and shall not be subject to discovery or introduction as evidence in any civil proceeding unless extraordinary good cause is shown and a protective order is issued by a district court limiting dissemination of such information.

Source: Laws 2009, LB36, § 12.
Effective date August 30, 2009.

83-968 Method of execution declared unconstitutional; effect on sentence.

No death sentence shall be voided or reduced as a result of a determination that a method of execution was declared unconstitutional under the Constitution of Nebraska or the Constitution of the United States. In any case in which an execution method is declared unconstitutional, the death sentence shall

remain in force until the sentence can be lawfully executed by any valid method of execution.

Source: Laws 2009, LB36, § 13.
Effective date August 30, 2009.

83-969 Punishment inflicted; exclude view of persons; exception.

When any convicted person is sentenced to death, such punishment shall be inflicted at a Department of Correctional Services facility under the supervision of the Director of Correctional Services and in such a manner as to exclude the view of all persons except those permitted to be present as provided in sections 83-970 and 83-971.

Source: Laws 1973, LB 268, § 18; R.S.1943, (2008), § 29-2533; Laws 2009, LB36, § 14.
Effective date August 30, 2009.

83-970 Execution; persons permitted.

Besides the Director of Correctional Services and those persons required to be present under the execution protocol, the following persons, and no others, except as provided in section 83-971, may be present at the execution: (1) The member of the clergy in attendance upon the convicted person; (2) no more than three persons selected by the convicted person; (3) no more than three persons representing the victim or victims of the crime; and (4) such other persons, not exceeding six in number, as the director may designate. At least two persons designated by the director shall be professional members of the Nebraska news media.

Source: Laws 1973, LB 268, § 19; R.S.1943, (2008), § 29-2534; Laws 2009, LB36, § 15.
Effective date August 30, 2009.

83-971 Director of Correctional Services; military force necessary to carry out punishment; inform Governor.

Whenever the Director of Correctional Services shall deem the presence of a military force necessary to carry into effect the provisions of sections 83-964 and 83-969, he or she 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 or her judgment may be necessary for the purpose.

Source: Laws 1973, LB 268, § 20; R.S.1943, (2008), § 29-2535; Laws 2009, LB36, § 16.
Effective date August 30, 2009.

83-972 Director of Correctional Services; inflict punishment; return of proceedings; clerk of court; duty.

Whenever the Director of Correctional Services shall inflict the punishment of death upon a convicted person, in obedience to the command of the court, he or she shall make return of his or her 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; R.S.1943, (2008), § 29-2536; Laws 2009, LB36, § 17.
Effective date August 30, 2009.

ARTICLE 12
DEVELOPMENTAL DISABILITIES SERVICES

Section

83-1209 Director; duties.

To carry out the policies and purposes of the Developmental Disabilities Services Act, the director shall:

(1) Ensure effective management by (a) determining whether applicants are eligible for specialized services, (b) authorizing service delivery for eligible persons, (c) ensuring that services are available, accessible, and coordinated, (d) ensuring that eligible persons have their needs assessed by a team process, have individual program plans developed by a team process to address assessed needs, which plans incorporate the input of the individual and the family, and have services delivered in accordance with the program plan, (e) having the amount of funding for specialized services determined by an objective assessment process, (f) providing information and referral services to persons with developmental disabilities and their families, (g) promoting the development of pilot projects of high quality, cost-efficient services provided by specialized programs, and (h) administering the Beatrice State Developmental Center;

(2) Ensure a coordinated statewide response by (a) developing a comprehensive and integrated statewide plan for specialized services to persons with developmental disabilities in conjunction with state and local officials, designated advocates for such persons, service providers, and the general public, (b) reporting biennially to the Legislature, the Governor, service providers, and the public on persons served and progress made toward meeting requirements of the plan, and (c) creating a statewide registry of persons eligible for specialized services;

(3) Ensure specialized services which are efficient and individualized by (a) developing a written policy which ensures the adequate and equitable distribution of fiscal resources based upon a consistent rationale for reimbursement that allows funding to follow service recipients as their service needs change and which also includes a plan for funding shortfalls and (b) administering all state and federal funds as may be allowed by law;

(4) Ensure maximum quality of services by (a) developing a due process mechanism for resolution of disputes, (b) coordinating the development of review teams designed to enhance the quality of specialized services, (c) developing certification and accreditation requirements for service providers, (d) providing technical assistance to local service providers, and (e) providing eligible persons, their families, and the designated protection and advocacy system authorized pursuant to the Developmental Disabilities Assistance and Bill of Rights Act of 2000, 42 U.S.C. 15001 et seq., with copies of all reports resulting from surveys of providers of specialized services conducted as part of the certification and accreditation process; and

(5) Establish and staff a developmental disabilities division which shall assist in carrying out the policies and purposes of the Developmental Disabilities Services Act.

Source: Laws 1991, LB 830, § 9; Laws 2004, LB 297, § 2; Laws 2009, LB288, § 40.
Operative date August 30, 2009.

83-1211 Responsibility for cost of services.

A person receiving specialized services from a local specialized program which receives financial assistance through the department shall be responsible for the cost of such services in the same manner as are persons receiving services at the Beatrice State Developmental Center. Provisions of law in effect on September 6, 1991, or enacted after such date relating to the responsibility of such persons and their relatives for the cost of and determination of ability to pay for services at the center shall also apply to persons receiving services from specialized programs.

Source: Laws 1991, LB 830, § 11; Laws 2009, LB288, § 41.
Operative date August 30, 2009.

83-1213 Quality review team; members; expenses; duties; reports.

(1) The department shall provide for the establishment of at least one quality review team for each developmental disability service area designated by the department. Each team shall consist of at least four members and shall include at least one person with a developmental disability, at least one parent or other close relative of a person with a developmental disability, and at least one person who is neither a person with a developmental disability nor a close relative of such a person. No employee of any governmental agency or instrumentality or any specialized program shall be eligible to be appointed to a team. The department shall consider nominations for such teams from advocacy groups, providers, elected officials, or other groups or by persons interested in developmental disability services who are located in the service area where such team is established.

(2) Members of each quality review team shall be reimbursed by the department for their actual and necessary expenses as provided in sections 81-1174 to 81-1177.

(3)(a) Each quality review team shall (i) conduct onsite visits of persons with developmental disabilities receiving residential services funded in whole or in part by the department, (ii) assess the quality of life of such persons receiving such services, (iii) make recommendations to improve the quality of such services on behalf of such persons, and (iv) perform such advisory or other duties as provided or approved in rules and regulations adopted and promulgated by the department.

(b) In making quality of life assessments of persons receiving such services, the quality review team shall consider the extent to which such persons (i) are able to exercise choice and control regarding the type and provider of services they receive and the daily activities in which they are engaged, (ii) are treated with respect and dignity by their service providers, (iii) have access to necessary services, equipment, and support, and (iv) are able to participate in activities and events that maximize community integration and inclusion.

(4) Each quality review team shall provide quarterly and annual written reports to the department and service providers of visits conducted and assessments completed under this section.

Source: Laws 1991, LB 830, § 13; Laws 2009, LB288, § 42.
Operative date August 30, 2009.

83-1217 Department; contract for specialized services; certification and accreditation requirements; assisted services; method of reimbursement.

The department shall contract for specialized services and shall only contract with specialized programs which meet certification and accreditation requirements. Assisted services provided under this section through community-based developmental disability programs shall be reimbursed on a daily rate basis, including such services provided to eligible recipients under the medical assistance program established in section 68-903 upon approval for such reimbursement from the federal Centers for Medicare and Medicaid Services. The department shall apply to the federal Centers for Medicare and Medicaid Services for approval of any necessary waiver amendments to permit such reimbursement no later than September 1, 2009, and shall begin reimbursing such services on a daily rate basis no later than ninety days after such approval. In order to be certified, each specialized program shall:

(1) Have an internal quality assurance process;

(2) Have a program evaluation component;

(3) Have a complaint mechanism for persons with developmental disabilities and their families;

(4) Have a process to ensure direct and open communication with the department;

(5) Develop, implement, and regularly evaluate a plan to ensure retention of quality employees and prevent staff turnover;

(6) Have measures to enhance staff training and development;

(7) Be governed by a local governing board or have an advisory committee, the membership of which consists of (a) county commissioners or other locally elected officials, (b) persons with developmental disabilities or members of their families, and (c) persons who are not elected officials, persons with developmental disabilities, or family members of persons with developmental disabilities. At least one-third of the membership shall be persons with developmental disabilities or members of their families. No more than one-third of the membership shall be elected officials, and no more than one-third of the membership shall be persons who are not elected officials, persons with developmental disabilities, or family members of persons with developmental disabilities;

(8) Meet accreditation standards developed by the department;

(9) Require a criminal history record information check of all employees hired on or after September 13, 1997, who work directly with clients receiving services and who are not licensed or certified as members of their profession; and

(10) Meet any other certification requirements developed by the department to further the purposes of the Developmental Disabilities Services Act.

Source: Laws 1991, LB 830, § 17; Laws 1997, LB 852, § 2; Laws 2004, LB 297, § 4; Laws 2009, LB288, § 43.
Operative date May 30, 2009.

83-1217.02 Employees subject to criminal history record information check; fingerprints; confidentiality.

Each employee subject to the criminal history record information check requirements of subdivision (9) of section 83-1217 and section 83-1217.01 shall file a complete set of his or her legible fingerprints with the department. The department shall transmit such fingerprints to the Nebraska State Patrol which shall transmit a copy of the applicant's fingerprints to the Identification Division of the Federal Bureau of Investigation for a national criminal history record information check.

The national criminal history record information check shall include information concerning the employee from federal repositories of such information and repositories of such information in other states if authorized by federal law. The division shall issue a report containing the results of the national criminal history record information check to the department.

The Nebraska State Patrol shall undertake a search for Nebraska criminal history record information concerning the employee. The Nebraska State Patrol shall issue a report to the department which contains the results of the criminal history record information check conducted by the Nebraska State Patrol.

The department shall issue copies of the reports to the employer listed by the employee.

Criminal history record information subject to federal confidentiality requirements shall remain confidential and may be released only upon the written authorization by the employee.

The department, in cooperation with the Nebraska State Patrol, shall adopt and promulgate rules and regulations to carry out this section. Such rules and regulations shall provide that the decision to initiate, continue, or terminate the employment of the employee is and shall remain that of the employer.

Source: Laws 1997, LB 852, § 4; Laws 1999, LB 722, § 1; Laws 2009, LB288, § 44.
Operative date August 30, 2009.

CHAPTER 84
STATE OFFICERS

Article.
5. Secretary of State. 84-510.
6. State Treasurer. 84-602 to 84-621.
7. General Provisions as to State Officers. 84-712.05.
9. Rules of Administrative Agencies.
   (a) Administrative Procedure Act. 84-907.03, 84-917.
13. State Employees Retirement Act. 84-1302 to 84-1331.
14. Public Meetings. 84-1411, 84-1413.
15. Public Employees Retirement Board. 84-1512.

ARTICLE 5
SECRETARY OF STATE

Section
84-510. Corporation Cash Fund; created; use; investment.

84-510 Corporation Cash Fund; created; use; investment.

The Corporation Cash Fund is created. Transfers from the fund to the Election Administration Fund or the General Fund may be made at the direction of the Legislature. The State Treasurer shall transfer five hundred thousand dollars from the Corporation Cash Fund to the General Fund on or before July 5, 2009. Any money in the Corporation Cash Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 2003, LB 357, § 9; Laws 2008, LB961, § 7; Laws 2009, LB316, § 25.
Effective date May 20, 2009.

Cross References

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

ARTICLE 6
STATE TREASURER

Section
84-602. State Treasurer; duties.
84-602.01. Taxpayer Transparency Act.
84-602.02. Web site; contents.
84-612. Cash Reserve Fund; created; transfers; receipt of federal funds.
84-613. Cash Reserve Fund; investment; interest.
84-621. State Treasurer; duty to transfer funds.

84-602 State Treasurer; duties.

It shall be the duty of the State Treasurer:

(1) To receive and keep all money of the state not expressly required to be received and kept by some other person;

(2) To disburse the public money upon warrants drawn upon the state treasury according to law and not otherwise;

(3) To keep a just, true, and comprehensive account of all money received and disbursed;

(4) To keep a just account with each fund, and each head of appropriation made by law, and the warrants drawn against them;

(5) To render a full statement to the Department of Administrative Services of all money received by him or her from whatever source, and if on account of revenue, for what year; of all penalties and interest on delinquent taxes reported or accounted for to him or her, and of all disbursements of public funds; with a list, in numerical order, of all warrants redeemed, the name of the payee, amount, interest, and total amount allowed thereon, and with the amount of the balance of the several funds unexpended; which statement shall be made on the first day of December, March, June, and September, and more often if required;

(6) To report to the Legislature as soon as practicable, but within ten days after the commencement of each regular session, a detailed statement of the condition of the treasury and its operations for the preceding fiscal year;

(7) To give information in writing to the Legislature, whenever required, upon any subject connected with the treasury or touching any duty of his or her office;

(8) To account for, and pay over, all money received by him or her as such treasurer, to his or her successor in office, and deliver all books, vouchers, and effects of office to him or her; and such successor shall receipt therefor. In accounting for and paying over such money the treasurer shall not be held liable on account of any loss occasioned by any investment, when such investment shall have been made pursuant to the direction of the state investment officer; and

(9) To develop and maintain a single, searchable web site with information on state tax receipts and expenditures which is accessible by the public at no cost to access as provided in section 84-602.02. The web site shall be hosted on a server owned and operated by the State of Nebraska or approved by the Chief Information Officer. The naming convention for the web site shall identify the web site as a state government web site. The web site shall not include the treasurer's name, the treasurer's image, the treasurer's seal, or a welcome message.

Source: R.S.1866, c. 4, § 18, p. 24; R.S.1913, § 5577; C.S.1922, § 4881; C.S.1929, § 84-602; R.S.1943, § 84-602; Laws 1967, c. 617, § 1, p. 2069; Laws 1970, Spec. Sess., c. 3, § 1, p. 67; Laws 2009, LB16, § 2.
Effective date August 30, 2009.

84-602.01 Taxpayer Transparency Act.

The establishment of the web site provided for in section 84-602 and described in section 84-602.02 shall be known and may be cited as the Taxpayer Transparency Act.

Source: Laws 2009, LB16, § 1.
Effective date August 30, 2009.

84-602.02 Web site; contents.

(1)(a) Not later than January 1, 2010, the web site established, developed, and maintained by the State Treasurer pursuant to subdivision (9) of section 84-602 shall provide such information as will document the sources of all tax receipts and the expenditure of state funds by all agencies, boards, commissions, and departments of the state.

(b) The State Treasurer shall, in appropriate detail, cause to be published on the web site:

(i) The identity, principal location, and amount of funds received or expended by the State of Nebraska and all of its agencies, boards, commissions, and departments;

(ii) The funding or expending agency, board, commission, or department;

(iii) The budget program source;

(iv) The amount, date, purpose, and recipient of all disbursed funds; and

(v) Such other relevant information as will further the intent of enhancing the transparency of state government financial operations to its citizens and taxpayers. The web site shall include data for fiscal year 2008-09 and each fiscal year thereafter.

(2) Beginning July 1, 2010, the data shall be available on the web site no later than thirty days after the end of the preceding fiscal year. All agencies, boards, commissions, and departments of the state shall provide to the State Treasurer, at such times and in such form as designated by the State Treasurer, such information as is necessary to accomplish the purposes of the Taxpayer Transparency Act. Nothing in this subsection requires the disclosure of information which is considered confidential under state or federal law or is not a public record under section 84-712.05.

(3)(a) For purposes of this section, expenditure of state funds means all expenditures of appropriated or nonappropriated funds by an agency, board, commission, or department of the state from the state treasury in forms including, but not limited to:

(i) Grants;

(ii) Contracts;

(iii) Subcontracts;

(iv) State aid to political subdivisions; and

(v) Tax refunds or credits that may be disclosed pursuant to the Nebraska Advantage Act, the Nebraska Advantage Microenterprise Tax Credit Act, the Nebraska Advantage Research and Development Act, or the Nebraska Advantage Rural Development Act.

(b) Expenditure of state funds does not include the transfer of funds between two agencies, boards, commissions, or departments of the state or payments of state or federal assistance to an individual.

Source: Laws 2009, LB16, § 3.
Effective date August 30, 2009.

Cross References

Nebraska Advantage Act, see section 77-5701.
Nebraska Advantage Microenterprise Tax Credit Act, see section 77-5901.
Nebraska Advantage Research and Development Act, see section 77-5801.
Nebraska Advantage Rural Development Act, see section 77-27,187.

84-612 Cash Reserve Fund; created; transfers; receipt of federal funds.

(1) There is hereby created within the state treasury a fund known as the Cash Reserve Fund which shall be under the direction of the State Treasurer. The fund shall only be used pursuant to this section.

(2) The State Treasurer shall transfer funds from the Cash Reserve Fund to the General Fund upon certification by the Director of Administrative Services that the current cash balance in the General Fund is inadequate to meet current obligations. Such certification shall include the dollar amount to be transferred. Any transfers made pursuant to this subsection shall be reversed upon notification by the Director of Administrative Services that sufficient funds are available.

(3) The State Treasurer, at the direction of the budget administrator of the budget division of the Department of Administrative Services, shall transfer such amounts not to exceed seven million seven hundred fifty-three thousand two hundred sixty-three dollars in total from the Cash Reserve Fund to the Nebraska Capital Construction Fund between July 1, 2003, and June 30, 2007.

(4) The State Treasurer, at the direction of the budget administrator, shall transfer an amount equal to the total amount transferred pursuant to subsection (3) of this section from the General Fund to the Cash Reserve Fund on or before June 30, 2008.

(5) In addition to receiving transfers from other funds, the Cash Reserve Fund shall receive federal funds received by the State of Nebraska for undesignated general government purposes, federal revenue sharing, or general fiscal relief of the state.

(6) On June 15, 2009, the State Treasurer shall transfer four million nine hundred ninety thousand five hundred five dollars from the Cash Reserve Fund to the General Fund.

(7) On or before June 16, 2009, the State Treasurer, at the direction of the budget administrator, shall transfer fifty million dollars from the Cash Reserve Fund to the General Fund.

(8) The State Treasurer, at the direction of the budget administrator, shall transfer such amounts, as certified by the Director of Administrative Services, for employee health insurance claims and expenses, not to exceed twelve million dollars in total from the Cash Reserve Fund to the State Employees Insurance Fund between May 1, 2007, and June 30, 2011.

(9) On July 9, 2007, the State Treasurer shall transfer five million dollars from the Cash Reserve Fund to the Job Training Cash Fund. The State Treasurer shall transfer from the Job Training Cash Fund to the Cash Reserve Fund such amounts as directed in section 81-1201.21.

(10) On July 7, 2008, the State Treasurer shall transfer five million dollars from the Cash Reserve Fund to the Job Training Cash Fund. The State Treasurer shall transfer from the Job Training Cash Fund to the Cash Reserve Fund such amounts as directed in section 81-1201.21.

(11) On or before June 30, 2009, the State Treasurer shall transfer nine million five hundred ninety thousand dollars from the Cash Reserve Fund to the Nebraska Capital Construction Fund.

(12) The State Treasurer, at the direction of the budget administrator, shall transfer an amount equal to the total amount transferred pursuant to subsec-

tion (8) of this section from the appropriate health insurance accounts of the State Employees Insurance Fund in such amounts as certified by the Director of Administrative Services to the Cash Reserve Fund on or before June 30, 2011.

(13) On July 7, 2009, the State Treasurer shall transfer five million dollars from the Cash Reserve Fund to the Roads Operations Cash Fund. The Department of Roads shall use such funds to provide the required state match for federal funding made available to the state through congressional earmarks.

(14) On July 7, 2010, the State Treasurer shall transfer five million dollars from the Cash Reserve Fund to the Roads Operations Cash Fund. The Department of Roads shall use such funds to provide the required state match for federal funding made available to the state through congressional earmarks.

(15) On July 7, 2011, the State Treasurer shall transfer five million dollars from the Cash Reserve Fund to the Roads Operations Cash Fund. The Department of Roads shall use such funds to provide the required state match for federal funding made available to the state through congressional earmarks.

(16) Within five days after the budget division of the Department of Administrative Services notifies the State Treasurer that matching fund requirements under section 82-331 have been met, the State Treasurer shall transfer one million dollars from the Cash Reserve Fund to the Nebraska Cultural Preservation Endowment Fund.

(17) On or before June 15, 2010, the State Treasurer, at the direction of the budget administrator, shall transfer ninety-five million dollars from the Cash Reserve Fund to the General Fund.

(18) On or before June 15, 2011, the State Treasurer, at the direction of the budget administrator, shall transfer one hundred fifty-one million dollars from the Cash Reserve Fund to the General Fund.

(19) On June 15, 2009, the State Treasurer shall transfer seven million five hundred thousand dollars from the Cash Reserve Fund to the Governor's Emergency Cash Fund.

(20) On July 7, 2009, the State Treasurer shall transfer one million dollars from the Cash Reserve Fund to the State Visitors Promotion Cash Fund. The Department of Economic Development shall use such funds to provide funding for the promotion and support of the hosting of a Special Olympics national event by a city of the primary class.

Source: Laws 1983, LB 59, § 5; Laws 1985, LB 713, § 2; Laws 1985, LB 501, § 2; Laws 1986, LB 739, § 1; Laws 1986, LB 870, § 1; Laws 1987, LB 131, § 1; Laws 1988, LB 1091, § 4; Laws 1989, LB 310, § 1; Laws 1991, LB 857, § 1; Laws 1991, LB 783, § 33; Laws 1992, LB 1268, § 1; Laws 1993, LB 38, § 4; Laws 1994, LB 1045, § 1; Laws 1996, LB 1290, § 6; Laws 1997, LB 401, § 5; Laws 1998, LB 63, § 1; Laws 1998, LB 988, § 1; Laws 1998, LB 1104, § 30; Laws 1998, LB 1134, § 5; Laws 1998, LB 1219, § 23; Laws 1999, LB 881, § 9; Laws 2000, LB 1214, § 2; Laws 2001, LB 541, § 6; Laws 2002, LB 1310, § 20; Laws 2003, LB 790, § 74; Laws 2003, LB 798, § 1; Laws 2004, LB 1090, § 2; Laws 2005, LB 427, § 2; Laws 2006, LB 1131, § 1; Laws 2006, LB 1256, § 9; Laws 2007, LB323, § 3; Laws 2008, LB846, § 21; Laws 2008, LB1094,

§ 8; Laws 2008, LB1116, § 9; Laws 2008, LB1165, § 2; Laws 2009, LB456, § 3.
Effective date May 20, 2009.

84-613 Cash Reserve Fund; investment; interest.

Any money in the Cash Reserve 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. Any interest earned by the fund shall accrue to the General Fund.

Source: Laws 1983, LB 59, § 6; Laws 1986, LB 870, § 2; Laws 1987, LB 131, § 2; Laws 1988, LB 391, § 1; Laws 1995, LB 7, § 147; Laws 2004, LB 1090, § 3; Laws 2006, LB 1131, § 2; Laws 2006, LB 1256, § 10; Laws 2007, LB323, § 4; Laws 2009, LB456, § 4.
Effective date May 20, 2009.

Cross References

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

84-621 State Treasurer; duty to transfer funds.

The State Treasurer shall transfer any money in the Commission on the Status of Women Cash Fund, the Nebraska Lewis and Clark Bicentennial Fund, the Nebraska Transit and Rail Advisory Council Cash Fund, and the Nebraska Transit and Rail Advisory Council Revolving Fund on August 30, 2009, to the General Fund.

Source: Laws 2009, LB154, § 25.
Effective date August 30, 2009.

ARTICLE 7

GENERAL PROVISIONS AS TO STATE OFFICERS

Section
84-712.05. Records which may be withheld from the public; enumerated.

84-712.05 Records which may be withheld from the public; enumerated.

The following records, unless publicly disclosed in an open court, open administrative proceeding, or open meeting or disclosed by a public entity pursuant to its duties, may be withheld from the public by the lawful custodian of the records:

(1) Personal information in records regarding a student, prospective student, or former student of any educational institution or exempt school that has effectuated an election not to meet state approval or accreditation requirements pursuant to section 79-1601 when such records are maintained by and in the possession of a public entity, other than routine directory information specified and made public consistent with 20 U.S.C. 1232g, as such section existed on January 1, 2003;

(2) Medical records, other than records of births and deaths and except as provided in subdivision (5) of this section, in any form concerning any person; records of elections filed under section 44-2821; and patient safety work product under the Patient Safety Improvement Act;

(3) Trade secrets, academic and scientific research work which is in progress and unpublished, and other proprietary or commercial information which if released would give advantage to business competitors and serve no public purpose;

(4) Records which represent the work product of an attorney and the public body involved which are related to preparation for litigation, labor negotiations, or claims made by or against the public body or which are confidential communications as defined in section 27-503;

(5) Records developed or received by law enforcement agencies and other public bodies charged with duties of investigation or examination of persons, institutions, or businesses, when the records constitute a part of the examination, investigation, intelligence information, citizen complaints or inquiries, informant identification, or strategic or tactical information used in law enforcement training, except that this subdivision shall not apply to records so developed or received relating to the presence of and amount or concentration of alcohol or drugs in any body fluid of any person;

(6) Appraisals or appraisal information and negotiation records concerning the purchase or sale, by a public body, of any interest in real or personal property, prior to completion of the purchase or sale;

(7) Personal information in records regarding personnel of public bodies other than salaries and routine directory information;

(8) Information solely pertaining to protection of the security of public property and persons on or within public property, such as specific, unique vulnerability assessments or specific, unique response plans, either of which is intended to prevent or mitigate criminal acts the public disclosure of which would create a substantial likelihood of endangering public safety or property; computer or communications network schema, passwords, and user identification names; guard schedules; or lock combinations;

(9) The security standards, procedures, policies, plans, specifications, diagrams, access lists, and other security-related records of the Lottery Division of the Department of Revenue and those persons or entities with which the division has entered into contractual relationships. Nothing in this subdivision shall allow the division to withhold from the public any information relating to amounts paid persons or entities with which the division has entered into contractual relationships, amounts of prizes paid, the name of the prize winner, and the city, village, or county where the prize winner resides;

(10) With respect to public utilities and except as provided in sections 43-512.06 and 70-101, personally identified private citizen account payment information, credit information on others supplied in confidence, and customer lists;

(11) Records or portions of records kept by a publicly funded library which, when examined with or without other records, reveal the identity of any library patron using the library's materials or services;

(12) Correspondence, memoranda, and records of telephone calls related to the performance of duties by a member of the Legislature in whatever form. The lawful custodian of the correspondence, memoranda, and records of telephone calls, upon approval of the Executive Board of the Legislative Council, shall release the correspondence, memoranda, and records of telephone calls which are not designated as sensitive or confidential in nature to

any person performing an audit of the Legislature. A member's correspondence, memoranda, and records of confidential telephone calls related to the performance of his or her legislative duties shall only be released to any other person with the explicit approval of the member;

(13) Records or portions of records kept by public bodies which would reveal the location, character, or ownership of any known archaeological, historical, or paleontological site in Nebraska when necessary to protect the site from a reasonably held fear of theft, vandalism, or trespass. This section shall not apply to the release of information for the purpose of scholarly research, examination by other public bodies for the protection of the resource or by recognized tribes, the Unmarked Human Burial Sites and Skeletal Remains Protection Act, or the federal Native American Graves Protection and Repatriation Act;

(14) Records or portions of records kept by public bodies which maintain collections of archaeological, historical, or paleontological significance which reveal the names and addresses of donors of such articles of archaeological, historical, or paleontological significance unless the donor approves disclosure, except as the records or portions thereof may be needed to carry out the purposes of the Unmarked Human Burial Sites and Skeletal Remains Protection Act or the federal Native American Graves Protection and Repatriation Act;

(15) Job application materials submitted by applicants, other than finalists, who have applied for employment by any public body as defined in section 84-1409. For purposes of this subdivision, (a) job application materials means employment applications, resumes, reference letters, and school transcripts and (b) finalist means any applicant (i) who reaches the final pool of applicants, numbering four or more, from which the successful applicant is to be selected, (ii) who is an original applicant when the final pool of applicants numbers less than four, or (iii) who is an original applicant and there are four or fewer original applicants;

(16) Records obtained by the Public Employees Retirement Board pursuant to section 84-1512;

(17) Social security numbers; credit card, charge card, or debit card numbers and expiration dates; and financial account numbers supplied to state and local governments by citizens; and

(18) Information exchanged between a jurisdictional utility and city pursuant to section 66-1867.

Source: Laws 1979, LB 86, § 5; Laws 1983, LB 108, § 1; Laws 1983, LB 565, § 1; Laws 1993, LB 579, § 6; Laws 1993, LB 590, § 6; Laws 1993, LB 719, § 2; Laws 1994, LB 1061, § 7; Laws 1994, LB 1224, § 88; Laws 1995, LB 343, § 7; Laws 1995, LB 509, § 6; Laws 1999, LB 137, § 1; Laws 2002, LB 276, § 7; Laws 2004, LB 236, § 1; Laws 2004, LB 868, § 3; Laws 2005, LB 361, § 37; Laws 2007, LB389, § 1; Laws 2009, LB188, § 8; Laws 2009, LB658, § 7.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB188, section 8, with LB658, section 7, to reflect all amendments.

Note: Changes made by LB188 became operative July 1, 2009. Changes made by LB658 became effective August 30, 2009.

Cross References

Patient Safety Improvement Act, see section 71-8701.
Unmarked Human Burial Sites and Skeletal Remains Protection Act, see section 12-1201.

ARTICLE 9
RULES OF ADMINISTRATIVE AGENCIES

(a) ADMINISTRATIVE PROCEDURE ACT

(a) ADMINISTRATIVE PROCEDURE ACT

84-907.03 Secretary of State Administration Cash Fund; created; use; investment.

There is hereby created the Secretary of State Administration Cash Fund. The fund shall consist of revenue received to defray costs as authorized in sections 84-901 to 84-908. The revenue shall be collected by the Secretary of State and remitted to the State Treasurer for credit to the fund. The fund shall be used to (1) offset expenses incurred as a result of such sections, (2) administer the Address Confidentiality Act, and (3) administer the Nebraska Uniform Athlete Agents Act.

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

Source: Laws 1994, LB 1194, § 8; Laws 1995, LB 7, § 148; Laws 2003, LB 228, § 15; Laws 2009, LB292, § 20.
Operative date January 1, 2010.

Cross References

Address Confidentiality Act, see section 42-1201.
Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

84-917 Contested case; appeal; right to cross-appeal; procedure.

(1) Any person aggrieved by a final decision in a contested case, whether such decision is affirmative or negative in form, shall be entitled to judicial review under the Administrative Procedure Act. Nothing in this section shall be deemed to prevent resort to other means of review, redress, or relief provided by law.

(2)(a)(i) Proceedings for review shall be instituted by filing a petition in the district court of the county where the action is taken within thirty days after the service of the final decision by the agency. All parties of record shall be made parties to the proceedings for review. If an agency's only role in a contested case is to act as a neutral factfinding body, the agency shall not be a party of record. In all other cases, the agency shall be a party of record. Summons shall be served within thirty days of the filing of the petition in the manner provided for service of a summons in section 25-510.02. If the agency whose decision is appealed from is not a party of record, the petitioner shall serve a copy of the petition and a request for preparation of the official record upon the agency within thirty days of the filing of the petition. The court, in its discretion, may permit other interested persons to intervene.

(ii) The filing of a petition for review shall vest in a responding party of record the right to a cross-appeal against any other party of record. A respon-

dent shall serve its cross-appeal within thirty days after being served with the summons and petition for review.

(b) A petition for review shall set forth: (i) The name and mailing address of the petitioner; (ii) the name and mailing address of the agency whose action is at issue; (iii) identification of the final decision at issue together with a duplicate copy of the final decision; (iv) identification of the parties in the contested case that led to the final decision; (v) facts to demonstrate proper venue; (vi) the petitioner's reasons for believing that relief should be granted; and (vii) a request for relief, specifying the type and extent of the relief requested.

(3) The filing of the petition or the service of summons upon such agency shall not stay enforcement of a decision. The agency may order a stay. The court may order a stay after notice of the application therefor to such agency and to all parties of record. If the agency has found that its action on an application for stay or other temporary remedies is justified to protect against a substantial threat to the public health, safety, or welfare, the court may not grant relief unless the court finds that: (a) The applicant is likely to prevail when the court finally disposes of the matter; (b) without relief, the applicant will suffer irreparable injuries; (c) the grant of relief to the applicant will not substantially harm other parties to the proceedings; and (d) the threat to the public health, safety, or welfare relied on by the agency is not sufficiently serious to justify the agency's action in the circumstances. The court may require the party requesting such stay to give bond in such amount and conditioned as the court may direct.

(4) Within thirty days after service of the petition or within such further time as the court for good cause shown may allow, the agency shall prepare and transmit to the court a certified copy of the official record of the proceedings had before the agency. Such official record shall include: (a) Notice of all proceedings; (b) any pleadings, motions, requests, preliminary or intermediate rulings and orders, and similar correspondence to or from the agency pertaining to the contested case; (c) the transcribed record of the hearing before the agency, including all exhibits and evidence introduced during such hearing, a statement of matters officially noticed by the agency during the proceeding, and all proffers of proof and objections and rulings thereon; and (d) the final order appealed from. The agency shall charge the petitioner with the reasonable direct cost or require the petitioner to pay the cost for preparing the official record for transmittal to the court in all cases except when the petitioner is not required to pay a filing fee. The agency may require payment or bond prior to the transmittal of the record.

(5)(a) When the petition instituting proceedings for review was filed in the district court before July 1, 1989, the review shall be conducted by the court without a jury on the record of the agency, and review may not be obtained of any issue that was not raised before the agency unless such issue involves one of the grounds for reversal or modification enumerated in subdivision (6)(a) of this section. When the petition instituting proceedings for review is filed in the district court on or after July 1, 1989, the review shall be conducted by the court without a jury de novo on the record of the agency.

(b)(i) If the court determines that the interest of justice would be served by the resolution of any other issue not raised before the agency, the court may remand the case to the agency for further proceedings.

(ii) The agency shall affirm, modify, or reverse its findings and decision in the case by reason of the additional proceedings and shall file the decision following remand with the reviewing court. The agency shall serve a copy of the decision following remand upon all parties to the district court proceedings. The agency decision following remand shall become final unless a petition for further review is filed with the reviewing court within thirty days after the decision following remand being filed with the district court. The party filing the petition for further review shall serve a copy of the petition for further review upon all parties to the district court proceeding in accordance with the rules of pleading in civil actions promulgated by the Supreme Court pursuant to section 25-801.01 within thirty days after the petition for further review is filed. Within thirty days after service of the petition for further review or within such further time as the court for good cause shown may allow, the agency shall prepare and transmit to the court a certified copy of the official record of the additional proceedings had before the agency following remand.

(6)(a) When the petition instituting proceedings for review was filed in the district court before July 1, 1989, the court may affirm the decision of the agency or remand the case for further proceedings, or it may reverse or modify the decision if the substantial rights of the petitioner may have been prejudiced because the agency decision is:

(i) In violation of constitutional provisions;

(ii) In excess of the statutory authority or jurisdiction of the agency;

(iii) Made upon unlawful procedure;

(iv) Affected by other error of law;

(v) Unsupported by competent, material, and substantial evidence in view of the entire record as made on review; or

(vi) Arbitrary or capricious.

(b) When the petition instituting proceedings for review is filed in the district court on or after July 1, 1989, the court may affirm, reverse, or modify the decision of the agency or remand the case for further proceedings.

(7) The review provided by this section shall not be available in any case where other provisions of law prescribe the method of appeal.

Source: Laws 1963, c. 531, § 1, p. 1664; Laws 1969, c. 838, § 2, p. 3162; Laws 1983, LB 447, § 102; Laws 1987, LB 253, § 19; Laws 1988, LB 352, § 186; Laws 1989, LB 213, § 1; Laws 1997, LB 165, § 5; Laws 2006, LB 1115, § 42; Laws 2008, LB1014, § 69; Laws 2009, LB35, § 32.
Operative date August 30, 2009.

ARTICLE 13

STATE EMPLOYEES RETIREMENT ACT

Section

Section
84-1313.02. Retirement system; transfer deferred compensation as plan-to-plan transfer; conditions.
84-1317. Employees; retirement date; application for benefits; deferment of benefits; board; duties.
84-1319. Future service retirement benefits; when payable; how computed; selection of annuity; board; provide tax information; deferment of benefits.
84-1321. Employees; termination of employment; benefits; when; how computed; vesting; deferment of benefits.
84-1323. Employees; death before retirement; death benefit; amount.
84-1330. Elected officials and employees having regular term; act, when operative.
84-1331. Act, how cited.

84-1302 State Employees Retirement System; established; operative date; official name; acceptance of contributions.

(1) An employees retirement system is hereby established for the purpose of providing a retirement annuity or other benefits for employees as provided by the State Employees Retirement Act and sections 84-1332 and 84-1333. The retirement system so created shall begin operation January 1, 1964. It shall be known as the State Employees Retirement System of the State of Nebraska and by such name shall transact all business and hold all cash and other property as provided in such sections.

(2) The retirement system shall not accept as contributions any money from members or the state except the following:

(a) Mandatory contributions established by sections 84-1308 and 84-1309;

(b) Money that is a repayment of refunded contributions made pursuant to section 84-1322;

(c) Contributions for military service credit made pursuant to section 84-1325;

(d) Actuarially required contributions pursuant to subdivision (4)(b) of section 84-1319;

(e) Trustee-to-trustee transfers pursuant to section 84-1313.01; or

(f) Corrections ordered by the board pursuant to section 84-1305.02.

Source: Laws 1963, c. 532, § 2, p. 1668; Laws 1991, LB 549, § 61; Laws 2003, LB 451, § 24; Laws 2009, LB188, § 9.
Operative date July 1, 2009.

84-1307 Retirement system; membership; composition; exercise of option to join; effect; new employee; participation in another governmental plan; how treated; separate employment; effect.

(1) The membership of the retirement system shall be composed of all persons who are or were employed by the State of Nebraska and who maintain an account balance with the retirement system.

(2) The following employees of the State of Nebraska are authorized to participate in the retirement system: (a) All permanent full-time employees shall begin participation in the retirement system upon employment; and (b) all permanent part-time employees who have attained the age of twenty years may exercise the option to begin participation in the retirement system. An employee who exercises the option to begin participation in the retirement system pursuant to this section shall remain in the retirement system until his or her

termination of employment or retirement, regardless of any change of status as a permanent or temporary employee.

(3) For purposes of this section, (a) permanent full-time employees includes employees of the Legislature or Legislative Council who work one-half or more of the regularly scheduled hours during each pay period of the legislative session and (b) permanent part-time employees includes employees of the Legislature or Legislative Council who work less than one-half of the regularly scheduled hours during each pay period of the legislative session.

(4) Within the first one hundred eighty days of employment, a full-time employee may apply to the board for vesting credit for years of participation in another Nebraska governmental plan, as defined by section 414(d) of the Internal Revenue Code. During the years of participation in the other Nebraska governmental plan, the employee must have been a full-time employee, as defined in the Nebraska governmental plan in which the credit was earned. The board may adopt and promulgate rules and regulations governing the assessment and granting of vesting credit.

(5) Any employee who qualifies for membership in the retirement system pursuant to this section may not be disqualified for membership in the retirement system solely because such employee also maintains separate employment which qualifies the employee for membership in another public retirement system, nor may membership in this retirement system disqualify such an employee from membership in another public employment system solely by reason of separate employment which qualifies such employee for membership in this retirement system.

(6) State agencies shall ensure that employees authorized to participate in the retirement system pursuant to this section shall enroll and make required contributions to the retirement system immediately upon becoming an employee. Information necessary to determine membership in the retirement system shall be provided by the employer.

Source: Laws 1963, c. 532, § 7, p. 1670; Laws 1969, c. 842, § 1, p. 3177; Laws 1973, LB 492, § 1; Laws 1983, LB 219, § 1; Laws 1986, LB 325, § 16; Laws 1986, LB 311, § 30; Laws 1990, LB 834, § 1; Laws 1995, LB 501, § 11; Laws 1996, LB 1076, § 38; Laws 1997, LB 624, § 36; Laws 1998, LB 1191, § 71; Laws 1999, LB 703, § 21; Laws 2000, LB 1192, § 24; Laws 2002, LB 407, § 55; Laws 2002, LB 687, § 20; Laws 2004, LB 1097, § 33; Laws 2006, LB 366, § 8; Laws 2008, LB1147, § 13; Laws 2009, LB188, § 10. Operative date July 1, 2009.

84-1309.02 Cash balance benefit; election; effect; administrative services agreements; authorized.

(1) It is the intent of the Legislature that, in order to improve the competitiveness of the retirement plan for state employees, a cash balance benefit shall be added to the State Employees Retirement Act on and after January 1, 2003. Each member who is employed and participating in the retirement system prior to January 1, 2003, may either elect to continue participation in the defined contribution benefit as provided in the act prior to January 1, 2003, or elect to participate in the cash balance benefit as set forth in this section. The member shall make the election prior to January 1, 2003, or on or after November 1, 2007, but before January 1, 2008. If no election is made prior to January 1,

2003, or on or after November 1, 2007, but before January 1, 2008, the member shall be treated as though he or she elected to continue participating in the defined contribution benefit as provided in the act prior to January 1, 2003. Members who elect to participate in the cash balance benefit on or after November 1, 2007, but before January 1, 2008, shall commence participation in the cash balance benefit on January 1, 2008. Any member who made the election prior to January 1, 2003, does not have to reelect the cash balance benefit on or after November 1, 2007, but before January 1, 2008. A member employed and participating in the retirement system prior to January 1, 2003, who terminates employment on or after January 1, 2003, and returns to employment prior to having a five-year break in service shall participate in the cash balance benefit as set forth in this section.

(2) For a member employed and participating in the retirement system beginning on and after January 1, 2003, or a member employed and participating in the retirement system on January 1, 2003, who, prior to January 1, 2003, or on or after November 1, 2007, but before January 1, 2008, elects to convert his or her employee and employer accounts to the cash balance benefit:

(a) The employee cash balance account shall, at any time, be equal to the following:

(i) The initial employee account balance, if any, transferred from the defined contribution plan account described in section 84-1310; plus

(ii) Employee contribution credits deposited in accordance with section 84-1308; plus

(iii) Interest credits credited in accordance with subdivision (18) of section 84-1301; plus

(iv) Dividend amounts credited in accordance with subdivision (4)(c) of section 84-1319; and

(b) The employer cash balance account shall, at any time, be equal to the following:

(i) The initial employer account balance, if any, transferred from the defined contribution plan account described in section 84-1311; plus

(ii) Employer contribution credits deposited in accordance with section 84-1309; plus

(iii) Interest credits credited in accordance with subdivision (18) of section 84-1301; plus

(iv) Dividend amounts credited in accordance with subdivision (4)(c) of section 84-1319.

(3) In order to carry out the provisions of this section, the board may enter into administrative services agreements for accounting or record-keeping services. No agreement shall be entered into unless the board determines that it will result in administrative economy and will be in the best interests of the state and its participating employees. The board may develop a schedule for the allocation of the administrative services agreements costs for accounting or record-keeping services and may assess the costs so that each member pays a reasonable fee as determined by the board. The money forfeited pursuant to

section 84-1321.01 shall not be used to pay the administrative costs incurred pursuant to this subsection.

Source: Laws 2002, LB 687, § 21; Laws 2003, LB 451, § 25; Laws 2005, LB 364, § 17; Laws 2006, LB 366, § 10; Laws 2006, LB 1019, § 16; Laws 2007, LB328, § 7; Laws 2009, LB188, § 11.
Operative date July 1, 2009.

84-1313.02 Retirement system; transfer deferred compensation as plan-to-plan transfer; conditions.

The retirement system may transfer deferred compensation by a member as a plan-to-plan transfer to the deferred compensation plan authorized under section 84-1504 if the following conditions are met:

(1) The member has an amount of compensation deferred immediately after the transfer at least equal to the amount of compensation deferred immediately before the transfer;

(2) The account of the member is valued as of the date of final account value;

(3) The member is not eligible for additional annual deferrals in the receiving plan unless the member is performing services for the state; and

(4) The deferred compensation plan provides for such transfers.

Source: Laws 2009, LB188, § 12.
Operative date July 1, 2009.

84-1317 Employees; retirement date; application for benefits; deferment of benefits; board; duties.

(1) Upon filing an application for benefits with the board, an employee may elect to retire after the attainment of age fifty-five or an employee may retire as a result of disability at any age.

(2) The member shall specify in the application for benefits the manner in which he or she wishes to receive the retirement benefit under the options provided by the State Employees Retirement Act. Payment under the application for benefits shall be made (a) for annuities, no sooner than the annuity start date, and (b) for other distributions, no sooner than the date of final account value.

(3) Payment of any benefit provided under the retirement system may not be deferred later than April 1 of the year following the year in which the employee has both attained at least age seventy and one-half years and terminated his or her employment with the state, except that for members participating in the defined contribution benefit, no distribution is required to be made for the plan year commencing January 1, 2009, through December 31, 2009.

(4) The board shall make reasonable efforts to locate the member or the member's beneficiary and distribute benefits by the required beginning date as specified by section 401(a)(9) of the Internal Revenue Code and the regulations issued thereunder. If the board is unable to make such a distribution, the benefit shall be distributed pursuant to the Uniform Disposition of Unclaimed Property Act and no amounts may be applied to increase the benefits any member would otherwise receive under the State Employees Retirement Act.

Source: Laws 1963, c. 532, § 17, p. 1673; Laws 1967, c. 619, § 2, p. 2075; Laws 1971, LB 360, § 1; Laws 1973, LB 498, § 4; Laws 1973, LB

55, § 1; Laws 1974, LB 740, § 2; Laws 1979, LB 391, § 7; Laws 1979, LB 161, § 3; Laws 1981, LB 288, § 1; Laws 1982, LB 287, § 5; Laws 1983, LB 604, § 25; Laws 1983, LB 219, § 2; Laws 1986, LB 325, § 17; Laws 1986, LB 311, § 32; Laws 1987, LB 296, § 4; Laws 1996, LB 1076, § 39; Laws 1997, LB 624, § 38; Laws 2003, LB 451, § 27; Laws 2009, LB188, § 13.
Operative date July 1, 2009.

Cross References

Uniform Disposition of Unclaimed Property Act, see section 69-1329.

84-1319 Future service retirement benefits; when payable; how computed; selection of annuity; board; provide tax information; deferment of benefits.

(1) The future service retirement benefit shall be an annuity, payable monthly with the first payment made no earlier than the annuity start date, which shall be the actuarial equivalent of the retirement value as specified in section 84-1318 based on factors determined by the board, except that gender shall not be a factor when determining the amount of such payments except as provided in this section.

Except as provided in section 42-1107, at any time before the annuity start date, the retiring employee may choose to receive his or her annuity either in the form of an annuity as provided under subsection (4) of this section or any optional form that is determined acceptable by the board.

Except as provided in section 42-1107, in lieu of the future service retirement annuity, a retiring employee may receive a benefit not to exceed the amount in his or her employer and employee accounts as of the date of final account value payable in a lump sum and, if the employee chooses not to receive the entire amount in such accounts, an annuity equal to the actuarial equivalent of the remainder of the retirement value, and the employee may choose any form of such annuity as provided for by the board.

In any case, the amount of the monthly payment shall be such that the annuity chosen shall be the actuarial equivalent of the retirement value as specified in section 84-1318 except as provided in this section.

The board shall provide to any state employee who is eligible for retirement, prior to his or her selecting any of the retirement options provided by this section, information on the federal and state income tax consequences of the various annuity or retirement benefit options.

(2) Except as provided in subsection (4) of this section, the monthly annuity income payable to a member retiring on or after January 1, 1984, shall be as follows:

He or she shall receive at retirement the amount which may be purchased by the accumulated contributions based on annuity rates in effect on the annuity start date which do not utilize gender as a factor, except that such amounts shall not be less than the retirement income which can be provided by the sum of the amounts derived pursuant to subdivisions (a) and (b) of this subsection as follows:

(a) The income provided by the accumulated contributions made prior to January 1, 1984, based on male annuity purchase rates in effect on the date of purchase; and

(b) The income provided by the accumulated contributions made on and after January 1, 1984, based on the annuity purchase rates in effect on the date of purchase which do not use gender as a factor.

(3) Any amounts, in excess of contributions, which may be required in order to purchase the retirement income specified in subsection (2) of this section shall be withdrawn from the State Equal Retirement Benefit Fund.

(4)(a) The normal form of payment shall be a single life annuity with five-year certain, which is an annuity payable monthly during the remainder of the member's life with the provision that, in the event of his or her death before sixty monthly payments have been made, the monthly payments will be continued to his or her estate or to the beneficiary he or she has designated until sixty monthly payments have been made in total. Such annuity shall be equal to the actuarial equivalent of the member cash balance account or the sum of the employee and employer accounts, whichever is applicable, as of the date of final account value. As a part of the annuity, the normal form of payment may include a two and one-half percent cost-of-living adjustment purchased by the member, if the member elects such a payment option.

Except as provided in section 42-1107, a member may elect a lump-sum distribution of his or her member cash balance account as of the date of final account value upon termination of service or retirement.

For a member employed and participating in the retirement system prior to January 1, 2003, who has elected to participate in the cash balance benefit pursuant to section 84-1309.02, or for a member employed and participating in the retirement system beginning on and after January 1, 2003, the balance of his or her member cash balance account as of the date of final account value shall be converted to an annuity using an interest rate used in the actuarial valuation as recommended by the actuary and approved by the board.

For an employee who is a member prior to January 1, 2003, who has elected not to participate in the cash balance benefit prior to January 1, 2003, or on or after November 1, 2007, but before January 1, 2008, pursuant to section 84-1309.02, and who, at the time of retirement, chooses the annuity option rather than the lump-sum option, his or her employee and employer accounts as of the date of final account value shall be converted to an annuity using an interest rate that is equal to the lesser of (i) the Pension Benefits Guarantee Corporation initial interest rate for valuing annuities for terminating plans as of the beginning of the year during which payment begins plus three-fourths of one percent or (ii) the interest rate used in the actuarial valuation as recommended by the actuary and approved by the board.

(b) For the calendar year beginning January 1, 2003, and each calendar year thereafter, the actuary for the board shall perform an actuarial valuation of the system using the entry age actuarial cost method. Under this method, the actuarially required funding rate is equal to the normal cost rate plus the contribution rate necessary to amortize the unfunded actuarial accrued liability on a level-payment basis. The normal cost under this method shall be determined for each individual member on a level percentage of salary basis. The normal cost amount is then summed for all members. The initial unfunded actual accrued liability as of January 1, 2003, if any, shall be amortized over a twenty-five-year period. During each subsequent actuarial valuation, changes in the unfunded actuarial accrued liability due to changes in benefits, actuarial assumptions, the asset valuation method, or actuarial gains or losses shall be

measured and amortized over a twenty-five-year period beginning on the valuation date of such change. If the unfunded actuarial accrued liability under the entry age actuarial cost method is zero or less than zero on an actuarial valuation date, then all prior unfunded actuarial accrued liabilities shall be considered fully funded and the unfunded actuarial accrued liability shall be reinitialized and amortized over a twenty-five-year period as of the actuarial valuation date. If the actuarially required contribution rate exceeds the rate of all contributions required pursuant to the State Employees Retirement Act, there shall be a supplemental appropriation sufficient to pay for the difference between the actuarially required contribution rate and the rate of all contributions required pursuant to the act.

(c) If the unfunded accrued actuarial liability under the entry age actuarial cost method is less than zero on an actuarial valuation date, and on the basis of all data in the possession of the retirement board, including such mortality and other tables as are recommended by the actuary engaged by the retirement board and adopted by the retirement board, the retirement board may elect to pay a dividend to all members participating in the cash balance option in an amount that would not increase the actuarial contribution rate above ninety percent of the actual contribution rate. Dividends shall be credited to the employee cash balance account and the employer cash balance account based on the account balances on the actuarial valuation date. In the event a dividend is granted and paid after the actuarial valuation date, interest for the period from the actuarial valuation date until the dividend is actually paid shall be paid on the dividend amount. The interest rate shall be the interest credit rate earned on regular contributions.

(5) At the option of the retiring member, any lump sum or annuity provided under this section or section 84-1320 may be deferred to commence at any time, except that no benefit shall be deferred later than April 1 of the year following the year in which the employee has both attained at least seventy and one-half years of age and has terminated his or her employment with the state, except that for members participating in the defined contribution benefit, no distribution is required to be made for the plan year commencing January 1, 2009, through December 31, 2009. Such election by the retiring member may be made at any time prior to the commencement of the lump-sum or annuity payments.

Source: Laws 1963, c. 532, § 19, p. 1674; Laws 1973, LB 498, § 5; Laws 1983, LB 210, § 2; Laws 1984, LB 751, § 7; Laws 1986, LB 325, § 18; Laws 1986, LB 311, § 33; Laws 1987, LB 308, § 1; Laws 1987, LB 60, § 4; Laws 1991, LB 549, § 70; Laws 1992, LB 543, § 2; Laws 1994, LB 1306, § 8; Laws 1996, LB 1273, § 31; Laws 2002, LB 687, § 27; Laws 2003, LB 451, § 29; Laws 2006, LB 1019, § 17; Laws 2007, LB328, § 9; Laws 2009, LB188, § 14. Operative date July 1, 2009.

84-1321 Employees; termination of employment; benefits; when; how computed; vesting; deferment of benefits.

(1) Except as provided in section 42-1107, upon termination of employment before becoming eligible for retirement under section 84-1317, a member may, upon application to the board, receive:

(a) If not vested, a termination benefit equal to the amount in his or her employee account or member cash balance account as of the date of final account value payable in a lump sum or an annuity with the lump-sum or first annuity payment made at any time after termination but no later than April 1 of the year following the year in which the member attains the age of seventy and one-half years, except that for members participating in the defined contribution benefit, no distribution is required to be made for the plan year commencing January 1, 2009, through December 31, 2009; or

(b) If vested, a termination benefit equal to (i) the amount of his or her member cash balance account as of the date of final account value payable in a lump sum or an annuity with the lump-sum or first annuity payment made at any time after termination but no later than April 1 of the year following the year in which the member attains the age of seventy and one-half years or (ii)(A) the amount in his or her employee account as of the date of final account value payable in a lump sum or an annuity with the lump-sum or first annuity payment made at any time after termination but no later than April 1 of the year following the year in which the member attains the age of seventy and one-half years plus (B) the amount of his or her employer account as of the date of final account value payable in a lump sum or an annuity with the lump-sum or first annuity payment made at any time after termination but no later than April 1 of the year following the year in which the member attains the age of seventy and one-half years. For purposes of subdivision (1)(b) of this section, for members participating in the defined contribution benefit, no distribution is required to be made for the plan year commencing January 1, 2009, through December 31, 2009.

The member cash balance account or employer and employee accounts of a terminating member shall be retained by the board, and the termination benefit shall be deferred until a valid application for benefits has been received.

(2) At the option of the terminating member, any lump sum of the vested portion of the employer account or member cash balance account or any annuity provided under subsection (1) of this section shall commence as of the first of the month at any time after such member has terminated his or her employment with the state or may be deferred, except that no benefit shall be deferred later than April 1 of the year following the year in which the employee has both attained at least seventy and one-half years of age and has terminated his or her employment with the state, except that for members participating in the defined contribution benefit, no distribution is required to be made for the plan year commencing January 1, 2009, through December 31, 2009. Such election by the terminating member shall be made at any time prior to the commencement of the lump-sum or annuity payments.

(3) Members of the retirement system shall be vested after a total of three years of participation in the system as a member pursuant to section 84-1307, including vesting credit. If an employee retires pursuant to section 84-1317, such an employee shall be fully vested in the retirement system.

Source: Laws 1963, c. 532, § 21, p. 1675; Laws 1973, LB 498, § 6; Laws 1975, LB 56, § 3; Laws 1983, LB 604, § 26; Laws 1983, LB 219, § 3; Laws 1984, LB 751, § 9; Laws 1986, LB 325, § 20; Laws 1986, LB 311, § 35; Laws 1987, LB 308, § 3; Laws 1987, LB 60, § 5; Laws 1991, LB 549, § 71; Laws 1993, LB 417, § 7; Laws 1994, LB 1306, § 9; Laws 1996, LB 1076, § 40; Laws 1996, LB

1273, § 32; Laws 1997, LB 624, § 39; Laws 2002, LB 687, § 28; Laws 2003, LB 451, § 31; Laws 2006, LB 366, § 11; Laws 2009, LB188, § 15.
Operative date July 1, 2009.

84-1323 Employees; death before retirement; death benefit; amount.

In the event of the death before his or her retirement date of any employee who is a member of the system, the death benefit shall be equal to (1) for participants in the defined contribution benefit, the total of the employee account and the employer account and (2) for participants in the cash balance benefit, the benefit provided in section 84-1309.02. The death benefit shall be paid to the member's beneficiary, to an alternate payee pursuant to a qualified domestic relations order as provided in section 42-1107, or to the member's estate if there are no designated beneficiaries. If the beneficiary is not the member's surviving spouse, the death benefit shall be paid as a lump-sum payment or payments, except that the entire account must be distributed by the fifth anniversary of the member's death. If the sole primary beneficiary is the member's surviving spouse, the surviving spouse may elect to receive an annuity calculated as if the member retired and selected a one-hundred-percent joint and survivor annuity effective on the annuity purchase date. If the surviving spouse does not elect the annuity option within one hundred eighty days after the death of the member, the surviving spouse shall receive a lump-sum payment or payments, except that the entire account must be distributed by the fifth anniversary of the member's death.

Source: Laws 1963, c. 532, § 23, p. 1676; Laws 1973, LB 498, § 7; Laws 1984, LB 751, § 10; Laws 1994, LB 1306, § 10; Laws 1996, LB 1273, § 33; Laws 2002, LB 687, § 31; Laws 2003, LB 451, § 34; Laws 2004, LB 1097, § 36; Laws 2009, LB188, § 16.
Operative date July 1, 2009.

84-1330 Elected officials and employees having regular term; act, when operative.

The provisions of the State Employees Retirement Act pertaining to elected officials or other employees having a regular term of office shall be interpreted as to effectuate its general purpose and to take effect as soon as the same may become operative under the Constitution of the State of Nebraska.

Source: Laws 1963, c. 532, § 30, p. 1677; Laws 2009, LB188, § 17.
Operative date July 1, 2009.

84-1331 Act, how cited.

Sections 84-1301 to 84-1331 shall be known and may be cited as the State Employees Retirement Act.

Source: Laws 1963, c. 532, § 31, p. 1677; Laws 1984, LB 751, § 12; Laws 1991, LB 549, § 73; Laws 1994, LB 833, § 53; Laws 1995, LB 501, § 13; Laws 1996, LB 847, § 50; Laws 1996, LB 1076, § 43; Laws 1997, LB 623, § 45; Laws 1997, LB 624, § 42; Laws 1998, LB 1191, § 77; Laws 1999, LB 687, § 6; Laws 2002, LB 407, § 62; Laws 2002, LB 687, § 32; Laws 2009, LB188, § 18.
Operative date July 1, 2009.

ARTICLE 14
PUBLIC MEETINGS

Section

84-1411 Meetings of public body; notice; contents; when available; right to modify; duties concerning notice; videoconferencing or telephone conferencing authorized; emergency meeting without notice; appearance before public body.

(1) Each public body shall give reasonable advance publicized notice of the time and place of each meeting by a method designated by each public body and recorded in its minutes. Such notice shall be transmitted to all members of the public body and to the public. Such notice shall contain an agenda of subjects known at the time of the publicized notice or a statement that the agenda, which shall be kept continually current, shall be readily available for public inspection at the principal office of the public body during normal business hours. Agenda items shall be sufficiently descriptive to give the public reasonable notice of the matters to be considered at the meeting. Except for items of an emergency nature, the agenda shall not be altered later than (a) twenty-four hours before the scheduled commencement of the meeting or (b) forty-eight hours before the scheduled commencement of a meeting of a city council or village board scheduled outside the corporate limits of the municipality. The public body shall have the right to modify the agenda to include items of an emergency nature only at such public meeting.

(2) A meeting of a state agency, state board, state commission, state council, or state committee, of an advisory committee of any such state entity, of an organization created under the Interlocal Cooperation Act, the Joint Public Agency Act, or the Municipal Cooperative Financing Act, of the governing body of a public power district having a chartered territory of more than fifty counties in this state, of a board of an educational service unit, or of the governing body of a risk management pool or its advisory committees organized in accordance with the Intergovernmental Risk Management Act may be held by means of videoconferencing or, in the case of the Judicial Resources Commission in those cases specified in section 24-1204, by telephone conference, if:

(a) Reasonable advance publicized notice is given;

(b) Reasonable arrangements are made to accommodate the public's right to attend, hear, and speak at the meeting, including seating, recordation by audio or visual recording devices, and a reasonable opportunity for input such as public comment or questions to at least the same extent as would be provided if videoconferencing or telephone conferencing was not used;

(c) At least one copy of all documents being considered is available to the public at each site of the videoconference or telephone conference;

(d) At least one member of the state entity, advisory committee, board, or governing body is present at each site of the videoconference or telephone conference; and

(e) No more than one-half of the state entity's, advisory committee's, board's, or governing body's meetings in a calendar year are held by videoconference or telephone conference.

Videoconferencing, telephone conferencing, or conferencing by other electronic communication shall not be used to circumvent any of the public government purposes established in the Open Meetings Act.

(3) A meeting of a board of an educational service unit, of the governing body of an entity formed under the Interlocal Cooperation Act, the Joint Public Agency Act, or the Municipal Cooperative Financing Act, or of the governing body of a risk management pool or its advisory committees organized in accordance with the Intergovernmental Risk Management Act may be held by telephone conference call if:

(a) The territory represented by the educational service unit or member public agencies of the entity or pool covers more than one county;

(b) Reasonable advance publicized notice is given which identifies each telephone conference location at which an educational service unit board member or a member of the entity's or pool's governing body will be present;

(c) All telephone conference meeting sites identified in the notice are located within public buildings used by members of the educational service unit board or entity or pool or at a place which will accommodate the anticipated audience;

(d) Reasonable arrangements are made to accommodate the public's right to attend, hear, and speak at the meeting, including seating, recordation by audio recording devices, and a reasonable opportunity for input such as public comment or questions to at least the same extent as would be provided if a telephone conference call was not used;

(e) At least one copy of all documents being considered is available to the public at each site of the telephone conference call;

(f) At least one member of the educational service unit board or governing body of the entity or pool is present at each site of the telephone conference call identified in the public notice;

(g) The telephone conference call lasts no more than one hour; and

(h) No more than one-half of the board's, entity's, or pool's meetings in a calendar year are held by telephone conference call, except that a governing body of a risk management pool that meets at least quarterly and the advisory committees of the governing body may each hold more than one-half of its meetings by telephone conference call if the governing body's quarterly meetings are not held by telephone conference call or videoconferencing.

Nothing in this subsection shall prevent the participation of consultants, members of the press, and other nonmembers of the governing body at sites not identified in the public notice. Telephone conference calls, emails, faxes, or other electronic communication shall not be used to circumvent any of the public government purposes established in the Open Meetings Act.

(4) The secretary or other designee of each public body shall maintain a list of the news media requesting notification of meetings and shall make reasonable efforts to provide advance notification to them of the time and place of each meeting and the subjects to be discussed at that meeting.

(5) When it is necessary to hold an emergency meeting without reasonable advance public notice, the nature of the emergency shall be stated in the minutes and any formal action taken in such meeting shall pertain only to the emergency. Such emergency meetings may be held by means of electronic or telecommunication equipment. The provisions of subsection (4) of this section shall be complied with in conducting emergency meetings. Complete minutes of such emergency meetings specifying the nature of the emergency and any formal action taken at the meeting shall be made available to the public by no later than the end of the next regular business day.

(6) A public body may allow a member of the public or any other witness other than a member of the public body to appear before the public body by means of video or telecommunications equipment.

Source: Laws 1975, LB 325, § 4; Laws 1983, LB 43, § 3; Laws 1987, LB 663, § 25; Laws 1993, LB 635, § 2; Laws 1996, LB 469, § 6; Laws 1996, LB 1161, § 1; Laws 1999, LB 47, § 2; Laws 1999, LB 87, § 100; Laws 1999, LB 461, § 1; Laws 2000, LB 968, § 85; Laws 2004, LB 821, § 38; Laws 2004, LB 1179, § 2; Laws 2006, LB 898, § 2; Laws 2007, LB199, § 9; Laws 2009, LB361, § 2. Effective date August 30, 2009.

Cross References

Intergovernmental Risk Management Act, see section 44-4301.
Interlocal Cooperation Act, see section 13-801.
Joint Public Agency Act, see section 13-2501.
Municipal Cooperative Financing Act, see section 18-2401.

84-1413 Meetings; minutes; roll call vote; secret ballot; when.

(1) Each public body shall keep minutes of all meetings showing the time, place, members present and absent, and the substance of all matters discussed.

(2) Any action taken on any question or motion duly moved and seconded shall be by roll call vote of the public body in open session, and the record shall state how each member voted or if the member was absent or not voting. The requirements of a roll call or viva voce vote shall be satisfied by a municipality, a county, a learning community, a joint entity created pursuant to the Interlocal Cooperation Act, a joint public agency created pursuant to the Joint Public Agency Act, or an agency formed under the Municipal Cooperative Financing Act which utilizes an electronic voting device which allows the yeas and nays of each member of such city council, village board, county board, or governing body to be readily seen by the public.

(3) The vote to elect leadership within a public body may be taken by secret ballot, but the total number of votes for each candidate shall be recorded in the minutes.

(4) The minutes of all meetings and evidence and documentation received or disclosed in open session shall be public records and open to public inspection during normal business hours.

(5) Minutes shall be written and available for inspection within ten working days or prior to the next convened meeting, whichever occurs earlier, except that cities of the second class and villages may have an additional ten working

days if the employee responsible for writing the minutes is absent due to a serious illness or emergency.

Source: Laws 1975, LB 325, § 6; Laws 1978, LB 609, § 3; Laws 1979, LB 86, § 9; Laws 1987, LB 663, § 26; Laws 2005, LB 501, § 1; Laws 2009, LB361, § 3.
Effective date August 30, 2009.

Cross References

Interlocal Cooperation Act, see section 13-801.
Joint Public Agency Act, see section 13-2501.
Municipal Cooperative Financing Act, see section 18-2401.

ARTICLE 15
PUBLIC EMPLOYEES RETIREMENT BOARD

Section
84-1512. Board; access to records; director; duties; employer education program.

84-1512 Board; access to records; director; duties; employer education program.

(1) The Public Employees Retirement Board, for purposes of administering the various retirement systems under its jurisdiction, shall receive from the Department of Administrative Services and other employers such information as is necessary for the efficient and accurate administration of the systems and shall consult with the Department of Administrative Services and other employers as to the form in which the information is to be presented and received by the board. The information in the records shall be provided by the employers in an accurate and verifiable form, as specified by the director of the Nebraska Public Employees Retirement Systems. The director shall, from time to time, carry out testing procedures to verify the accuracy of such information. The director shall have access to records maintained by the Department of Administrative Services on the Nebraska employees information system data base for the purpose of obtaining any information which may be necessary to verify the accuracy of information and administer the systems and the holder of the records shall comply with a request by the director for access by providing such facts and information to the director in a timely manner.

(2) The director shall develop and implement an employer education program using principles generally accepted by public employee retirement systems so that all employers have the knowledge and information necessary to prepare and file reports as the board requires.

(3) The information obtained by the board pursuant to this section shall not be considered public records subject to sections 84-712 to 84-712.09, except that the following information shall be considered public records: The member's name, the retirement system in which the member is a participant, the date the member's participation in the retirement system commenced, and the date the member's participation in the retirement system ended, if applicable.

Source: Laws 1986, LB 311, § 41; Laws 2000, LB 1192, § 26; Laws 2005, LB 503, § 22; Laws 2009, LB188, § 19.
Operative date July 1, 2009.

CHAPTER 85
STATE UNIVERSITY, STATE COLLEGES, AND POSTSECONDARY EDUCATION

Article.
1. University of Nebraska. 85-1,138 to 85-1,142.
4. Campus Buildings and Facilities. 85-415, 85-421.
6. Public Institutions of Higher Education.
(c) Admission. 85-607.
9. Postsecondary Education.
(m) Student Diversity Scholarship Program Act. 85-9,178, 85-9,182.
10. Nebraska Safety Center. 85-1008.
14. Coordinating Commission for Postsecondary Education.
(a) Coordinating Commission for Postsecondary Education Act. 85-1402, 85-1412.
16. Private Postsecondary Career Schools. 85-1655.
21. Access College Early Scholarship Program Act. 85-2104 to 85-2106.
23. In the Line of Duty Dependent Education Act. 85-2301 to 85-2306.

ARTICLE 1
UNIVERSITY OF NEBRASKA

Section
85-1,138. Transferred to section 68-962.
85-1,139. Transferred to section 68-963.
85-1,140. Transferred to section 68-964.
85-1,141. Transferred to section 68-965.
85-1,142. Transferred to section 68-966.

85-1,138. Transferred to section 68-962.

85-1,139. Transferred to section 68-963.

85-1,140. Transferred to section 68-964.

85-1,141. Transferred to section 68-965.

85-1,142. Transferred to section 68-966.

ARTICLE 4
CAMPUS BUILDINGS AND FACILITIES

Section
85-415. University of Nebraska Facilities Program; contracts authorized; limitations.
85-421. University of Nebraska Facilities Program of 2006; appropriations; legislative intent; projects enumerated; accounting; status reports.

85-415 University of Nebraska Facilities Program; contracts authorized; limitations.

(1) In order to accomplish any projects authorized by section 85-414, the Board of Regents of the University of Nebraska may enter into contracts with any person, firm, or corporation providing for the implementation of any such project of the University of Nebraska and providing for the long-term payment

of the cost of such project from the University of Nebraska Facilities Program. In no case shall any such contract extend for a period beyond July 15, 2011, nor shall any such contract exceed the repayment capabilities implicit in the funding streams authorized in sections 85-412 and 85-414.

(2) The Board of Regents of the University of Nebraska shall not pledge the credit of the State of Nebraska for the payment of any sum owing on account of such contract, except that there may be pledged for the payment of any such contract any appropriation specifically made by the Legislature for such purpose, together with such funds of the Board of Regents of the University of Nebraska as the board determines. No contract shall be entered into pursuant to this section without prior approval by resolution by the Board of Regents. The Board of Regents may also convey, lease, or lease back all or any part of the projects authorized by section 85-414 and the land on which such projects are situated to such person, firm, or corporation as the Board of Regents may contract with pursuant to this section to facilitate the long-term payment of the cost of such projects. Any such conveyance or lease shall provide that when the cost of such projects has been paid, together with interest and other costs thereon, such projects and the land on which such projects are located shall become the property of the Board of Regents.

(3) The Board of Regents of the University of Nebraska is authorized to make expenditures for the purposes stated in this section and section 85-414 from investment income balances in any fund created under the authority provided for in any contract or contracts authorized by this section. Any appropriated amounts and amounts designated or matched by the Board of Regents under section 85-412 in excess of amounts required to meet debt service and any interest earnings derived from reserve funds or any other funds created under the authority provided for in any contract or contracts authorized by this section shall be accumulated and applied toward early retirement of debt as authorized under any indenture or other contract entered into by the Board of Regents as authorized by this section. The Board of Regents and the Department of Administrative Services shall, on or before January 1, 1999, enter into an agreement providing for the allocation and distribution of any balances existing in the University of Nebraska Facilities Program or any other funds created as part of a long-term contract entered into by the Board of Regents pursuant to this section to the General Fund and any other funds designated by the Board of Regents as a source of funds for the match specified in section 85-412 either on July 15, 2011, or when all financial obligations incurred in the contracts entered into by the Board of Regents pursuant to this section are discharged, whichever occurs first. Up to eleven million eight hundred thousand dollars of the balances existing in the University of Nebraska Facilities Program and any other funds created as a part of a long-term contract entered into by the Board of Regents pursuant to this section on July 15, 2009, may be expended for the acquisition and implementation of a joint student information system for the University of Nebraska and the Nebraska State College System.

Source: Laws 1998, LB 1100, § 4; Laws 2009, LB316, § 26.
Effective date May 20, 2009.

85-421 University of Nebraska Facilities Program of 2006; appropriations; legislative intent; projects enumerated; accounting; status reports.

(1) The Legislature shall appropriate from the General Fund (a) an amount not less than five million five hundred thousand dollars for each fiscal year for the period beginning with the fiscal year commencing July 1, 2006, and continuing through the fiscal year ending June 30, 2009, and (b) an amount not less than eleven million dollars for each fiscal year for the period beginning with the fiscal year commencing July 1, 2009, and continuing through the fiscal year ending June 30, 2020, to the University of Nebraska Facilities Program of 2006 to be used by the Board of Regents of the University of Nebraska to accomplish projects as provided in this section. Through the allotment process established in section 81-1113, the Department of Administrative Services shall make appropriated funds available. Undisbursed appropriations balances existing in the University of Nebraska Facilities Program of 2006 at the end of each fiscal year until June 30, 2021, shall be and are hereby reappropriated.

(2) The Legislature finds and determines that the projects funded through the University of Nebraska Facilities Program of 2006 are of critical importance to the State of Nebraska. It is the intent of the Legislature that the appropriations to the program shall not be reduced until all contracts and securities relating to the construction and financing of the projects or portions of the projects funded from such funds or accounts of such funds are completed or paid but in no case shall such appropriations extend beyond the fiscal year ending June 30, 2020, nor shall the cumulative total of the General Fund appropriations for the program exceed one hundred thirty-seven million five hundred thousand dollars.

(3) Subject to the receipt of project approval from the Coordinating Commission for Postsecondary Education as required by subsection (10) of section 85-1414 for each of the following University of Nebraska projects, the Board of Regents of the University of Nebraska is authorized to make expenditures from the University of Nebraska Facilities Program of 2006 for the following projects: (a) Deferred maintenance, repair, and renovation of University of Nebraska at Kearney Bruner Hall; (b) construction of University of Nebraska at Kearney campus-wide central utilities plant and system; (c) construction of facilities to replace University of Nebraska-Lincoln Behlen, Brace, and Ferguson Halls or deferred maintenance, repair, and renovation of University of Nebraska-Lincoln Behlen, Brace, and Ferguson Halls; (d) construction of a facility to replace University of Nebraska-Lincoln Keim Hall or deferred maintenance, repair, and renovation of University of Nebraska-Lincoln Keim Hall; (e) deferred maintenance, repair, and renovation of University of Nebraska-Lincoln Sheldon Memorial Art Gallery; (f) deferred maintenance, repair, and renovation of University of Nebraska-Lincoln Animal Science Complex; (g) deferred maintenance, repair, and renovation of University of Nebraska Medical Center Poynter, Bennet, and Wittson Halls; (h) deferred maintenance, repair, and renovation of University of Nebraska Medical Center Eppley Institute for Research in Cancer and Allied Diseases or replacement if additional federal or private funds are received; (i) deferred maintenance, repair, and renovation of University of Nebraska Medical Center College of Dentistry; (j) deferred maintenance, repair, and renovation of University of Nebraska at Omaha Library; and (k) deferred maintenance, repair, and renovation of University of Nebraska at Omaha utilities infrastructure.

(4) Expenditures of matching funds provided for the projects listed in this section by the Board of Regents of the University of Nebraska as provided for in section 85-419 shall be accounted for in the Nebraska State Accounting System

through the University of Nebraska Facilities Program of 2006 or according to some other reporting process mutually agreed upon by the University of Nebraska and the Department of Administrative Services.

(5) The Board of Regents of the University of Nebraska shall record and report, on the Nebraska State Accounting System, expenditure of amounts from the University of Nebraska Facilities Program of 2006 and expenditure of proceeds arising from any contract entered into pursuant to this section and section 85-422 in such manner and format as prescribed by the Department of Administrative Services or according to some other reporting process mutually agreed upon by the University of Nebraska and the Department of Administrative Services.

(6) The Board of Regents of the University of Nebraska shall provide to the Task Force for Building Renewal semiannual reports concerning the status of each project authorized by this section.

Source: Laws 2006, LB 605, § 3; Laws 2009, LB316, § 27.
Effective date May 20, 2009.

ARTICLE 6

PUBLIC INSTITUTIONS OF HIGHER EDUCATION

(c) ADMISSION

(c) ADMISSION

85-607 Denial of admission of certain qualified student; prohibited.

No publicly funded college or university in this state shall prohibit the admission of any student educated in any school which elects to meet the requirements of subsections (2) through (6) of section 79-1601 if the student is qualified for admission as shown by testing results.

Source: Laws 1984, LB 928, § 5; Laws 1996, LB 900, § 1079; Laws 1999, LB 813, § 58; Laws 2009, LB549, § 51.
Effective date August 30, 2009.

ARTICLE 9

POSTSECONDARY EDUCATION

(m) STUDENT DIVERSITY SCHOLARSHIP PROGRAM ACT

(m) STUDENT DIVERSITY SCHOLARSHIP PROGRAM ACT

85-9,178 Legislative findings and intent.

(1) The Legislature finds that the State of Nebraska has a compelling interest to provide access to the University of Nebraska, the state colleges, and the community colleges for students from diverse backgrounds who often find that the financial requirements of postsecondary education are a major obstacle. The Legislature further finds that the State of Nebraska has a compelling interest in attaining greater diversity in the makeup of the student bodies at the

University of Nebraska, the state colleges, and the community colleges because of the educational benefits that a diverse educational environment will produce for all students attending the University of Nebraska, the state colleges, and the community colleges.

(2) It is the intent of the Legislature:

(a) To appropriate funds to support a student diversity scholarship program for the purpose of developing more diverse student bodies at the state's public postsecondary educational institutions;

(b) That the student diversity scholarship program be designed and implemented so as to achieve a greater diversity in student populations in fulfillment of the compelling interest found by the Legislature pursuant to subsection (1) of this section; and

(c) That all funds appropriated by the Legislature for student diversity scholarships at the University of Nebraska, the state colleges, and the community colleges shall be used in coordination with private donations for such scholarships and in consultation with the major donors thereof and in coordination with federal grant funds available to students at the University of Nebraska, the state colleges, and the community colleges so as to maximize the level of benefits and accomplish the purposes of the Student Diversity Scholarship Program Act.

Source: Laws 2000, LB 1379, § 2; Laws 2007, LB342, § 33; Laws 2009, LB440, § 1.
Effective date August 30, 2009.

85-9,182 Awards; committee; determination.

Criteria for the award of scholarships under the Student Diversity Scholarship Program Act shall be determined in accordance with state and federal law by a committee selected by the Board of Regents of the University of Nebraska, the Board of Trustees of the Nebraska State Colleges, and the community college boards of governors. The committee shall include members from diverse groups and private donors to the endowed scholarship funds. Awards shall be consistent with the intent stated in the act and with the constitutions and laws of the United States and the State of Nebraska.

Source: Laws 2000, LB 1379, § 6; Laws 2007, LB342, § 37; Laws 2009, LB440, § 2.
Effective date August 30, 2009.

ARTICLE 10

NEBRASKA SAFETY CENTER

Section
85-1008. Nebraska Safety Center Advisory Council; membership; appointment.

85-1008 Nebraska Safety Center Advisory Council; membership; appointment.

(1) To assist the center in carrying out its purposes and functions, the Board of Regents may establish a Nebraska Safety Center Advisory Council composed of the following members:

(a) One representative from the Department of Roads;

(b) One representative from the Department of Motor Vehicles;

(c) One representative from the State Department of Education;

(d) One representative from the Game and Parks Commission;

(e) One representative from the Department of Labor;

(f) One person representing the community college areas;

(g) One person representing private business and industry;

(h) One person representing the University of Nebraska;

(i) One person representing the medical profession;

(j) One person representing the area of law enforcement in this state;

(k) One person representing the Safety Council of Nebraska, Inc.;

(l) One person representing the area of transportation;

(m) One person representative of emergency medical services;

(n) One person representing the judiciary in the State of Nebraska;

(o) One person representing city government;

(p) One person representing county government;

(q) One person representing the area of agriculture;

(r) One person representing the local public school system;

(s) One person representing fire safety;

(t) One representative of the Coordinating Commission for Postsecondary Education;

(u) One person representing the Red Cross; and

(v) One person representing the state colleges.

(2) Representatives selected to serve on the council shall have appropriate education, training, and experience in the field of fire safety, industrial safety, recreational safety, domestic safety, or traffic safety.

Source: Laws 1978, LB 693, § 8; Laws 1991, LB 663, § 124; Laws 1994, LB 683, § 14; Laws 2009, LB299, § 1.
Effective date August 30, 2009.

ARTICLE 14

COORDINATING COMMISSION FOR POSTSECONDARY EDUCATION

(a) COORDINATING COMMISSION FOR POSTSECONDARY EDUCATION ACT

(a) COORDINATING COMMISSION FOR POSTSECONDARY EDUCATION ACT

85-1402 Terms, defined.

For purposes of the Coordinating Commission for Postsecondary Education Act:

(1)(a) Capital construction project shall mean a project which utilizes tax funds designated by the Legislature and shall be: Any proposed new capital structure; any proposed addition to, renovation of, or remodeling of a capital

structure; any proposed acquisition of a capital structure by gift, purchase, lease-purchase, or other means of construction or acquisition that (i) will be directly financed in whole or in part with tax funds designated by the Legislature totaling at least the minimum capital expenditure for purposes of this subdivision or (ii) is likely, as determined by the institution, to result in an incremental increase in appropriation or expenditure of tax funds designated by the Legislature of at least the minimum capital expenditure for the facility's operations and maintenance costs in any one fiscal year within a period of ten years from the date of substantial completion or acquisition of the project. No tax funds designated by the Legislature shall be appropriated or expended for any incremental increase of more than the minimum capital expenditure for the costs of the operations and utilities of any facility which is not included in the definition of capital construction project and thus is not subject to commission approval pursuant to the Coordinating Commission for Postsecondary Education Act. No institution shall include a request for funding such an increase in its budget request for tax funds designated by the Legislature nor shall any institution utilize any such funds for such an increase. The Governor shall not include in his or her budget recommendations, and the Legislature shall not appropriate, such funds for such increase.

(b) For purposes of this subdivision:

(i) Directly financed shall mean funded by:

(A) Appropriation of tax funds designated by the Legislature for the specific capital construction project;

(B) Property tax levies used to establish a capital improvement and bond sinking fund pursuant to section 85-1515; or

(C) That portion of tax funds designated by the Legislature and appropriated by the Legislature for the general operation of the public institution and utilized to fund the capital project;

(ii) Incremental increase shall mean an increase in appropriation or expenditure of tax funds designated by the Legislature of at least the minimum capital expenditure for a facility's operations and maintenance costs, beyond any increase due to inflation, to pay for a capital structure's operations and maintenance costs that are a direct result of a capital construction project; and

(iii) Minimum capital expenditure shall mean:

(A) For purposes of subdivision (a)(i) of this subdivision, a base amount of two million dollars; and

(B) For the facility's operations and maintenance costs pursuant to subdivision (a)(ii) of this subdivision, a base amount of eighty-five thousand dollars for any one fiscal year.

The base amount for the facility's operations and maintenance costs shall be subject to any inflationary or market adjustments made by the commission pursuant to this subdivision. The commission shall adjust the base amount on a biennial basis beginning January 1, 2010. The adjustments shall be based on percentage changes in a construction cost index and any other published index relevant to operations and utilities costs, both as selected by the commission in cooperation with the public institutions. The index or indices shall reflect inflationary or market trends for the applicable operations and maintenance or construction costs;

(2) Commission shall mean the Coordinating Commission for Postsecondary Education;

(3) Coordination shall mean:

(a) Authority to adopt, and revise as needed, a comprehensive statewide plan for postsecondary education which shall include (i) definitions of the role and mission of each public postsecondary educational institution within any general assignments of role and mission as may be prescribed by the Legislature and (ii) plans for facilities which utilize tax funds designated by the Legislature;

(b) Authority to review, monitor, and approve or disapprove each public postsecondary educational institution's programs and capital construction projects which utilize tax funds designated by the Legislature in order to provide compliance and consistency with the comprehensive plan and to prevent unnecessary duplication; and

(c) Authority to review and modify, if needed to promote compliance and consistency with the comprehensive statewide plan and prevent unnecessary duplication, the budget requests of the governing boards or any other governing board for any other public postsecondary educational institution which may be established by the Legislature;

(4) Education center shall mean an off-campus branch of a public institution or cooperative of either public or public and private postsecondary educational institutions which offers instructional programs to students;

(5) Governing board shall mean the Board of Regents of the University of Nebraska, the Board of Trustees of the Nebraska State Colleges, or the board of governors for each community college area;

(6) Program shall mean any program of instruction which leads directly to a degree, diploma, or certificate and, for purposes of section 85-1414, shall include public service programs and all off-campus instructional programs, whether or not such programs lead directly to a degree, diploma, or certificate. Program shall also include the establishment of any new college, school, major division, education center, or institute but shall not include reasonable and moderate extensions of existing curricula which have a direct relationship to existing programs;

(7) Public institution shall mean each campus of a public postsecondary educational institution which is or may be established by the Legislature, which is under the direction of a governing board, and which is administered as a separate unit by the board; and

(8) Tax funds designated by the Legislature shall mean all state tax revenue and all property tax revenue.

Source: Laws 1991, LB 663, § 5; Laws 1994, LB 683, § 15; Laws 1999, LB 816, § 11; Laws 2006, LB 196, § 2; Laws 2009, LB440, § 3. Effective date August 30, 2009.

85-1412 Commission; additional powers and duties.

The commission shall have the following additional powers and duties:

(1) Conduct surveys and studies as may be necessary to undertake the coordination function of the commission pursuant to section 85-1403 and request information from governing boards and appropriate administrators of public institutions and other governmental agencies for research projects. All

public institutions and governmental agencies receiving state funds shall comply with reasonable requests for information under this subdivision. Public institutions may comply with such requests pursuant to section 85-1417;

(2) Recommend to the Legislature and the Governor legislation it deems necessary or appropriate to improve postsecondary education in Nebraska and any other legislation it deems appropriate to change the role and mission provisions in sections 85-917 to 85-966.01;

(3) Establish any advisory committees as may be necessary to undertake the coordination function of the commission pursuant to section 85-1403 or to solicit input from affected parties such as students, faculty, governing boards, administrators of the public institutions, administrators of the private nonprofit institutions of postsecondary education and proprietary institutions in the state, and community and business leaders regarding the coordination function of the commission;

(4) Participate in or designate an employee or employees to participate in any committee which may be created to prepare a coordinated plan for the delivery of educational programs and services in Nebraska through the telecommunications system;

(5) Seek a close liaison with the State Board of Education and the State Department of Education in recognition of the need for close coordination of activities between elementary and secondary education and postsecondary education;

(6) Administer the Integrated Postsecondary Education Data System or other information system or systems to provide the commission with timely, comprehensive, and meaningful information pertinent to the exercise of its duties. The information system shall be designed to provide comparable data on each public institution. The commission shall also administer the uniform information system prescribed in sections 85-1421 to 85-1427 known as the Nebraska Educational Data System. Public institutions shall supply the appropriate data for the information system or systems required by the commission;

(7) Administer the Access College Early Scholarship Program Act and the Nebraska Scholarship Act;

(8) Accept and administer loans, grants, and programs from the federal or state government and from other sources, public and private, for carrying out any of its functions, including the administration of privately endowed scholarship programs. Such loans and grants shall not be expended for any other purposes than those for which the loans and grants were provided. The commission shall determine eligibility for such loans, grants, and programs, and such loans and grants shall not be expended unless approved by the Governor;

(9) Consistent with section 85-1620, approve, in a timely manner, new baccalaureate degree programs to be offered at private postsecondary career schools as defined in section 85-1603. The commission may charge a reasonable fee based on its administrative costs for authorizations pursuant to this subdivision and section 85-1620. The commission shall report such action to the Commissioner of Education;

(10) Pursuant to sections 85-1101 to 85-1104, authorize out-of-state institutions of higher or postsecondary education to offer courses or degree programs in this state;

(11) Pursuant to sections 85-1105 to 85-1111, approve or disapprove petitions to establish new private colleges in this state;

(12) On or before December 1, 2000, and on or before December 1 every two years thereafter, submit to the Legislature and the Governor a report of its objectives and activities and any new private colleges in Nebraska and the implementation of any recommendations of the commission for the preceding two calendar years;

(13) Provide staff support for interstate compacts on postsecondary education;

(14) Request inclusion of the commission in any existing grant review process and information system; and

(15) Facilitate a study that explores the following issues related to the Nebraska community college system:

(a) The need for changes to the statutory role and mission of Nebraska community colleges;

(b) Changes in the weighting of courses that may be necessary for reimbursable educational units to properly reflect the role and mission of Nebraska community colleges and the cost of providing such courses;

(c) Powers, duties, and mission of the Nebraska Community College Association or its successor and whether membership in such an association should be required;

(d) Consequences for failing to satisfy current community college association membership requirements contained in section 85-1502; and

(e) State coordination of community colleges in the absence of a community college association or membership therein.

The commission shall include and facilitate discussion among the state's community colleges in the completion of such study. Each community college shall participate in good faith with the conduct of such study. The commission shall report its findings to the Legislature on or before December 15, 2009.

Source: Laws 1991, LB 663, § 15; Laws 1993, LB 93, § 7; Laws 1994, LB 683, § 18; Laws 1999, LB 816, § 14; Laws 2003, LB 7, § 5; Laws 2003, LB 574, § 26; Laws 2003, LB 685, § 29; Laws 2007, LB192, § 1; Laws 2009, LB340, § 1.
Effective date April 23, 2009.

Cross References

Access College Early Scholarship Program Act, see section 85-2101.
Integrated Postsecondary Education Data System, see section 85-1424.
Nebraska Scholarship Act, see section 85-1901.
Private Postsecondary Career School Act, see section 85-1601.

ARTICLE 16

PRIVATE POSTSECONDARY CAREER SCHOOLS

Section
85-1655. Tuition Recovery Cash Fund; administration.

85-1655 Tuition Recovery Cash Fund; administration.

The Tuition Recovery Cash Fund shall be administered by the board. The board shall adopt and promulgate rules and regulations for the administration

of the fund and for the evaluation and approval of claims pursuant to section 85-1657.

Source: Laws 1993, LB 348, § 53; R.S.1943, (1994), § 79-2860; Laws 1995, LB 4, § 55; Laws 2009, LB154, § 20.
Effective date August 30, 2009.

ARTICLE 21

ACCESS COLLEGE EARLY SCHOLARSHIP PROGRAM ACT

Section
85-2104. Student; eligibility.
85-2105. Applicant; commission; powers and duties; educational institution receiving payment; report required.
85-2106. Report.

85-2104 Student; eligibility.

A student who is applying to take one or more courses for credit from a qualified postsecondary educational institution is eligible for the Access College Early Scholarship Program if:

(1) Such student or the student's parent or legal guardian is eligible to receive:

(a) Supplemental Security Income;

(b) Supplemental Nutrition Assistance Program benefits;

(c) Free or reduced-price lunches under United States Department of Agriculture child nutrition programs;

(d) Aid to families with dependent children; or

(e) Assistance under the Special Supplemental Nutrition Program for Women, Infants, and Children; or

(2) The student or the student's parent or legal guardian has experienced an extreme hardship.

Source: Laws 2007, LB192, § 5; Laws 2009, LB288, § 45.
Operative date August 30, 2009.

85-2105 Applicant; commission; powers and duties; educational institution receiving payment; report required.

(1) An applicant for the Access College Early Scholarship Program shall complete an application form developed and provided by the commission and shall forward the form to his or her guidance counselor. The guidance counselor shall verify the student's eligibility under the Access College Early Scholarship Program Act and shall forward the information to the commission for review within fifteen days following receipt of the form from the student. Notification of tuition and mandatory fees to be accrued by the student shall be provided to the commission by the student, high school, or qualified postsecondary educational institution as determined by the commission.

(2) The commission shall review the application and verify the student's eligibility under the act. The commission shall notify the student and the student's guidance counselor of the verification of eligibility and the estimated award amount in writing within thirty days following receipt of the form from the student's guidance counselor. The scholarship award shall equal the lesser of tuition and mandatory fees accrued by the student after any discounts

applicable to such student from the qualified postsecondary educational institution or the tuition and mandatory fees that would have been accrued by the student for the same number of credit hours if the student were taking the course as a full-time, resident, undergraduate student from the University of Nebraska-Lincoln. The commission shall forward such amount directly to the qualified postsecondary educational institution as payment of such student's tuition and mandatory fees.

(3) The commission shall make such payments in the order the applications are received, except that the commission may limit the number of scholarships awarded in each term.

(4) The commission may limit the number of scholarships a student may receive.

(5) For any student receiving a scholarship pursuant to the act for tuition and mandatory fees, the qualified postsecondary educational institution receiving the payment shall report either the student's grade for the course or the student's failure to complete the course to the commission within thirty days after the end of the course or within one hundred eighty days after receipt of a payment pursuant to the act if the course for which the scholarship was awarded does not have a specified ending date. The commission shall keep the identity of students receiving scholarships confidential, except as necessary to comply with the requirements of the act.

Source: Laws 2007, LB192, § 6; Laws 2009, LB20, § 1.
Effective date March 6, 2009.

85-2106 Report.

The commission shall prepare an annual report on scholarships awarded pursuant to the Access College Early Scholarship Program Act and shall submit the report to the Clerk of the Legislature. The report shall include, but not be limited to, the number and amount of scholarships awarded, the postsecondary educational institutions attended by scholarship recipients, and information regarding the success of scholarship recipients in the courses for which the scholarships were awarded.

Source: Laws 2007, LB192, § 7; Laws 2009, LB20, § 2.
Effective date March 6, 2009.

ARTICLE 23

IN THE LINE OF DUTY DEPENDENT EDUCATION ACT

Section

85-2301 Act, how cited.

Sections 85-2301 to 85-2306 shall be known and may be cited as the In the Line of Duty Dependent Education Act.

Source: Laws 2009, LB206, § 1.
Effective date April 23, 2009.

85-2302 Legislative findings, declarations, and intent.

The Legislature finds and declares that:

(1) Nebraska's law enforcement officers and firefighters place their lives at risk in the line of duty to protect the citizens and property of this state;

(2) The services performed by Nebraska law enforcement officers and firefighters are necessary for the protection of the citizens and property of this state;

(3) Nebraska law enforcement officers and firefighters have lost or may lose their lives in the performance of their official duties; and

(4) Nebraska law enforcement officers and firefighters perform dangerous and hazardous acts in order to protect the citizens and property of this state.

It is the intent of the Legislature to recognize the ultimate sacrifice made by Nebraska law enforcement officers and firefighters who are killed in the line of duty on or after April 23, 2009, by providing a postsecondary educational benefit for their surviving children to attend state universities, state colleges, and community colleges located in Nebraska.

Source: Laws 2009, LB206, § 2.
Effective date April 23, 2009.

85-2303 Terms, defined.

For purposes of the In the Line of Duty Dependent Education Act:

(1) Associate degree program means a degree program at a community college, state college, or state university which typically requires completion of an organized program of study of at least sixty semester credit hours or an equivalent that can be shown to accomplish the same goal. Associate degree program does not include a baccalaureate degree program;

(2) Baccalaureate degree program means a degree program at a community college, state college, or state university which typically requires completion of an organized program of study of at least one hundred twenty semester credit hours or an equivalent that can be shown to accomplish the same goal;

(3) Child means a resident or nonresident of Nebraska who is the child by birth or adoption of a Nebraska law enforcement officer killed in the line of duty or a Nebraska firefighter killed in the line of duty;

(4) Community college means a public postsecondary educational institution which is part of the community college system and includes all branches and campuses of such institution located within the State of Nebraska;

(5) Education benefit means the In the Line of Duty Dependent Education Benefit established under section 85-2304;

(6) Fatal injury means an event occurring in the line of duty which is a proximate cause of the death of a law enforcement officer or firefighter;

(7) Firefighter means a member of a paid or volunteer fire department in Nebraska, including a member of a rescue squad associated with a paid or volunteer fire department in Nebraska, and a member of an emergency medical services ambulance squad;

(8) Law enforcement officer means any person who is responsible for the prevention or detection of crime or the enforcement of the penal, traffic, or highway laws of the State of Nebraska or any political subdivision of the state

for more than one hundred hours per year and who is authorized by law to make arrests;

(9) Line of duty means any action that a Nebraska law enforcement officer or firefighter is authorized or obligated by law, rule, or regulation to perform, related to or as a condition of employment or service;

(10) State college means a public postsecondary educational institution which is part of the Nebraska state college system and includes all branches and campuses of such institution located within the State of Nebraska;

(11) State university means a public postsecondary educational institution which is part of the University of Nebraska and includes all branches and campuses of such institution located within the State of Nebraska;

(12) Tuition and fees means the charges and cost of tuition and fees as set by the governing body of a state university, state college, or community college; and

(13) Volunteer fire department means a volunteer department as defined in section 35-1303 located in Nebraska which provides fire protection services within Nebraska.

Source: Laws 2009, LB206, § 3.
Effective date April 23, 2009.

85-2304 In the Line of Duty Dependent Education Benefit; established; eligibility; waiver of tuition and fees; application; notice; determination; effect.

(1) The In the Line of Duty Dependent Education Benefit is established for children of law enforcement officers and firefighters killed in the line of duty. In order for a child to be eligible for the benefit, the law enforcement officer or firefighter must have incurred the fatal injury on or after April 23, 2009.

(2) Notwithstanding the provisions of this section, a death that occurs as the direct and proximate result of a preexisting physical condition, disease, or illness shall be excluded from eligibility under this section unless the aggravation of such condition, disease, or illness caused by being in the line of duty was a direct and proximate cause of death.

(3) Any child who is the child of a law enforcement officer killed in the line of duty as provided in subsection (1) of this section or of a firefighter killed in the line of duty as provided in such subsection shall be eligible for the education benefit if the child is twenty-five years of age or younger. An eligible child shall meet all admission requirements of the state university, state college, or community college to which he or she is applying.

(4) The education benefit shall be provided only for full-time undergraduate students who are pursuing studies leading to a degree from an associate degree program or a baccalaureate degree program. The eligible child may receive the education benefit for up to five years if he or she otherwise continues to be eligible for participation. All education benefits received under the In the Line of Duty Dependent Education Act shall cease when the eligible child reaches twenty-six years of age.

(5) A child becomes eligible for the education benefit after he or she has applied for federal financial aid grants and state scholarships and grants to cover tuition and fees. The child must provide a record of application for such financial aid to the state university, state college, or community college to which he or she is applying.

(6) The state university, state college, or community college shall waive tuition and fees remaining due after subtracting awarded federal financial aid grants and state scholarships and grants for an eligible child during the time the child is enrolled as a full-time student. To remain eligible, the child must comply with all requirements of the institution for continued attendance and award of an associate degree or a baccalaureate degree.

(7) An application for an education benefit shall include a certified copy of the eligible child's birth certificate or applicable adoption record and verification of the death of the law enforcement officer or firefighter who was the child's parent.

(8) Verification of the death of the law enforcement officer or firefighter shall be made by obtaining a certificate of eligibility from the following sources: (a) Certificates of eligibility for the children of law enforcement officers shall be obtained from the Superintendent of Law Enforcement and Public Safety; (b) certificates of eligibility for the children of firefighters, except as provided in subdivision (c) of this subsection, shall be obtained from the State Fire Marshal; and (c) certificates of eligibility for the children of members of emergency medical services ambulance squads that are not associated with a paid or volunteer fire department shall be obtained from the Department of Health and Human Services.

(9) Within forty-five days after receipt of a completed application, the state university, state college, or community college shall send written notice of the applicant's eligibility or ineligibility for the education benefit. If the child is determined not to be eligible for the benefit, the notice shall include the reason or reasons for such determination and an indication that an appeal of the determination may be made pursuant to the Administrative Procedure Act.

(10) Upon a determination of eligibility for the child to obtain the education benefit, the state university, state college, or community college is prohibited from charging the child, the child's surviving parent, or the child's guardian any tuition or fees as long as the child remains eligible.

Source: Laws 2009, LB206, § 4.
Effective date April 23, 2009.

85-2305 Procedures, rules, and regulations.

Each state university, state college, or community college shall adopt the procedures, rules, and regulations necessary to carry out the In the Line of Duty Dependent Education Act.

Source: Laws 2009, LB206, § 5.
Effective date April 23, 2009.

85-2306 Qualification for benefit; how treated.

A finding that a student qualifies for an education benefit pursuant to the In Line of Duty Dependent Education Act shall not be admissible as evidence for any other purpose.

Source: Laws 2009, LB206, § 6.
Effective date April 23, 2009.

CHAPTER 86
TELECOMMUNICATIONS AND TECHNOLOGY

Article.

ARTICLE 2
TELECOMMUNICATIONS CONSUMER PROTECTION

(e) INTERCEPTED COMMUNICATIONS

Section

(e) INTERCEPTED COMMUNICATIONS

86-275 Electronic, mechanical, or other device, defined.

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

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

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

Source: Laws 2002, LB 1105, § 137; Laws 2009, LB195, § 109.
Effective date August 30, 2009.

ARTICLE 4
PUBLIC SAFETY SYSTEMS

(a) NEBRASKA PUBLIC SAFETY COMMUNICATION SYSTEM ACT

Section

(a) NEBRASKA PUBLIC SAFETY COMMUNICATION SYSTEM ACT

86-401 Act, how cited.

Sections 86-401 to 86-418 shall be known and may be cited as the Nebraska Public Safety Communication System Act.

Source: Laws 1999, LB 446, § 1; R.S.1943, (1999), § 86-1803; Laws 2002, LB 1105, § 208; Laws 2002, LB 1211, § 14; Laws 2005, LB 343, § 2; Laws 2006, LB 1061, § 14; Laws 2009, LB154, § 21. Effective date August 30, 2009.

86-418.01 Repealed. Laws 2009, LB 154, § 27.

ARTICLE 5

PUBLIC TECHNOLOGY INFRASTRUCTURE

(h) RETAIL OR WHOLESALE SERVICES

(i) NETWORK NEBRASKA

(h) RETAIL OR WHOLESALE SERVICES

86-593 Terms, defined.

For purposes of sections 86-593 to 86-598:

(1) Broadband services means the offering of a capability for high-speed broadband telecommunications capability at a speed or bandwidth in excess of two hundred kilobits per second that enables users to originate and receive high-quality voice, data, and video telecommunications using any technology;

(2) Internet services means the offering of Internet service provider services, providing voice over Internet protocol services, or providing Internet protocol-based video services;

(3) Public power supplier means a public power district, a public power and irrigation district, a municipal electric system, a joint entity formed under the Interlocal Cooperation Act, a joint public agency formed under the Joint Public Agency Act, an agency formed under the Municipal Cooperative Financing Act, or any other governmental entity providing electric service;

(4) Telecommunications has the same meaning as telecommunications defined in section 86-117;

(5) Telecommunications services has the same meaning as telecommunications service defined in section 86-121; and

(6) Video services means the delivery of any subscription video service except those described in section 70-625.

Source: Laws 2005, LB 645, § 1; Laws 2009, LB154, § 22. Effective date August 30, 2009.

Cross References

Interlocal Cooperation Act, see section 13-801.
Joint Public Agency Act, see section 13-2501.
Municipal Cooperative Financing Act, see section 18-2401.

86-597 Retail or wholesale service; how construed.

(1) For purposes of sections 86-594 to 86-596, providing a service on a retail or wholesale basis shall not include an agency or political subdivision of the state, whether or not a public power supplier, deploying or utilizing broadband services, Internet services, telecommunications services, or video services, for its own use either individually or jointly through the Interlocal Cooperation Act, the Joint Public Agency Act, or the Municipal Cooperative Financing Act for the internal use and purpose of the agency, political subdivision, or public power supplier or to carry out the public purposes of the agency, political subdivision, or public power supplier.

(2) Nothing in sections 86-593 to 86-598 prohibits or restricts the ability of an agency, political subdivision, or public power supplier from deploying or utilizing broadband services, Internet services, telecommunications services, or video services for the internal use and purpose of the agency, political subdivision, or public power supplier, or to carry out the public purposes of the agency, political subdivision, or public power supplier.

Source: Laws 2005, LB 645, § 5; Laws 2009, LB154, § 23.
Effective date August 30, 2009.

Cross References

Interlocal Cooperation Act, see section 13-801.
Joint Public Agency Act, see section 13-2501.
Municipal Cooperative Financing Act, see section 18-2401.

86-598 Sections; how construed.

Except as otherwise provided in sections 86-595 and 86-596, nothing in sections 86-593 to 86-598 shall be construed to restrict or expand any authority of a public power supplier as that authority existed prior to September 4, 2005.

Source: Laws 2005, LB 645, § 6; Laws 2009, LB154, § 24.
Effective date August 30, 2009.

86-599 Repealed. Laws 2009, LB 154, § 27.

(i) NETWORK NEBRASKA

86-5,101 Repealed. Laws 2009, LB 545, § 26.

CHAPTER 87
TRADE PRACTICES

Article.
3. Deceptive Trade Practices.
(a) Uniform Deceptive Trade Practices Act. 87-302.

ARTICLE 3
DECEPTIVE TRADE PRACTICES

(a) UNIFORM DECEPTIVE TRADE PRACTICES ACT

Section
87-302. Deceptive trade practices; enumerated.

(a) UNIFORM DECEPTIVE TRADE PRACTICES ACT

87-302 Deceptive trade practices; enumerated.

(a) A person engages in a deceptive trade practice when, in the course of his or her business, vocation, or occupation, he or she:

(1) Passes off goods or services as those of another;

(2) Causes likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of goods or services;

(3) Causes likelihood of confusion or of misunderstanding as to affiliation, connection, or association with, or certification by, another;

(4) Uses deceptive representations or designations of geographic origin in connection with goods or services;

(5) Represents that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that he or she does not have;

(6) Represents that goods are original or new if they are deteriorated, altered, reconditioned, reclaimed, used, or secondhand, except that sellers may repair damage to and make adjustments on or replace parts of otherwise new goods in an effort to place such goods in compliance with factory specifications;

(7) Represents that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another;

(8) Disparages the goods, services, or business of another by false or misleading representation of fact;

(9) Advertises goods or services with intent not to sell them as advertised or advertises the price in any manner calculated or tending to mislead or in any way deceive a person;

(10) Advertises goods or services with intent not to supply reasonably expectable public demand, unless the advertisement discloses a limitation of quantity;

(11) Makes false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions;

(12) Uses or promotes the use of a chain distributor scheme in connection with the solicitation of business or personal investments from members of the public;

(13) With respect to a sale or lease to a natural person of goods or services purchased or leased primarily for personal, family, household, or agricultural purposes, uses or employs any referral or chain referral sales technique, plan, arrangement, or agreement;

(14) Knowingly makes a false or misleading statement in a privacy policy, published on the Internet or otherwise distributed or published, regarding the use of personal information submitted by members of the public;

(15) Uses any scheme or device to defraud by means of:

(i) Obtaining money or property by knowingly false or fraudulent pretenses, representations, or promises; or

(ii) Selling, distributing, supplying, furnishing, or procuring any property for the purpose of furthering such scheme;

(16) Offers an unsolicited check, through the mail or by other means, to promote goods or services if the cashing or depositing of the check obligates the endorser or payee identified on the check to pay for goods or services. This subdivision does not apply to an extension of credit or an offer to lend money;

(17) Mails or causes to be sent an unsolicited billing statement, invoice, or other document that appears to obligate the consumer to make a payment for services or merchandise he or she did not order; or

(18) Violates any provision of the Nebraska Foreclosure Protection Act.

(b) In order to prevail in an action under the Uniform Deceptive Trade Practices Act, a complainant need not prove competition between the parties.

(c) This section does not affect unfair trade practices otherwise actionable at common law or under other statutes of this state.

Source: Laws 1969, c. 855, § 2, p. 3222; Laws 1974, LB 327, § 2; Laws 1976, LB 820, § 1; Laws 1979, LB 257, § 1; Laws 1988, LB 180, § 1; Laws 1991, LB 408, § 1; Laws 1993, LB 305, § 32; Laws 2003, LB 118, § 1; Laws 2008, LB123, § 29; Laws 2008, LB781, § 1; Laws 2009, LB155, § 18.
Effective date August 30, 2009.

Cross References

Nebraska Foreclosure Protection Act, see section 76-2701.

CHAPTER 90
SPECIAL ACTS

Article.
3. Capitol Environs. 90-303.
5. Appropriations. 90-501 to 90-514.

ARTICLE 3
CAPITOL ENVIRONS

Section
90-303. Nebraska State Capitol Environs District; maximum height restrictions; enforcement; exemptions; city of Lincoln; powers and duties.

90-303 Nebraska State Capitol Environs District; maximum height restrictions; enforcement; exemptions; city of Lincoln; powers and duties.

(1) The maximum height of any buildings and structures built after March 8, 1977, shall be restricted as follows:

(a) The maximum height of buildings and structures shall be forty-five feet or National Geodetic Survey elevation 1235.0 feet, whichever is lower, within an area bounded on the west by Seventeenth Street, on the north by K Street, on the east by a boundary formed by a line extending in a true south direction as an extension of the east property line of Twenty-fourth Street, and on the south by a boundary formed by a line extending directly in a true east direction to the east property line of Twenty-fourth Street from the centerpoint of the intersection of Seventeenth and H Streets, all streets in the city of Lincoln, Lancaster County, Nebraska;

(b) The maximum height of buildings and structures shall be forty-five feet or National Geodetic Survey elevation 1235.0 feet, whichever is lower, within an area bounded on the west by Fourteenth Street, on the north by G Street, on the east by Sixteenth Street, and on the south by Washington Street, all streets in the city of Lincoln, Lancaster County, Nebraska;

(c) The maximum height of the buildings and structures shall be fifty-seven feet or National Geodetic Survey elevation 1247.0 feet, whichever is lower, within an area bounded on the west by Thirteenth Street, on the north by L Street, on the east by Seventeenth Street, and on the south by G Street, all streets in the city of Lincoln, Lancaster County, Nebraska;

(d) The maximum height of the buildings and structures shall be fifty-seven feet or National Geodetic Survey elevation 1247.0 feet, whichever is lower, within an area bounded on the west by Fourteenth Street, on the north by S Street, on the east by Sixteenth Street, and on the south by L Street, all streets in the city of Lincoln, Lancaster County, Nebraska; and

(e) The maximum height of the buildings and structures shall be fifty-seven feet or National Geodetic Survey elevation 1247.0 feet, whichever is lower, within an area bounded on the west by Fifth Street, on the north by K Street, on the east by Thirteenth Street, and on the south by H Street, all streets in the city of Lincoln, Lancaster County, Nebraska.

(2) For the purposes of the Nebraska State Capitol Environs Act, the areas and the full width of the right-of-way boundary streets described in subsections (1) and (3) of this section shall together constitute and be defined as the Nebraska State Capitol Environs District.

(3) Design approval shall be required for all aboveground utility, construction, and landscape improvements in the public right-of-way bounded on the north and south by the property lines of J Street, on the west by a boundary formed by a line extending in a true south direction as an extension of the east property line of Twenty-fourth Street, and on the east by a line extending in a true north direction as an extension of the east property line of Thirty-fifth Street.

(4) The city of Lincoln shall insure, through its inspection and permit procedures, that the maximum height restrictions and design review process prescribed by this section for the Nebraska State Capitol Environs District are enforced.

(5) The height restrictions and design review process required by this section shall apply, within the Nebraska State Capitol Environs District, to all real estate in private or quasi-public ownership and to real estate owned by the State of Nebraska and local governmental units of all types.

(6) The following appurtenances shall be exempt from the height restrictions required by this section, but such appurtenances shall not exceed twenty feet in height above the maximum height permitted in subsection (1) of this section and shall be set back a minimum of fifteen feet from all faces of a building when such faces are adjacent to a street: Church spires, cooling towers with approved screening, elevator bulkheads, fire towers, monuments, stage towers or scenery lofts, ornamental towers, and spires.

(7) Nothing in the act shall be construed as limiting the authority of the city of Lincoln to impose lower height restrictions than those maximum height limits established by subsection (1) of this section or in establishing lower height restrictions for appurtenances than those required by subsection (6) of this section.

(8) The city of Lincoln shall review and approve or disapprove plans and proposals for demolition, exterior alteration, and construction of structures and other improvements in the Nebraska State Capitol Environs District. The city of Lincoln shall adopt regulations within its zoning code vesting responsibility for review, approval, and disapproval of projects with the Nebraska State Capitol Environs Commission established by the city of Lincoln.

(9) The regulations of the city of Lincoln for design review in the Nebraska State Capitol Environs District shall emphasize the long-term enhancement of the State Capitol's setting and of enjoyment of the State Capitol by the citizens while respecting the interests of property owners, including economic interests and the desirability of predictable, expeditious review.

Source: Laws 1977, LB 172, § 3; Laws 1993, LB 271, § 3; Laws 2002, LB 729, § 13; Laws 2009, LB450, § 1.
Effective date August 30, 2009.

ARTICLE 5
APPROPRIATIONS

Section

90-501 Transfer to Personnel Division Revolving Fund.

The State Treasurer shall transfer $100,000 from the Department of Administrative Services Revolving Fund to the Personnel Division Revolving Fund, as soon as possible, on or after May 20, 2009.

Source: Laws 2009, LB316, § 1.
Effective date May 20, 2009.

90-502 Transfer to Personnel Division Revolving Fund.

The State Treasurer shall transfer $265,000 from the Accounting Division Revolving Fund to the Personnel Division Revolving Fund, as soon as possible, on or after May 20, 2009.

Source: Laws 2009, LB316, § 2.
Effective date May 20, 2009.

90-503 Transfer to Ethanol Production Incentive Cash Fund.

The State Treasurer shall transfer $2,500,000 from the General Fund to the Ethanol Production Incentive Cash Fund on or before June 30, 2010, on such date as directed by the budget administrator of the budget division of the Department of Administrative Services, pursuant to subdivision (2)(g) of section 66-1345.04.

Source: Laws 2009, LB316, § 3.
Effective date May 20, 2009.

90-504 Transfer to Ethanol Production Incentive Cash Fund.

The State Treasurer shall transfer $2,500,000 from the General Fund to the Ethanol Production Incentive Cash Fund on or before June 30, 2011, on such date as directed by the budget administrator of the budget division of the Department of Administrative Services, pursuant to subdivision (2)(g) of section 66-1345.04.

Source: Laws 2009, LB316, § 4.
Effective date May 20, 2009.

90-505 Transfer to Ethanol Production Incentive Cash Fund.

The State Treasurer shall transfer $200,000 from the Agricultural Alcohol Fuel Tax Fund to the Ethanol Production Incentive Cash Fund on June 15, 2010, or as soon thereafter as administratively possible.

Source: Laws 2009, LB316, § 5.
Effective date May 20, 2009.

90-506 Transfer to Water Resources Cash Fund.

The State Treasurer shall transfer $2,700,000 from the General Fund to the Water Resources Cash Fund on or before June 30, 2010, on such date as directed by the budget administrator of the budget division of the Department of Administrative Services, pursuant to section 61-218.

Source: Laws 2009, LB316, § 6.
Effective date May 20, 2009.

90-507 Transfer to Water Resources Cash Fund.

The State Treasurer shall transfer $2,700,000 from the General Fund to the Water Resources Cash Fund on or before June 30, 2011, on such date as directed by the budget administrator of the budget division of the Department of Administrative Services, pursuant to section 61-218.

Source: Laws 2009, LB316, § 7.
Effective date May 20, 2009.

90-508 Transfer to Ethanol Production Incentive Cash Fund.

The State Treasurer shall transfer $8,250,000 from the General Fund to the Ethanol Production Incentive Cash Fund on or before June 30, 2010, on such date as directed by the budget administrator of the budget division of the Department of Administrative Services, pursuant to subdivision (2)(j) of section 66-1345.04.

Source: Laws 2009, LB316, § 8.
Effective date May 20, 2009.

90-509 Transfer to Ethanol Production Incentive Cash Fund.

The State Treasurer shall transfer $3,000,000 from the General Fund to the Ethanol Production Incentive Cash Fund on or before June 30, 2011, on such date as directed by the budget administrator of the budget division of the Department of Administrative Services, pursuant to subdivision (2)(k) of section 66-1345.04.

Source: Laws 2009, LB316, § 9.
Effective date May 20, 2009.

90-510 Transfer to Property Tax Credit Cash Fund.

The State Treasurer shall transfer $112,000,000 from the General Fund to the Property Tax Credit Cash Fund on or before December 31, 2009, on such date as directed by the budget administrator of the budget division of the Department of Administrative Services.

Source: Laws 2009, LB316, § 10.
Effective date May 20, 2009.

90-511 Transfer to Property Tax Credit Cash Fund.

The State Treasurer shall transfer $112,000,000 from the General Fund to the Property Tax Credit Cash Fund on or before December 31, 2010, on such date as directed by the budget administrator of the budget division of the Department of Administrative Services.

Source: Laws 2009, LB316, § 11.
Effective date May 20, 2009.

90-512 Transfer to Joseph Soukup Trust Fund.

The State Treasurer shall transfer $100,000 from the Nebraska Health Care Cash Fund to the Joseph Soukup Trust Fund before July 1, 2009.

Source: Laws 2009, LB316, § 12.
Effective date May 20, 2009.

90-513 Transfer to Nebraska Cultural Preservation Endowment Fund.

The State Treasurer shall transfer an amount as directed by the budget administrator of the budget division of the Department of Administrative Services, pursuant to subdivisions (3) and (4) of section 82-331, not to exceed $500,000, from the General Fund to the Nebraska Cultural Preservation Endowment Fund on December 31, 2009, or as soon thereafter as administratively possible.

Source: Laws 2009, LB316, § 13.
Effective date May 20, 2009.

90-514 Transfer to Nebraska Cultural Preservation Endowment Fund.

The State Treasurer shall transfer an amount as directed by the budget administrator of the budget division of the Department of Administrative Services, pursuant to subdivisions (3) and (4) of section 82-331, not to exceed $500,000, plus an amount equal to unused transfer authority from the prior fiscal year, from the General Fund to the Nebraska Cultural Preservation Endowment Fund on December 31, 2010, or as soon thereafter as administratively possible.

Source: Laws 2009, LB316, § 14.
Effective date May 20, 2009.

UNIFORM COMMERCIAL CODE

ARTICLE 9

SECURED TRANSACTIONS

Part 5
FILING

Subpart 1
FILING OFFICE; CONTENTS AND EFFECTIVENESS OF FINANCING STATEMENT

Part 5

FILING

Subpart 1

FILING OFFICE; CONTENTS AND EFFECTIVENESS OF FINANCING STATEMENT

9-506 Effect of errors or omissions.

(a)(i) This subsection applies until September 2, 2010. A financing statement substantially satisfying the requirements of this part is effective, even if it has minor errors or omissions, unless the errors or omissions make the financing statement seriously misleading.

(ii) Except as otherwise provided in subdivision (iii) of this subsection, a financing statement that fails sufficiently to provide the name of the debtor in accordance with section 9-503(a) is seriously misleading.

(iii) If a search of the records of the filing office under the debtor's correct name, using the filing office's standard search logic, if any, would disclose a financing statement that fails sufficiently to provide the name of the debtor in accordance with section 9-503(a), the name provided does not make the financing statement seriously misleading.

(iv) For purposes of section 9-508(b), the ''debtor's correct name'' in subdivision (iii) of this subsection means the correct name of the new debtor.

(b)(i) This subsection applies beginning on September 2, 2010. A financing statement substantially satisfying the requirements of this part is effective, even if it has minor errors or omissions, unless the errors or omissions make the financing statement seriously misleading.

(ii) Except as otherwise provided in subdivision (iii) of this subsection, a financing statement that fails sufficiently to provide the name of the debtor in accordance with section 9-503(a) is seriously misleading.

(iii) If a search of the records of the filing office under the debtor's correct name, or, in the case of a debtor who is an individual, the debtor's correct last name, using the filing office's standard search logic, if any, would disclose a financing statement that fails sufficiently to provide the name of the debtor in accordance with section 9-503(a), the name provided does not make the financing statement seriously misleading.

(iv) For purposes of section 9-508(b), the ''debtor's correct name'' in subdivision (iii) of this subsection means the correct name of the new debtor.

Source: Laws 1986, LB 1027, § 164; Laws 2009, LB87, § 1.
Effective date August 30, 2009.